

# PATENT ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	LICENSE
<b>CONVEYING PARTY DATA</b>	
Name	Execution Date
Mayo Foundation for Medical Education and Research	06/27/2011
<b>RECEIVING PARTY DATA</b>	
Name:	Titan Medical Inc.
Street Address:	181 University Ave., Suite 401
City:	Toronto, Ontario
State/Country:	CANADA
Postal Code:	M5H 3M7
<b>PROPERTY NUMBERS Total: 1</b>	
Property Type	Number
Application Number:	13254553
<b>CORRESPONDENCE DATA</b>	
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<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
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ATTORNEY DOCKET NUMBER:	96315.4
NAME OF SUBMITTER:	Michelle Rhodes
<b>Total Attachments: 18</b> source=96315-4-Client-20110831-Redacted Executed Mayo Titan License#page1.tif source=96315-4-Client-20110831-Redacted Executed Mayo Titan License#page2.tif source=96315-4-Client-20110831-Redacted Executed Mayo Titan License#page3.tif source=96315-4-Client-20110831-Redacted Executed Mayo Titan License#page4.tif	

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**MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH  
EXCLUSIVE PATENT LICENSE AGREEMENT**

This patent license agreement ("Agreement") is by and between Mayo Foundation for Medical Education and Research, a Minnesota charitable corporation, located at 200 First Street SW, Rochester, Minnesota 55905-0001 ("Mayo"), and Titan Medical Inc., a Canadian corporation, with its principal place of business at 181 University Ave., Suite 401, Toronto, Ontario, Canada M5H 3M7 ("Company").

WHEREAS, Mayo desires to make its intellectual property rights available for the development and commercialization of products, methods and processes for public use and benefit;

WHEREAS, Company represents itself as being knowledgeable in developing and commercializing robotic surgical systems; and

WHEREAS, Mayo is willing to grant and Company is willing to accept an exclusive license under such rights for the purpose of developing such surgical stapler delivery system that was conceived of by Dr. Heidi Nelson and Dr. David W. Larson, and described in Mayo Invention Disclosure and Assignment Record No. 2009-003.

NOW THEREFORE, in consideration of the foregoing and the terms and conditions set forth below, the parties hereby agree as follows:

**Article 1.00 – Definitions**

For purposes of this Agreement, the terms defined in this Article will have the meaning specified and will be applicable both to the singular and plural forms:

**1.01** For Mayo, "Affiliate": any corporation or other entity within the same "controlled group of corporations" as Mayo or its parent Mayo Clinic. For purposes of this definition, the term "controlled group of corporations" will have the same definition as Section 1563 of the Internal Revenue Code as of November 10, 1998, but will include corporations or other entities which if not a stock corporation, more than 50% of the board of directors or other governing body of such corporation or other entity is controlled by a corporation within the controlled group of corporations of Mayo or Mayo Clinic. Mayo's Affiliates include, but are not limited to: Mayo Clinic; Mayo Collaborative Services, Inc.; Mayo Clinic - Methodist Hospital; Mayo Clinic - Saint Marys Hospital; Mayo Clinic Florida; Mayo Clinic Arizona; and its Mayo Health System entities.

For Company, "Affiliate": any corporation or other entity that controls, is controlled by, or is under common control with, Company. For purposes of this definition, "control" means ownership of: (a) at least 50% or the maximum percentage, if less than 50%, as allowed by applicable law, of the outstanding voting securities of such entity; or (b) at least 50% of the decision-making authority of such entity.

**1.02** “Confidential Information”: any information or material disclosed by one party, the disclosing party, to the other, the receiving party, identified in writing as confidential at the time of disclosure or, if first disclosed orally, identified as confidential and confirmed in writing within forty-five days. Confidential Information does not include any information or material that receiving party evidences is: (a) already known to the receiving party at the time of disclosure (other than from the disclosing party); (b) publicly known other than through acts or omissions of the receiving party; (c) disclosed to the receiving party by a third party who was not and is not under any obligation of confidentiality; or (d) independently developed by employees of the receiving party without knowledge of or access to the Confidential Information.

**1.03** “Distributor”: any third party that contracts with Company to offer for sale, sell, or import Licensed Products, but does not have the right to make or have made Licensed Products.

**1.04** “Effective Date”: June 27, 2011.

**1.05** “Field”: medical diagnosis and/or treatment of a human or animal body or part thereof, and specifically, the development, commercialization and application of robotic surgical procedures and systems.

**1.06** “Licensed Product”: any product or process: (a) described by a pending claim of the Patent Rights; and/or (b) infringing an issued claim of the Patent Rights.

