

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT6589336

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	COMMERCIAL LICENSE AGREEMENT REDACTED AND EXPLAINED IN DECLARATION		
CONVEYING PARTY DATA			
Name			Execution Date
BIOAMBER INC.			04/15/2010
RECEIVING PARTY DATA			
Name:	CARGILL, INCORPORATED		
Street Address:	15407 MCGINTY ROAD WEST		
City:	WAYZATA		
State/Country:	MINNESOTA		
Postal Code:	55391		
PROPERTY NUMBERS Total: 1			
Property Type	Number		
Patent Number:	9885065		
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	6513512900		
Email:	blichtscheidl@kaganbinder.com		
Correspondent Name:	KAGAN BINDER PLLC		
Address Line 1:	SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET N		
Address Line 2:	221 MAIN STREET NORTH		
Address Line 4:	STILLWATER, MINNESOTA 55082		
ATTORNEY DOCKET NUMBER:	105464.000006		
NAME OF SUBMITTER:	BETHANY LICHTSCHEIDL		
SIGNATURE:	/Bethany Lichtscheidl/		
DATE SIGNED:	03/08/2021		
Total Attachments: 35			
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Exhibit 10.33

***** Text Omitted and Filed Separately
Confidential Treatment Requested
Under 17 C.F.R. §§ 200.80(b)(4)
and 203.406**

COMMERCIAL LICENSE AGREEMENT

This Commercial License Agreement (“Commercial License”), effective the 15th day of April, 2010 (“Effective Date”), is made by and between Cargill, Inc., through its Bio Technology Development Center, having its principal place of business at 15407 McGinty Road West, Wayzata, MN 55391 (hereinafter “Cargill”), and Bioamber S.A.S., having a place of business at Route de Bazancourt, F-51110, Pomacle France (“Bioamber”). Cargill and Bioamber are referred to herein as “Parties”, in singular or plural usage, as required by context.

WHEREAS, Cargill has developed a yeast strain designated CB1 for fermenting glucose and/or sucrose, and/or mixed sugar streams and related research tools for modifying CB1, which are protected by Licensed Patents (as defined in Section 1.3 below);

WHEREAS, Bioamber has engaged Cargill under the Development Agreement, to which this Commercial License is an Exhibit, to further develop or modify CB1 with the goal of fermenting glucose and/or sucrose, and/or mixed sugar streams to produce succinic acid and salts thereof;

WHEREAS, the Parties also desire to enter into this Commercial License concurrently with the Development Agreement for the purpose of Cargill granting and Bioamber acquiring certain rights to commercialize the CB1 strain, Improvements made under the Development Agreement, and related patent rights for the production of succinic acid and salts thereof as specified in this Commercial License under its terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. DEFINITIONS

1.1 “CB1 Strain” shall mean Modified CB1 as defined in the Development Agreement between the Parties.

1.2 “Confidential Information” shall mean all information related to this Commercial License in any form disclosed in any manner by or on behalf of one Party to the other Party during the term of this Commercial License. Without limitation, Confidential Information shall include information about products, raw materials, samples, packaging, manufacturing processes, financial information, research information, tools, business plans, customer lists and supplier lists.

1.3 “Licensed Patents” shall mean those patents and patent applications defined in Section 2.5 of the Development Agreement and in Exhibit B thereto provided that those patents and patent applications listed in Exhibit B under the heading of “Needed only if Bioamber takes the cellulose option” are only to be included within the term “Licensed Patents” in the event that Bioamber exercises its option under Section 3 of the Development Agreement.

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- 1 -

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PATENT

1.4 "Know-How" shall mean information developed by Cargill during the Development Agreement and this Commercial License concerning the use of CB1 Strain for the production of Product. Information relating to the Licensed Tool Kit (as defined in the Development Agreement) and the Licensed Tool Kit itself used to genetically modify CB1 Strain shall not be included within Know-How.

1.5 "Product" shall mean succinic acid and salts thereof produced by use of CB1 Strain to ferment glucose and/or sucrose, and, in the event that Bioamber exercises its option under Section 3 of the Development Agreement, "Product" shall also mean succinic acid and salts thereof produced by use of CB1 Strain to ferment cellulosic feedstock.