**1.07** “Net Sales”: the amount invoiced by Company, Sublicensee, or Distributor for the transfer of a Licensed Product to a third party (other than an Affiliate of Company) less documented: (a) sales tax, excise tax, use tax, value-added tax, goods and services tax or other similar taxes imposed on such transfer and shown on the face of the invoice; (b) credits for damaged, recalled, defective or returned Licensed Products actually given; (c) regular trade and discount allowances given; and (d) freight, insurance and other transportation charges in shipping such Licensed Product and shown on the face of the invoice. Leasing, lending, consigning or any other activity by means of which a third party acquires the right to possess or use a Licensed Product is a transfer for the purpose of determining Net Sales. Net Sales on Licensed Products transferred as part of a non-cash exchange shall be calculated at the then-current customary sales price invoiced to third parties or fair market value if there are no current invoices to third parties. Net Sales accrues with the first of delivery of Licensed Product or invoice with respect to the transfer thereof.

**1.08** “Sublicensee”: any third party or any Affiliate of Company to whom Company has conveyed rights or the forbearance of suit under the Patent Rights. Sublicensee does not include Distributors as defined in Section 1.03.

**1.09** “Sublicense Income”: consideration in any form received by Company from each Sublicensee with respect to the Patent Rights, excluding all amounts paid by Sublicensee directly to Mayo on Net Sales. Sublicense Income shall include all fees, payments, equity, research and development funding in excess of Company’s reasonable and documented costs of performing such research and development, and any consideration received for an equity interest in, extension of credit to, or other investment in, Company, to the extent such consideration exceeds the fair market value as promptly determined by agreement of the parties or by an independent appraiser mutually agreeable to the parties.

**1.10 “Patent Rights”:** PCT Application No. PCT/US2010/026220 entitled, "Surgical Stapler Delivery Systems and Methods of Assembling the Staplers" filed on March 4, 2010, and all provisionals, divisionals, continuations, and continuations-in-part therefrom, patents issuing thereon, re-examinations and re-issues thereof, as well as extensions and supplementary protection certificates and any foreign counterpart of any of the foregoing.

**1.11 “Improvements”:** Any new discovery or technology: (i) created by Dr. Heidi Nelson and/or Dr. David W. Larson in her or his work under this Agreement; (ii) arising during, and in the course of, work under a mutually agreed upon written work plan (“Work Plan”) and budget; or (iii) which is disclosed to and owned by Mayo, and is covered in whole or in part by the Patent Rights, and which is conceived, whether or not reduced to practice, by Mayo within one (1) year of Effective Date.

**1.12 “Term”:** begins on the Effective Date and ends, subject to Article 10, upon the date of the last to expire of the Patent Rights.

**1.13 “Territory”:** worldwide.

## **Article 2.00 – Grant of Rights**

**2.01 GRANT.** Subject to the terms and conditions of this Agreement, Mayo grants to Company an exclusive license with the right to sublicense within the Field and Territory under the Patent Rights and Improvements to make, have made, use, offer for sale, sell, and import Licensed Products.

**2.02 RESERVATION OF RIGHTS.** All rights herein are subject to: (a) the rights and obligations to and requirements of the U.S. government, if any have arisen or may arise, regarding the Patent Rights, including as set forth in 35 U.S.C. §§200 et al., 37 C.F.R. Part 401 et al. (“Bayh-Dole Act”); and (b) Mayo’s and its Affiliates’ reserved, irrevocable right to practice and have practiced the Patent Rights in connection with Mayo’s and its Affiliates’ educational, research and clinical programs. Company agrees to comply with the applicable provisions of the Bayh-Dole Act, including, where applicable, promptly providing to Mayo with information requested to enable Mayo to meet its compliance requirements and substantially manufacturing Licensed Product in the U.S.

**2.03 NO OTHER RIGHTS GRANTED.** This Agreement does not grant any right, title or interest in or to any tangible or intangible property right of Mayo or its Affiliates, including any further improvements thereon, or to any Patent Rights outside the Field or Territory that is not expressly stated in Section 2.01. All such rights, titles and interests are expressly reserved by Mayo and Company agrees that in no event will this Agreement be construed as a sale, an assignment, or an implied license by Mayo or its Affiliates to Company of any such tangible or intangible property rights.

**2.04 SUBLICENSES.** Any sublicense by Company shall be to a Sublicensee that agrees in writing to be bound by substantially the same terms and conditions as Company herein, excluding the financial terms and conditions, or such sublicense shall be null and void. Sublicenses granted hereunder shall not be transferable, including by further sublicensing, delegatable or assignable without the prior written approval of Mayo (such approval not to be unreasonably withheld or delayed). Company will provide Mayo with a copy of each sublicense agreement promptly after execution. Company is responsible for the performance of all Sublicensees as if such performance were carried out by Company itself, including the payment of any royalties or other payments provided for hereunder triggered by Sublicensee, regardless of whether the terms of any sublicense require that Sublicensee pay such amounts (such as in a fully paid-up license), or that such amounts be paid by the Sublicensee directly to Mayo. Each sublicense agreement shall name Mayo as a third party beneficiary and unless Mayo has provided written consent, all rights of Sublicensees shall terminate when Company's rights terminate. Company shall not grant any fully-paid up, royalty-free, or exclusive sublicenses without Mayo's prior written consent (such consent not to be unreasonably withheld or delayed).

### **Article 3.00 – Royalties**

**3.01 UP-FRONT.** As consideration for entering into this Agreement, Company will make a non-refundable and non-creditable up-front payment to Mayo of [REDACTED] within thirty (30) days of the Effective Date, and another [REDACTED] within six (6) months of the Effective Date.

**3.02 ANNUAL LICENSE MAINTENANCE FEE.** During the Term of this Agreement, Company will make annual, non-refundable and non-creditable license maintenance fees to Mayo on the first anniversary of the Effective Date and every anniversary thereafter, according to the table below, unless Company is making minimum royalty payments pursuant to Section 3.05.

<b>License Year &amp; Due Date</b>	<b>License Maintenance Fee</b>
2012 – 1 <sup>st</sup> Anniversary of the Effective Date	[REDACTED]
2013 – 2 <sup>nd</sup> Anniversary of the Effective Date	
2014 – 3 <sup>rd</sup> Anniversary of the Effective Date	
2015 – 4 <sup>th</sup> Anniversary of the Effective Date and thereafter	

**3.03 MILESTONE FEES.** Company will make the following non-refundable and non-creditable milestone fees to Mayo for each Licensed Product (excluding minor variations made thereto) developed by COMPANY upon every achievement of the following events:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

(e) [REDACTED]

**3.04 EARNED ROYALTIES.** Company and each Sublicensee will make non-refundable and non-creditable earned royalty payments to Mayo of [REDACTED] of Net Sales of Licensed Products as defined under Section 1.06, and in the case of transfers from Company to a Distributor, Company will make non-refundable and non-creditable earned royalty payments to Mayo of [REDACTED] of Net Sales of Licensed Products based on the amount invoiced (or to be invoiced) by the Distributor for the transfer of Licensed Products to third parties (collectively "Earned Royalties"). The Earned Royalties are payable as described in Section 4.01. Licensed Products transferred to Mayo or its Affiliates are not considered transfers for purposes of determining Net Sales or for calculating Earned Royalties. No Earned Royalties are due Mayo on transfers to Mayo or Mayo Affiliates. Provided that a Company's Affiliate is paying Earned Royalties to Mayo under this Section 3.04, Licensed Products transferred from Company to such Company's Affiliate are not considered transfers for the purposes of determining Net Sales or for calculating Earned Royalties, and no Earned Royalties are due to Mayo on transfers on such transfers from Company to such Company's Affiliates.

**3.05 MINIMUM ROYALTIES.** If the Earned Royalties in any single License Year do not equal or exceed the minimum annual royalty for that License Year as indicated in this Section 3.05, then the Company shall pay Mayo the difference between the amount paid in royalties for that License Year and the minimum annual royalty for that License Year. It is a material breach of this Agreement if such payment is not received by Mayo on or before 1 February following the end of the License Year to which such payment applies.

License Year	Minimum Annual Royalty
[REDACTED]	[REDACTED]

**3.06 SUBLICENSE INCOME.** Company will make non-refundable and non-creditable payments to Mayo of [REDACTED]

**3.07 TAXES.** Company is responsible for all taxes, duties, import deposits, assessments, and other governmental charges, however designated, which are now or hereafter imposed by any authority on Company: (a) by reason of the performance by Mayo of its obligations under this Agreement, or the payment of any amounts by Company to Mayo under this Agreement; (b) based on the Patent Rights; or (c) related to use, sale or import of the Licensed Product. Any withholding taxes which Company is required by law to withhold on remittance of the royalty payments shall be deducted from the royalty paid and Company shall promptly furnish Mayo with original copies of all official receipts for such taxes. Company will obtain or provide reasonable assistance to Mayo in Mayo's efforts to obtain any tax reduction (including avoidance of double taxation), tax refund or tax exemption available to Mayo by treaty or otherwise.

**3.08 U.S. CURRENCY.** All payments to Mayo under this Agreement will be made by draft drawn on a U.S. bank, and payable in U.S. dollars. In the event that conversion from foreign currency is required in calculating a payment under this Agreement, the exchange rate used shall be the Interbank rate quoted by Citibank at the end of the last business day of the quarter in which the payment accrued.

**3.09 OVERDUE PAYMENTS.** If overdue, the payments due under this Agreement shall bear interest until paid at a per annum rate of [REDACTED] and Mayo shall be entitled to recover, in addition to all other remedies, reasonable attorneys' fees and costs related to the administration or enforcement of this Agreement, including collection of payments, following such failure to pay. The acceptance of any payment, including of such interest shall not foreclose Mayo from exercising any other right or seeking any other remedy that it may have as a consequence of the failure of Company to make any payment when due.

#### **Article 4.00 – Accounting and Reports**

**4.01 REPORTS AND PAYMENT.** Company will deliver to Mayo on or before the following dates: 1 February, 1 May, 1 August, and 1 November, a written report setting forth a full accounting showing how any amounts due to Mayo for the preceding calendar quarter have been calculated as provided in this Agreement, including an accounting of total Net Sales with a reporting of any applicable foreign exchange rates, deductions, allowances, and charges, and any payments due from Sublicensees. If no Licensed Product transfers have occurred and no other amounts are due to Mayo, Company will submit a report so stating. Each such report will be accompanied by the payment of all amounts due for such calendar quarter.