1.6 "Improvements" shall mean those inventions or discoveries that are defined in Section 5.2 of the Development Agreement, including "Bioamber Improvements", "Cargill Improvements", and "Joint Improvements" as those terms are defined in Section 5.2 of the Development Agreement and used in this Commercial License.

1.7 "Net Sale(s)" shall mean the gross sale or transfer quantity of Succinic Acid Equivalent measured in US pounds that is made by Bioamber and its sublicensees and sold or otherwise transferred to any third party or to Bioamber itself less allowed Product returns and reasonable Product allowances given by Bioamber and its sublicensees, all as determined by Bioamber's standard accounting practices. For purposes of clarity, Product allowances shall not include discounts given to customers in the form of Product credits.

1.8 "Quarter" shall mean a three month time period from January 1 to March 31, April 1 to June 30, July 1 to September 30, or October 1 to December 31 in any year during the term of this Commercial License.

1.9 "Succinic Acid Equivalent" means the ratio of the molecular weight of succinic acid to molecular weight of Product multiplied by the dry weight mass of the Product produced. As an example, in the case where the Product is diammonium succinate (DAS), the Succinic Acid (SA) Equivalent would be calculated as follows: 1 pound DAS x (118/152) = 0.7763 pound of SA, where 118 is the molecular weight of succinic acid and 152 is the molecular weight of diammonium succinate.

1.10 "Affiliates" shall mean any person or entity that directly or indirectly controls, is controlled by, or is under common control with such person or entity, and is identified in writing and included in Exhibit X, which may be updated periodically as mutually agreed by the Parties. For purposes of the preceding sentence, "control" means the right to control, or actual control of, the management of such other entity, whether by ownership of securities, by voting rights, by agreement or otherwise. Neither Party's Affiliates are included under the rights and obligations of the provisions of this Commercial License unless done so by an explicit reference.

1.11 As used throughout this Commercial License, (i) "sublicense" shall mean any agreement between Bioamber and a third party (including Affiliates) granting the third party commercial rights under or to any CB1 Strain, Licensed Patents, Know-How and/or Improvements, and (ii) "sublicensee" shall mean any such third party entering into such sublicense with Bioamber.

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- 2 -

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2. CB1 STRAIN DEVELOPMENT AND REGULATORY APPROVAL

2.1 The Parties will attempt to develop CB1 Strain under the terms of the Development Agreement for the purpose of the commercialization of the Product.

2.2 Bioamber agrees to use its best efforts to obtain the regulatory approvals necessary to make and sell, or otherwise transfer, Products throughout the world.

3. CONFIDENTIAL INFORMATION, AND TRANSFER AND USE OF STRAINS

3.1 Both Parties agree that Confidential Information under this Commercial License is subject to the terms and conditions governing "Confidential Information" under Section 4 of the Development Agreement, including the exclusions therein. Notwithstanding the foregoing, Bioamber shall be permitted to disclose Confidential Information to its shareholders (DNP Green Technology, Inc. and Agro-Industrie Recherches & Développements, S.A.) and to its sublicensees or potential sublicensees who are bound by an executed confidentiality agreement with terms equivalent to those in the Development Agreement, subject to the requirements for biological materials specified in Section 3.2 below.

3.2 Bioamber shall not transfer or provide any CB1 Strain, or related biological materials, or biological materials derived from CB1 Strain to any third party, including Affiliates, unless (i) there is a written material transfer agreement in place with such third party that strictly limits such third party to non-commercial evaluation or testing of such strains or material and prohibits such third party from providing the strain or material to any other party, (ii) there is a written sub-license agreement in place under this Commercial License with such third party as provided under Section 4.2; and (iii) such third party is obligated not to file patent applications utilizing any data or results learned or obtained while evaluating CB1 Strain. In no event will Bioamber transfer the Licensed Tool Kit to any third party, except as provided in Section 2.5 of the Development Agreement.

3.3 Upon termination of this Commercial License for any reason (including the end of its term), Bioamber shall destroy and have its sublicensees destroy any and all CB1 Strain and any other biological materials relating to this Commercial License in their possession, and Bioamber shall certify such destruction in writing to Cargill, except with regard to sublicensees as provided in Section 4.3 of this Commercial License.