**4.02 ACCOUNTING.** Company will keep complete, continuous, true, and accurate books of accounts and records sufficient to support and verify the calculation of Net Sales, all royalties and any other amount due and payable to Mayo under this Agreement. Such books and records will be kept at Company's principal place of business for at least three years after the end of the calendar year to which they pertain, and will be open at all reasonable times for inspection by a representative of Mayo for verification of royalty statements or compliance with other aspects of this Agreement upon reasonable notice to Company; provided that any such audits shall be limited to one (1) per calendar year. The Mayo representative will treat as confidential all relevant matters and will be a person or firm reasonably acceptable to Company. In the event such audit reveals an underpayment by Company, Company will within thirty days pay the royalty due in excess of the royalty actually paid. In the event the audit reveals an underpayment by Company of more than [REDACTED] Company will pay interest on the royalty due in excess of the royalty actually paid at the highest rate then permitted by law, and in such event Company will pay all of Mayo's costs in conducting the audit. In the event such audit reveals an overpayment by Company, Company will be entitled to set-off the overpayment amount against one or more subsequent payments of Earned Royalties.

#### **Article 5.00 – Diligence**

**5.01 DEVELOPMENT PLAN.** Company will use its commercially reasonable efforts to bring Licensed Products to market in the Field in the Territory. Company has provided Mayo with a development plan which describes how Company intends to bring Licensed Products to



market, attached to this Agreement as **Exhibit A, Development Plan**, incorporated herein by reference. Company will promptly notify Mayo upon the achievement each of the following development milestones for each Licensed Product (excluding minor variations made thereto), including the actual date of such achievement:

- (a) Completion of a fully functional full-scale prototype;
- (b) Completion of testing in animals;
- (c) Completion of testing in humans;
- (d) Application for final regulatory approval (for sale of such Licensed Product) in Europe.
- (e) Application for final regulatory approval (for sale of such Licensed Product) in the United States.

**5.03 DILIGENCE REPORTS.** Company will provide Mayo with annual reports within thirty days of each anniversary of the Effective Date describing in reasonable detail: (a) as of that reporting period, all development and marketing activities for each Licensed Product and the names of all Sublicensees, including which of the Sublicensees are Affiliates, and the names of all Distributors; and (b) an updated development plan for the next annual period. Mayo shall have the right to audit Company's and Sublicensees's and Distributor's records relating to development of Licensed Products, provided that any such audits shall be limited to one (1) per calendar year.

## **Article 6.00 – Intellectual Property Management**

**6.01 CONTROL.** Company will have the first right to prepare, file, prosecute, maintain, abandon, enforce, defend or otherwise handle the Patent Rights in its sole discretion, at Company's sole cost and expense; and for greater certainty Company shall be entitled to determine, in its sole discretion, whether or not, and in which countries, to file a patent application, to abandon the prosecution of any patent application, or to discontinue the maintenance of any patent. Company will keep Mayo informed on these activities. In the event Company elects not to pursue a patent application in respect of the Patent Rights in any country or to abandon altogether or discontinue the maintenance of any Patent Rights in any country, it shall notify Mayo in sufficient time to allow Mayo to file or continue such patents or patent application(s) in such country, at Mayo's sole cost and expense. Mayo will have no liability to Company for any act or omission in the preparation, filing, prosecution, maintenance, abandonment, enforcement, defense or other handling of the Patent Rights.

### **6.02 COOPERATION**

Mayo shall provide, at no cost to Company (except for reimbursement of Mayo's reasonable out-of-pocket expenses), all cooperation and support reasonably requested by Company in connection with the filing of any patent applications in respect of the Patent rights and the prosecution and maintenance of any Patent Rights.

**6.03 PATENT TERM EXTENSION.** Company shall consult with Mayo in selecting the patent covering each Licensed Product for term extension for or supplementary protection certificate under in accordance with the applicable laws of any country. Each party agrees to execute any documents and to take any additional actions as the other party may reasonably request in connection therewith.

**6.04 PATENT MARKING.** To the extent commercially feasible, Company will mark all Licensed Products that are manufactured or sold under this Agreement with the number of each issued patent within the Patent Rights that cover such Licensed Product(s). Any such marking will be in conformance with the patent laws and other laws of the country of manufacture or sale.

**6.05 ENFORCEMENT.** Each party shall promptly inform the other in writing of any alleged or threatened infringement of any of the Patent Rights that it may become aware of, and provide the other with any available evidence of such infringement. Company shall have the first right, but not the obligation, to enforce the Patent Rights so long as Mayo is kept fully informed and given the right and opportunity to advise and comment. Mayo shall reasonably cooperate in any such action at Company's expense, but shall not be required to join such action unless it has agreed to do so in writing prior to commencement thereof. Company shall pay to Mayo [REDACTED] of any amounts recovered by, or damages awarded to, Company, net of all reasonable costs and expenses of Company associated with each suit or settlement. If Company elects not to enforce the Patent Rights, it shall so notify Mayo in writing within ninety (90) days of receiving notice that an infringement may exist, and Mayo may, in its sole judgment and without any obligation, enforce the Patent Rights and keep for its own account any amounts recovered by, or damages awarded to, Mayo in such suit or settlement. Company shall reasonably cooperate in any such actions if requested to do so by Mayo at Mayo's expense, but shall not be required to join such action unless it has agreed to do so in writing prior to commencement thereof.

**6.07 DEFENSE OF PATENT RIGHTS, AND THIRD PARTY LITIGATION.** In the event a third party institutes a suit against Company for patent infringement involving a Licensed Product, Company will promptly inform Mayo and keep Mayo regularly informed of the proceedings. Company shall be entitled to determine, in its sole discretion, whether it wishes to defend any such legal proceedings, and for greater certainty Company shall have no obligation to defend any such legal proceedings; provided that:

- (a) if Company does elect to defend any such legal proceedings: (i) Company shall not settle any such claims without the written consent of Mayo, which consent shall not be unreasonably withheld or delayed (except that the liability of Company shall be limited to the proposed settlement amount if such consent is not obtained for any reason; and (ii) Company shall be entitled to retain any damages or other amounts awarded or recovered from any such proceedings; and
- (b) if Company has not defended any such legal proceedings within a reasonable period of time, then, upon prior written consent of Company (such consent not to be unreasonably withheld or delayed), Mayo shall be entitled to defend any such legal proceedings, and in such case: (i) Mayo shall have exclusive control of any such legal proceedings and/or the negotiation and settlement of any such claims, and Company shall be bound by the results obtained by Mayo with respect to any

such claims; and (ii) Mayo shall be entitled to retain any damages or other amounts awarded or recovered from any such proceedings.

#### **Article 7.00 – Use of Name**

**7.01 USE OF NAME AND LOGO.** Company will not use for publicity, promotion, or otherwise, any logo, name, trade name, service mark, or trademark of Mayo or its Affiliates, including, but not limited to, the terms “Mayo®,” “Mayo Clinic®,” and the triple shield Mayo logo, or any simulation, abbreviation, or adaptation of the same, or the name of any Mayo employee or agent, without Mayo’s prior, written, express consent. Mayo may withhold such consent in Mayo’s absolute discretion. With regard to the use of Mayo’s name, all requests for approval pursuant to this Section must be submitted to the Mayo Clinic Public Affairs Business Relations Group, at the following e-mail address: PublicAffairsBR@Mayo.edu at least five (5) business days prior to the date on which a response is needed. Mayo will not use for publicity, promotion, or otherwise, any logo, name, trade name, service mark, or trademark of Company or its Affiliates, or the name of any Company employee or agent, without Company’s prior, written, express consent. Company may withhold such consent in Company’s absolute discretion.

#### **Article 8.00 – Confidentiality**

**8.01 TREATMENT OF CONFIDENTIAL INFORMATION.** Except as provided for in Section 8.02, neither party will disclose, use or otherwise make available the other’s Confidential Information during Term or for three years thereafter and will use the same degree of care it employs to protect its own confidential information.

#### **8.02 RIGHT TO DISCLOSE.**

(a) To the extent it is reasonably necessary or appropriate to fulfill its obligations or exercise its rights under this Agreement, Company may disclose Confidential Information of Mayo to its Sublicensees, consultants, and outside contractors on the condition that each such entity agrees to obligations of confidentiality and non-use at least as stringent as those therein.

(b) If a party is required by law, regulation or court order to disclose any of the Confidential Information, it will have the right to do so, provided it: (i) promptly notifies the disclosing party; and (ii) reasonably assists the disclosing party to obtain a protective order or other remedy of disclosing party’s election and at disclosing party’s expense.

**8.03 CONFIDENTIALITY OF AGREEMENT.** Except as otherwise required by law, the specific terms and conditions of this Agreement shall be Confidential Information but, subject to Section 7.01, the parties may state that Company is licensed under the Patent Rights.

#### **Article 9.00 – Warranties, Representations, Disclaimers and Indemnification**

**9.01 MUTUAL REPRESENTATIONS AND WARRANTIES.** Each party represents and warrants to the other that:

(a) it is a corporation duly organized and validly existing under the laws of the province or other jurisdiction of its incorporation;

(b) it shall comply, and Company shall require its Sublicensees and Distributors to comply, with any applicable international, national, and state laws, ordinances and regulations in its performance under this Agreement.