3.4 Bioamber shall have the first right to enforce the terms in the Sublicense Agreement with respect to the use and custody of the CB1 Strain. In the event Bioamber fails to enforce such provisions in the Sublicense Agreement within a reasonable period of time, Cargill shall have the right to step in as a named party and enforce such provisions, and Bioamber shall provide assistance thereto.

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- 3 -

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3.5 Notwithstanding any other provision of this Commercial License, Bioamber shall use all reasonable efforts to ensure that no samples of the CB1 Strain are taken from its facilities, (i) Bioamber shall use the CB1 Strain only for the production of Product within the scope of the rights it is granted under Section 4 of this Commercial License, subject to the limitations specified in that section, (ii) Bioamber shall not reverse engineer, analyze, attempt to analyze, or have analyzed the physical or genetic structure of the CB1 Strain, and (iii) Bioamber shall not modify the CB1 Strain in any way or use it to develop other biological materials for any purpose whatsoever. Bioamber shall require its sublicensees to comply with the provisions set forth in this Section 3.5.

4. GRANTS TO BIOAMBER AND CARGILL, AND CARGILL OPTION

4.1 Subject to the terms and conditions of this Commercial License, Cargill hereby grants to Bioamber an exclusive, worldwide, royalty bearing license with a limited right to sublicense, subject to Section 4.2, under and to Licensed Patents, the CB1 Strain, the Know-How, Cargill Improvements, and Joint Improvements to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import the Product only.

4.2 Bioamber's license under Section 4.1 and ownership rights under the Development Agreement include the right to grant sublicenses according to the following requirements:

- a. Bioamber will be responsible for reporting on and paying all royalties that are due to Cargill in accordance with Section 5 of this Commercial License for Product sold or otherwise transferred by any of Bioamber's sublicensees.
- b. Any sublicenses granted by Bioamber under this Section 4.2 shall be in writing ("Sublicense Agreement") and, prior to Bioamber granting any sublicenses to third parties, Cargill shall have the right to review and approve such Sublicense Agreement that will be used as a template for the sublicensing of the CB1 Strain. Any sublicenses granted by Bioamber under this Section 4.2 shall be subject to the terms and conditions of this Commercial License, including but not limited to the obligations on Bioamber concerning confidentiality and material transfer provisions as set forth in Section 3. Sublicenses shall not be granted in the geographies listed in Exhibit Y without the prior written approval of Cargill, such approval not being unreasonably withheld. [***] Further, Bioamber shall inform Cargill in writing prior to entering into confidential discussions with [***] as potential sublicensees of CB1 Strain, Cargill Confidential Information, Know-How, Improvements, and/or Licensed Patents."

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- 4 -

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c. No sublicensee under this Commercial License may grant any third party or any Affiliate of the sublicensee any rights in, any access to, or any copies or samples of the Licensed Patents, the CB1 Strain (and any related biological materials and biological materials derived from CB1 Strain), the Know-How, Cargill Improvements, Joint Improvements, and Confidential Information for any purpose.

d. Any non-remedied breach by a sublicensee of the terms of its sublicense or the requirements of this Commercial License shall not be considered to be a breach by Bioamber of this Commercial License.

e. Only the final commercial strains of CB1, which are adapted for commercially manufacturing Product will be provided to sublicensees. Additionally, Know-How may be provided to sublicensees, but in no event will the Licensed Tool Kit and pre-commercial CB1 strains be provided to sublicensees.

4.3 Effective on the date this Commercial License is terminated for any reason, prior to the end of its term (the "Termination Date"), and provided that any Bioamber sublicensee is not then in default under the terms of the sublicense to which it is a party, then Bioamber hereby assigns to Cargill those of its rights, title and interest under any such sublicense that are in effect on the Termination Date that relate to the license granted herein, including the right to receive the portion of the income from the sublicense that relates to the license provided herein, and Cargill undertakes to respect the terms of any such sublicense as though Cargill itself had contracted directly with such sublicensee, in accordance with the terms of any such sublicense so long as any such sublicensee respects the terms of its sublicense.