(c) the execution and delivery of this Agreement has been duly authorized and no further approval, corporate or otherwise, is required in order to execute this binding Agreement;

(d) it has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including, without limitation, the right, power and authority to grant the rights granted hereunder;

(e) the execution, delivery and performance by such party of this Agreement and its compliance with the terms and provisions hereof does not and will not conflict with or result in a breach of any of the terms and provisions of or constitute a default under: (i) any agreement or instrument binding or affecting it or its property; (ii) the provisions of its charter or constating documents or by-laws; or (iii) any order, writ, injunction or decree of any court or governmental body entered against it or by which any of its property is bound;

(f) except as contemplated by Section 11.12, the execution, delivery and performance of this Agreement by such party does not require the consent, approval or authorization of, or notice, declaration, filing or registration with, any governmental body and the execution, delivery or performance of this Agreement will not violate any law, rule or regulation applicable to such party; and

(g) this Agreement has been duly authorized, executed and delivered and constitutes such party's legal, valid and binding obligation enforceable against it in accordance with its terms.

## **9.02 ADDITIONAL REPRESENTATIONS AND WARRANTIES OF MAYO AND OF COMPANY.**

Mayo represents and warrants to Company that:

(a) to the best of its knowledge, Mayo is the owner of and has the entire right, title, and interest in and to Patent Rights, and has the right to grant any licenses thereunder;

(b) Mayo has not granted any licenses under the Patent Rights to any other person or entity that would restrict or conflict with the rights granted to Company under this Agreement; and

(c) Mayo has paid the maintenance and filing fees required to maintain the validity and enforceability of the Patent Rights up to and through the Effective Date.

Company represents and warrants to Mayo that:

(a) it has independently evaluated the Patent Rights and Confidential

Information, if any, their applicability or utility in Company's activities, is entering into this Agreement on the basis of its own evaluation and not in reliance of any representation by Mayo, and assumes all risk and liability in connection with such determination; and

(c) it now maintains and will continue to maintain throughout the Term and beyond insurance coverage as set forth in Section 9.04; and

(d) its rights and obligations under this Agreement do not conflict with any contractual obligation or court or administrative order by which it is bound.

### **9.03 DISCLAIMERS.**

(a) EXCEPT AS EXPRESSLY STATED IN SECTIONS 9.01 AND 9.02, MAYO HAS NOT MADE AND DOES NOT MAKE ANY PROMISES, COVENANTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY NATURE, DIRECTLY OR INDIRECTLY, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DURABILITY, CONDITION, QUALITY, OR ANY OTHER CHARACTERISTIC OF THE LICENSED PRODUCT OR PATENT RIGHTS.

(b) EXCEPT AS EXPRESSLY STATED IN SECTIONS 9.01 AND 9.02, CONFIDENTIAL INFORMATION AND PATENT RIGHTS ARE PROVIDED "AS IS," "WITH ALL FAULTS," AND "WITH ALL DEFECTS", AND COMPANY EXPRESSLY WAIVES ALL RIGHTS TO MAKE ANY CLAIM WHATSOEVER AGAINST MAYO FOR MISREPRESENTATION OR FOR BREACH OF PROMISE, GUARANTEE, REPRESENTATION OR WARRANTY OF ANY KIND RELATING TO THE LICENSED PRODUCTS, CONFIDENTIAL INFORMATION OR PATENT RIGHTS. MAYO EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE, WITH RESPECT TO: THE SCOPE, VALIDITY OR ENFORCEABILITY OF THE PATENT RIGHTS; THAT ANY PATENT WILL ISSUE BASED UPON ANY OF PENDING PATENT APPLICATION; OR THAT THE MANUFACTURE, USE, SALE, OFFER FOR SALE OR IMPORTATION OF THE LICENSED PRODUCTS WILL NOT INFRINGE OTHER INTELLECTUAL PROPERTY RIGHTS. NOTHING IN THIS AGREEMENT WILL BE CONSTRUED AS AN OBLIGATION FOR MAYO TO BRING, PROSECUTE OR DEFEND ACTIONS REGARDING THE PATENT RIGHTS.

(c) EXCEPT FOR BREACH OF MAYO'S EXPRESS REPRESENTATIONS AND WARRANTIES IN SECTIONS 9.01 AND 9.02, COMPANY AGREES THAT MAYO AND ITS AFFILIATES WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING OUT OF ANY RIGHTS GRANTED OR PERFORMANCE MADE UNDER THIS AGREEMENT, WHETHER TO OR BY COMPANY, SUBLICENSEE, DISTRIBUTOR, OR A THIRD PARTY.

(d) IN NO EVENT WILL EITHER PARTY'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE

## POSSIBILITY OF SUCH DAMAGES.

(e) IN NO EVENT WILL MAYO'S LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES AND ROYALTIES WHICH HAVE ACTUALLY BEEN PAID TO MAYO BY COMPANY AND SUBLICENSEES AS OF THE DATE OF FILING AN ACTION AGAINST MAYO WHICH RESULTS IN THE SETTLEMENT OR AWARD OF DAMAGES TO COMPANY.

## 9.04 INDEMNIFICATION AND INSURANCE.

(a) Subject to the provisions of Article 6.00, Company will defend, indemnify, and hold harmless Mayo, Mayo's Affiliates and their respective trustees, officers, agents, independent contractors and employees ("Mayo Indemnitees") from any and all claims, actions, demands, judgments, losses, costs, expenses, damages and liabilities (including attorneys' fees, court costs and other expenses of litigation), regardless of the legal theory asserted, arising out of or connected with: (i) the practice or exercise of any rights granted hereunder by or on behalf of Company or any Sublicensee; (ii) research, development, design, manufacture, distribution, use, sale, importation, exportation or other disposition of Licensed Products by Company or any Sublicensee; and (iii) any act or omission of Company or any Sublicensee hereunder, including the negligence or willful misconduct thereof.

(b) Mayo and Mayo Affiliates shall have no obligation to indemnify Company hereunder.

(c) The parties agree that the indemnity given by Company should be construed and applied in favor of maximum indemnification of Mayo Indemnitees.

(d) Company will continuously carry occurrence-based liability insurance, including products liability and contractual liability, in an amount and for a time period sufficient to cover the liability assumed by Company hereunder during the Term and after. In addition, such policy will name Mayo and its Affiliates as additional-named insureds.

(e) Company expressly waives any right of subrogation that it may have against Mayo Indemnitees resulting from any claim, demand, liability, judgment, settlement, costs, fees (including attorneys' fees), and expenses for which Company is obligated to indemnify, defend and hold Mayo Indemnitees harmless for under this Agreement.

**9.05 PROHIBITION AGAINST INCONSISTENT STATEMENTS.** Company shall not make any statements, representations or warranties, or accept any liabilities or responsibilities whatsoever which are inconsistent with any disclaimer or limitation included in this section or any other provision of this Agreement. Company shall not settle any matter that will incur liability for Mayo or require Mayo to make any admission of liability without Mayo's prior written consent.

## **Article 10.00 – Term and Termination**

**10.01 TERM.** This Agreement will expire at the end of the Term.

**10.02 TERMINATION FOR BREACH.** If Company commits a material breach of this Agreement, including without limitation, the failure to make any required royalty or fee payments hereunder, Mayo will notify Company in writing of such breach and Company will have thirty days after such notice to cure such breach to Mayo's satisfaction. If Company fails to cure such breach, Mayo may, at its sole option, terminate this Agreement in whole or in part by sending Company written notice of termination.

**10.03 TERMINATION FOR SUIT.** Mayo does not license entities that bring suit against Mayo or its Affiliates and as such, Mayo may immediately terminate this Agreement if Company or any Sublicensee or any Distributor directly or indirectly brings any action or proceeding against Mayo or its Affiliates, except for an uncured material breach of this Agreement by Mayo.

**10.04 TERMINATION FOR CONVENIENCE.** It is understood and agreed that Company may terminate this Agreement for convenience at any time during the Term upon giving Mayo sixty (60) days advance notice in writing, provided that Company submits a written confirmation to Mayo that it has ceased to make, have made, use, offer for sale, sell, and import Licensed Products.

**10.05 INSOLVENCY OF COMPANY.** This Agreement terminates immediately without an obligation of notice of termination to Company in the event Company ceases conducting business in the normal course, becomes insolvent or bankrupt, makes a general assignment for the benefit of creditors, admits in writing its inability to pay its debts as they are due, permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under any statute of any governing authority relating to insolvency or the protection of rights of creditors.

**10.06 SURVIVAL.** The termination or expiration of this Agreement does not relieve either party of its rights and obligations that have previously accrued. After the Term, all rights granted immediately revert to Mayo. All Confidential Information of the other party shall be returned or destruction certified, at the disclosing party's election. Rights and obligations that by their nature prescribe continuing rights and obligations shall survive the termination or expiration of this Agreement including Sections 4.02, 9.04, 10.05 and Articles 8 and 11. Company, its Sublicensees, and its Distributors shall provide an accounting for and pay, within thirty (30) days of termination or expiration, all amounts due to Mayo hereunder.

## **Article 11.00 – General Provisions**

**11.01 ASSIGNMENT AND TRANSFER.** Company is strictly prohibited from assigning, delegating or otherwise transferring any of its obligations or rights under this Agreement without Mayo's prior, express and written consent, which consent may be withheld in Mayo's sole discretion. Any assignment, delegation or transfer in contravention hereof is null and void.

**11.02 WAIVER.** No part of this Agreement may be waived except by the further written agreement of the party granting such waiver. Forbearance in any form from demanding the performance of a duty owed under this Agreement is not a waiver of that duty. Until complete performance of a duty owed under this Agreement is accomplished, the party to which that duty is owed may invoke any remedy under this Agreement or under law, despite its past forbearance in demanding performance of that duty.

**11.03 GOVERNING LAW AND JURISDICTION.** This Agreement is made and performed in Minnesota. The terms and conditions of this Agreement, as well as all disputes arising under or relating to this Agreement, shall be governed by Minnesota law, specifically excluding its choice-of-law principles, except that the interpretation, validity and enforceability of the Patent Rights will be governed by the patent laws of the country in which the patent application is pending or issued. This is not an Agreement for the sale of goods and as such Article 2 of the Uniform Commercial Code as enacted in Minnesota does not apply. The exclusive forums for the foregoing are the State or District Court of Olmsted County, Minnesota, unless such action cannot by law be brought in such forum, in which case the venue required by law shall govern. Company agrees unconditionally that it is personally subject to the jurisdiction of such courts.