4.4 At any time up until the fifth anniversary of the completion of Milestone 3 as referenced in Section 2.3 of the Development Agreement and described in Exhibit A to the Development Agreement, Cargill shall have the options to purchase (i) a non-exclusive, royalty bearing license to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import succinic acid and salts thereof, including the Product under the rights granted to Bioamber under Section 4.1 and under Bioamber's rights to Bioamber Improvements that are specified in the Development Agreement, and/or (ii) a non-exclusive royalty bearing license to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import succinic acid and salts thereof produced by use of Bioamber's proprietary *E. coli* or other strain to ferment glucose and/or sucrose and/or cellulosic feedstock (in the case of this option (ii), such license shall be to and under any and all proprietary and intellectual property rights that are possessed or controlled by Bioamber respecting the relevant *E. coli* or other strain and the process and technology related to its use for the licensed purpose; such license shall include provisions to convey the strain, process and technology to Cargill as necessary for it to practice its license). In the event Cargill exercises either or both of these options, Cargill shall be [***]. The licensing by Cargill of the Bioamber technology to produce the Product, including but not limited to the strain and the downstream processing, shall be for a single plant on a single site, and shall be consistent with the standard practices and deal structure of Bioamber's licensing program. Cargill shall have the right to purchase additional licenses to build additional plants, consistent with the principles described in this Section 4.4.

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- 5 -

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PATENT

4.5 Bioamber hereby grants to Cargill an exclusive, worldwide, royalty-free license with an unlimited right to sublicense under and to Bioamber Improvements to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import any and all products and services excluding the Product only.

4.6 This Commercial License shall serve as the framework for additional license grants should Bioamber exercise its option to alternative feedstock pursuant to Section 3 of the Development Agreement, and subject to the terms and conditions specified in Section 3 of the Development Agreement.

4.7 Cargill reserves any and all rights under and to Licensed Patents, the CB1 Strain, the Know-How, Cargill Improvements, Cargill Confidential Information, the Licensed Tool Kit, and Joint Improvements that are not exclusively granted to Bioamber under Section 4.1 of this Commercial License.

5. PAYMENTS, ROYALTIES, AND OTHER CONSIDERATION

5.1 In consideration of the rights granted to Bioamber under this Commercial License, including the grants under Section 4.1 herein, and the rights granted to Bioamber respecting Bioamber Improvements and Joint Improvements as specified in the Development Agreement, Bioamber agrees to the provisions of this Section 5. The Parties acknowledge and agree that the payments provided in this Section 5 and the obligations for sublicenses under Section 4.2 shall apply without regard to (i) what, if any patents issue respecting Licensed Patents and/or Improvements, the countries in which such patents issue, the scope of such patents, and whether or not any such patents are necessary or used to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import a Product and (ii) which party owns the CB1 Strain, Confidential Information, Licensed Patents, Know-How, and/or Improvements that may be necessary or used to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import a Product.

5.2 Bioamber shall pay an up-front fee to Cargill as specified in Section 2.1 of the Development Agreement. Bioamber shall also pay Cargill the milestone fees as specified in Section 2.3 of the Development Agreement.

5.3 Bioamber shall pay Cargill a royalty based on the Net Sale of the Product during each calendar quarter at the following rate: [***]. Bioamber shall be responsible for making the payments due to Cargill for its own Net Sales and the Net Sales of its sublicensees.

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- 6 -

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5.4 Within sixty (60) days of the last day of each Quarter, Bioamber shall submit to Cargill quarterly reports and royalty payments for each immediately preceding Quarter. Each report shall contain the amount of Net Sales of Product in the preceding Quarter and the total amount of royalties due to Cargill.

5.5 Bioamber and its sublicensees shall keep complete, true and accurate books and records for the purpose of determining and verifying royalty and other payment obligations under this Section 5, including those specified in 5.3 and in 5.10. Bioamber agrees to permit its books and records to be examined by an independent auditor not more than once per year, for the purpose of verifying the payments for Cargill. Bioamber will ensure that sublicensees' books and records can be examined by an independent auditor on an annual basis on Cargill's behalf solely to ensure compliance with this Section 5. Bioamber will keep, and will ensure that its sublicensees keep, these books and records for a minimum of five (5) years following the end of the calendar year to which they pertain. Cargill will pay all costs associated with any audits for this purpose, however in the event such audit reveals a discrepancy greater than five percent (5%) of the total amount of royalties owed to Cargill, Bioamber agrees to pay for the cost of such audit (including sublicensee audits).

5.6 Any payments to be made hereunder that remain due and unpaid after a period of sixty (60) calendar days after the date due shall accrue interest compounded daily, commencing as of the date payment was first past due, at the prime interest rate of Citibank, N.A., in effect on the first day of the calendar month in which the payment first becomes overdue.

5.7 No part of any amount payable to Cargill by Bioamber may be reduced due to any counterclaim, set off, adjustment or other right.

5.8 If in any one year period commencing with the Effective Date or the annual anniversary thereof the total royalty payments made by Bioamber to Cargill is less than \$[***] United States dollars, Bioamber shall make additional payment to Cargill to bring the total to \$[***] United States dollars within thirty (30) days of the end of that one year period. In the event that Bioamber's royalty payments owed in any given year are less than \$[***] and Bioamber elects not to pay an additional amount to bring the total to \$[***], Cargill's sole remedy shall be to transform the license it granted to Bioamber under Section 4.1 from an exclusive to a non-exclusive license by written notice to Bioamber. Upon such written notice, (i) Cargill shall have the right to freely license others with respect to the rights granted to Bioamber under Section 4.1 without any accounting to Bioamber and (ii) Bioamber shall and hereby does grant to Cargill a non-exclusive, worldwide, royalty-free license, with an unlimited right to sublicense, under and to Bioamber Improvements to make, have made, use, sell or otherwise transfer, offer for sale, export, and/or import succinic acid and salts thereof, including Products. Except as specified in this Section 5.8, such conversion of the exclusive grant by Cargill under Section 4.1 to a non-exclusive grant shall not otherwise change any term or obligation of this Commercial License, including Bioamber's payment obligations. For the [***] after the Effective Date or up until [***] following completion of Milestone 3 as specified in the Development Agreement, whichever occurs first, the amount paid by Bioamber to Cargill for development work under the Development Agreement in any one year period commencing with the Effective Date or the annual anniversary thereof (but not including any up-front or milestone payments) [***].

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- 7 -

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PATENT

5.9 In the event that (i) Milestone 3 as specified in the Development agreement is achieved, (ii) the CB1 Strain and fermentation protocols are successfully scaled up, (iii) Bioamber receives any applicable and necessary regulatory approvals to use the CB1 Strain to make and sell Product in any country, and (iv) the economics of using the CB1 Strain technology is no less favorable than use of Bioamber's current *E. coli* strain technology (including OPEX and CAPEX economic considerations), then (a) Bioamber will terminate all of its then existing agreements with licensees licensed to use technology other than the CB1 Strain to make and sell succinic acid and salts thereof in any and all countries where no regulatory approvals are required or the necessary regulatory approvals for use of CB1 Strain to make and sell the Product have been obtained, and Bioamber will require such terminated licensees to become sublicensees under this Commercial License, and (b) Bioamber will sublicense only the CB1 Strain technology under this Commercial License to all future Bioamber licensees for the production of succinic acid and salts thereof in any and all countries where no regulatory approvals are required or the necessary regulatory approvals for use of CB1 Strain to make and sell the Product have been obtained.

5.10 In addition to the royalties specified in this Section 5, including royalties for sales and other transfers of Product by sublicensees, Bioamber shall make the following calculation and payment to Cargill. Bioamber shall determine the amount by which the up-front payments, minimum and other cash payments, and royalties that Bioamber receives from any and all sublicensees in consideration for a sublicense under this Commercial License exceeds the up-front payments, minimum and other cash payments, and royalties, that Bioamber either (i) would receive from such sublicensee under its prior license to Bioamber's *E. Coli* technology for the production of succinic acid (where such sublicensee had such prior license) or (ii) would have received from such sublicensee if such sublicensee would have had a license to Bioamber's *E. Coli* technology for the production of succinic acid under the most favorable license terms existing at the time Bioamber begins switching its licensees to the CB1 Strain technology (where such sublicensee never had such license to Bioamber's *E. Coli* technology). The amount by which the up-front payments, minimum and other cash payments, and royalties that Bioamber receives from any and all sublicensees in consideration for a sublicense under this Commercial License exceeds those from the licenses to Bioamber's *E. Coli* technology as specified in the prior sentence is the "Incremental Value". Bioamber shall report and pay to Cargill [***] of the Incremental Value within thirty (30) days of Bioamber's receipt of the sublicensee payment subject to this payment to Cargill. Cargill shall have the right, through a mutually acceptable third party to audit Bioamber's license and sublicense agreements to determine the applicable Incremental Value and determine Bioamber's payment requirements under this Section 5.10.