**11.04 HEADINGS.** The headings of articles and sections used in this document are for convenience of reference only.

**11.05 NOTICES.** Any notice required to be given under this Agreement is properly provided if in writing and sent to the party at its address or facsimile number below, or as otherwise designated by the party in accordance with this provision, and duly given or made: (a) on the date delivered in person; (b) on the date transmitted by facsimile, if confirmation is received; (c) three days after deposit in the mail if sent by certified Canadian or U.S. mail postage prepaid, return receipt requested; and (d) one day after deposit with a nationally recognized overnight carrier service with charges prepaid.

Mayo Foundation for Medical Education and Research  
Office of Intellectual Property – MCHS – BB4  
200 First Street S.W.  
Rochester, Minnesota 55905-0001  
Attn: OIP Operations  
Phone: (507) 293-3900  
Facsimile: (507) 284-5410  
Email: intellectualproperty@mayo.edu  
Fed Tax ID: 41-1506440



**COMPANY:**

Titan Medical Inc.  
181 University Avenue  
Suite 401  
Toronto, Ontario M5H 3M7

Attention: Craig Leon  
Phone: 416-548-7522  
Facsimile: 416-485-0437  
Email: cleon@titanmedicalinc.com

**11.06 LIMITATION OF RIGHTS CREATED.** This Agreement is personal to the parties and shall be binding on and inure to the sole benefit of the parties and their permitted successors and assigns and shall not be construed as conferring any rights to any third party. Specifically, no interests are intended to be created for any customer, patient, research subjects, or other persons (or their relatives, heirs, dependents, or personal representatives) by or upon whom the Licensed Products may be used.

**11.07 INDEPENDENT CONTRACTORS.** Company, any Sublicensee, and any Distributor is an independent contractor not an agent, employee, partner, joint venturer, or servant of Mayo and has no right to obligate or bind Mayo in any manner.

**11.08 ENTIRE AGREEMENT.** This Agreement states the entire agreement and understanding between the parties about its subject matter. All past and contemporaneous discussions, writings, agreements, proposals, promises, covenants, warranties, representations, guarantees, correspondence, and understandings with respect to the same subject matter, whether oral or written, formal or informal, are entirely superseded by this Agreement.

**11.09 SEVERABILITY.** If any terms or conditions of this Agreement are or become in conflict with the laws, regulations or court order of any jurisdiction or any governmental entity having jurisdiction over the parties or this Agreement, those terms and conditions shall be deemed automatically deleted in such jurisdiction(s) only, and the remaining terms and conditions of this Agreement shall remain in full force and effect. If such a deletion is not so allowed in a given jurisdiction or if such a deletion leaves terms and conditions thereby made clearly illogical or inappropriate in effect, the parties agree to substitute new terms and conditions as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws, regulations or court order of such jurisdiction. The parties desire the terms and conditions herein to be valid and enforced to the maximum extent not prohibited by law, regulation or court order in a given jurisdiction.

**11.10 CHANGES TO AGREEMENT.** No terms or conditions of this Agreement may be changed except in writing, through another document signed by both parties, and expressly referencing this Agreement.

**11.11 CONSTRUCTION.** Each party acknowledges that it was provided an opportunity to seek advice of counsel and as such this Agreement shall not be construed for or against either party.

**11.12 REGISTRATION OF LICENSES.** Company will register and give required notice concerning this Agreement, at its expense, in each country in the Territory where an obligation under law exists to so register or give notice.

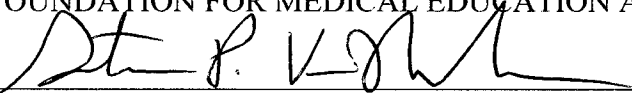
**11.13 EXPORT CONTROL.** Mayo is subject to U.S. laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities that may require a license from the applicable agency of the United States government and/or may require written assurances by Company that it will not export data or commodities to certain foreign countries without prior approval of such agency. Mayo neither represents that a license is required, nor that, if required, it will be issued.

[This space was intentionally left blank. Signature page follows]

The parties execute this Agreement in one or more counterparts, each of which shall be deemed an original but all of which taken together constitute one and the same instrument, as of the Effective Date.

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH:

Signed: \_\_\_\_\_



Printed Name: Steven P. VanNurden

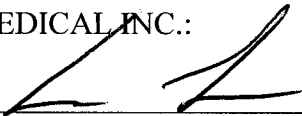
Title: Assistant Treasurer

Date: \_\_\_\_\_

June 27, 2011

TITAN MEDICAL INC.:

Signed: \_\_\_\_\_



Printed Name: Craig Leon

Title: \_\_\_\_\_

Chairman } CEO

Date: \_\_\_\_\_

July 6, 2011

Mayo/Titan Medical, Inc.  
License Agreement  
June 27, 2011

**Exhibit A**  
**DEVELOPMENT PLAN**