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- 8 -

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6. INTELLECTUAL PROPERTY

6.1 Intellectual property rights, including rights respecting Improvements, are subject to the provisions of Section 5 of the Development Agreement and the terms of this Commercial License.

7. TERM AND TERMINATION

7.1 The term of this Commercial License shall be from the Effective Date and will continue either (a) until no issued Licensed Patents and no issued patents respecting Improvements remain valid and enforceable, or (b) [***] years after the date of first commercial sale of Product made in a fully-operational plant (not a sale from a pilot plant), whichever is sooner. Following this initial term (the "Initial Term"), this Commercial License shall automatically renew for successive [***], and Bioamber shall provide Cargill at least six (6) month notice in the event it decides to terminate this Commercial License prior to any extensions of the Initial Term. Bioamber shall provide written notice to Cargill as to the date of such first commercial sale and in the event of a dispute the Parties shall resolve such dispute in good faith. Termination of the Development Agreement for any reason, including its end of term, will not terminate this Commercial License.

7.2 Following the Initial Term, Section 5.3 of this Commercial License shall only apply to the production of sublicenses that continue to pay licensing revenues to Bioamber ("Eligible Production"). The Eligible Production for the purposes of calculating Section 5.3 of this Commercial License shall be determined each three-month period during such an extension period. Notwithstanding the foregoing, Bioamber, should it elect to do so, shall continue to pay the annual minimum royalty provided in Section 5.8.

7.3 Either Party may terminate this Commercial License at any time for a material breach by the other Party, provided (i) that the Party alleging the breach provides the other with written notice specifying the breach, and (ii) the breach is not cured within one hundred twenty (120) days. To the extent permitted under applicable law, either Party may terminate this Commercial License in the event of the other Party's bankruptcy, insolvency, or the filing of a petition therefore. A Party shall promptly give the other Party notice of its bankruptcy, insolvency, or intent to file a petition therefore, whereupon the other Party may immediately terminate this Commercial License on written notice to that Party.

7.4 Bioamber may terminate this Commercial License upon ninety (90) days written notice to Cargill.

7.5 Termination of this Commercial License for any reason, including the end of its term, terminates all rights and obligations hereunder, including licenses and sublicenses, except as otherwise specified in this Commercial License.

7.6 Upon termination of this Commercial License by Bioamber pursuant to Section 7.4 or upon Cargill's termination of this Commercial License pursuant to Section 7.3 as a result of Bioamber's breach: (i) all of Bioamber's rights specified in Sections 5.2.1 and 5.2.2 in the Development Agreement terminate; (ii) Bioamber shall and hereby does assign to Cargill all

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- 9 -

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of its rights, title and interest in and to Bioamber Improvements and Bioamber will have no remaining rights respecting Bioamber Improvements; and (iii) such termination shall have no affect whatsoever on any license or other intellectual property rights granted from Bioamber to Cargill under the terms of the Commercial License or the Development Agreement.

7.7 Expiration or termination of this Commercial License shall not: (a) relieve Bioamber or its sublicensees of their obligation to make payments or fulfill any obligations to Cargill incurred prior to expiration or termination including quarterly payments for a completed milestone, other royalty and payment obligations, and a pro rata portion of the minimum payment due for the partial year as of the date of termination, or (b) relieve Cargill of its obligations to Bioamber incurred prior to expiration or termination.

7.8 Material breach of this Commercial License by Bioamber shall include, but not be limited to, the failure of Bioamber to use its best efforts to seek regulatory approval pursuant to Section 2.2 or pay any amounts due under Section 5.

7.9 Expiration or termination of this Commercial License, however effectuated, shall not release the Parties from their rights and obligations incurred prior to the expiration or termination of this Commercial License. Except as otherwise provided in this Commercial License, the following provisions survive any expiration or termination of this Commercial License: Sections 3 (Confidential Information & Transfer of Strains), 4.3, 4.4, 4.5, 5 (Payments, Royalties, and Other Consideration, except for Sections 5.8 (Bioamber's obligation to pay the \$[***] annual minimum payment shall not survive, but Cargill's license and rights granted thereunder shall survive), 5.9 and 5.10), 6 (Intellectual Property), 7 (Term and Termination), 8 (Disclaimer of Warranty, Limitation of Liability), 9 (WRF Patents), and 10 (Miscellaneous).

8. DISCLAIMER OF WARRANTY, LIMITATION OF LIABILITY

8.1 CARGILL EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

8.2 SUBJECT TO SECTION 8.1, BOTH PARTIES EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, OF NON INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR OTHER CONFIDENTIAL INFORMATION.

8.3 SUBJECT TO SECTIONS 8.1 AND 8.2, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR TO THE OTHER PARTY'S OFFICERS, EMPLOYEES OR REPRESENTATIVES, OR TO ANY THIRD PARTY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS, LOST PROFITS, DAMAGE TO GOODWILL OR REPUTATION AND/OR DEGRADATION IN VALUE OF BRANDS, TRADEMARKS, TRADENAMES, SERVICE NAMES OR SERVICE MARKS) WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY) OR OTHERWISE.

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- 10 -

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8.4 Cargill and its Affiliates shall not be liable to Bioamber, and Bioamber shall indemnify and hold harmless Cargill and its Affiliates for any loss, claim, damage, or liability, of whatsoever kind or nature, which may arise from or in connection with Bioamber's and Bioamber's sublicensee's use, handling, or storage of CB1 Strain and/or Confidential Information received from Cargill.

9. WRF PATENTS

9.1 As referenced in Section 6 of the Development Agreement, Washington Research Foundation (WRF) is the owner of several patents relating to the [***] ("WRF Patents"). Bioamber shall be solely responsible for acquiring any licenses or other permissions as described in Section 6 of the Development Agreement from WRF respecting the WRF Patents that may be necessary for Bioamber to exercise its rights under this Commercial License. Cargill shall have no liability to Bioamber for Bioamber's acts or failure to act with respect to the WRF Patents, or with respect to any other third party that may have intellectual property rights that may be necessary for Bioamber to exercise its rights under this Commercial License.

10. MISCELLANEOUS

10.1 This Commercial License is personal to the parties hereto and shall not be assigned by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, no assignment of this Commercial License shall be made effective unless (i) any breach or default of the intended assignor is cured by either the intended assignor or the intended assignee, or (ii) the intended assignee can give reasonable assurances of its ability to comply with the terms and conditions of this Commercial License, and to fulfill its intent. This Commercial License shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

10.2 All notices and reports respecting this Commercial License shall be sent via facsimile, mail, or electronically to the appropriate address of the Party as given below. If either Party wishes to change its address for notification, it shall promptly notify the other Party in writing of such change of address.

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- 11 -

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If to Cargill: Pirko Suominen
15285 Minnetonka Blvd.
Minnetonka, MN 55345
Phone: [***]
Fax: 952-742-0540
[***]

with a copy to: Cargill Incorporated
Corn Milling Intellectual Property Atty.
15407 McGinty Road West
Mailstop 24
Wayzata, MN 55391-2399

If to Bioamber: Laurent Bernier
Bioamber SAS
1250 Rene-Levesque West
Suite 4110
Montreal, Quebec
Canada
H3B4W8
Phone: 514-844-8000
Fax: 514-844-1414
[***]

with a copy to: Thomas Desbiens, Esq
Boivin Desbiens Senecal, g.p.
2000-2000 McGill College Avenue
Montreal, Quebec
Canada
H3A 3H3
Phone: 514-844-5468
Fax: 514-844-5836
[***]

10.3 Nothing contained herein shall limit the right of any Party to seek specific performance, injunctive relief or other non-monetary remedies in any court of competent jurisdiction.

10.4 If any provision or covenant, or any part thereof, of this Commercial License should be held by any court of competent jurisdiction to be invalid, illegal or unenforceable, either in whole or in part, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions or covenants, or any part thereof, of this Commercial License, all of which shall remain in full force and effect.

10.5 This Commercial License shall be governed, interpreted, and construed in accordance with the laws of Minnesota without regard to the principles of conflicts of laws.

10.7 This Commercial License and the Development Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereto, and no other representations, guarantees, covenants, or agreements shall be binding or affect any provisions hereof. This Commercial License may be modified only in a written amendment signed by both Parties hereto. In the event that the terms of this Commercial License conflict with the Terms of the Development Agreement, this Commercial License shall control. Provisions of the Development Agreement which are referenced by this Commercial License shall survive termination or end of term of the Development Agreement for the purpose referenced in this Commercial License.

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- 12 -

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IN WITNESS WHEREOF, the Parties hereto have executed this Commercial License the day, month, and year first above written.

Cargill, Inc.

Bioamber S.A.S.

By: /s/ Jack Stalock

By: /s/ J.F. Huc

Name: Jack Stalock

Name: J.F. Huc

Title: VP BioTDC

Title: Director General

Date: 4/16/10

Date: April 15 2010

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- 13 -

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EXHIBIT X
Affiliates

The following shareholders of Bioamber, until such time that they cease to be a shareholder of Bioamber, at which point they will no longer be considered Affiliates:

DNP Green Technology
Agrorecherches et Developpement (ARD)

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- 14 -

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EXHIBIT Y
Prohibited Geographies

[***]

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- 15 -

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Exhibit Z
Cargill's Guiding Principles

Guiding Principles

- Cargill will comply with the laws of all countries to which it is subject.
- Cargill will not knowingly assist any third party to violate any law of any country, by creating false documents or by any other means.
- Cargill will not pay or receive bribes or participate in any other unethical, fraudulent, or corrupt practice.
- Cargill will always honor all business obligations that it undertakes with absolute integrity.
- Cargill will keep its business records in a manner that accurately reflects the true nature of its business transactions.
- Cargill managers and supervisors will be responsible that employees, consultants and contract workers under their supervision are familiar with applicable laws and company policies and comply with them. Further, they will be responsible for preventing, detecting, and reporting any violations of law of Cargill policies.
- Cargill employees will not become involved in situations that create a conflict of interest between the company and the employee.
- Every year, all Cargill employees sign an agreement to live these principles.

Compliance Policy on Intellectual Property

[*** 2 pages omitted.]

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- 16 -

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First Named Inventor: Kenneth R. Finley	Examiner: Desai, Anand U.
Serial No.: 15/386,506	Group Art Unit: 1656
Filed: December 21, 2016	Docket No.: 105464.000030/012008-311
For: COMPOSITIONS AND METHODS FOR SUCCINATE PRODUCTION	Confirmation No.: 1043

Declaration of Charles P. Wakefield

I, Charles P. Wakefield, do hereby declare that:

A. BACKGROUND OF DECLARANT

1. I am currently a Senior IP Attorney for Cargill, Incorporated, 15407 McGinty Road West, Wayzata, MN 55391 ("Cargill"). I have worked at Cargill from August 2007 to the present. Since late 2010, part of my job responsibilities at Cargill has involved working on behalf of Cargill to help carry out and manage relationships with BioAmber Inc. and its successors BioAmber Luxembourg and BioAmber S.A.S. (collectively the "BioAmber entities") under various agreements between Cargill and the BioAmber entities. Other BioAmber entities include the Canadian affiliates BioAmber Canada Inc. and BioAmber Sarnia Inc. It also has been part of my duties to understand the agreements in order to help guide Cargill and to help implement actions with respect to Cargill's obligations, rights, and liabilities under these agreements.

B. BACKGROUND OF AGREEMENTS RELEVANT TO OWNERSHIP OF THE N0097, N00148, N00187, AND N00188 PATENT FAMILIES (DEFINED BELOW)

2. Two of the agreements between Cargill and the BioAmber entities that have been within the scope of my duties are a joint research agreement titled "Development Agreement" having an Effective Date of April 15, 2010, and a commercial agreement Titled "Commercial License Agreement" also signed and having an Effective Date of April 15, 2010. Cargill had developed yeast strain(s) ("CB1") that fermented sugars as well as research tools to modify the yeast strain. Cargill and BioAmber S.A.S. entered into the Development Agreement in order to cooperatively develop a modified version of the yeast strain that could ferment sugars to produce succinic acid and salts thereof.

- 25 3. The Commercial License Agreement was included as an exhibit to the Development Agreement. The
26 purpose of the Commercial License Agreement was to define the rights, obligations, and liabilities of
27 Cargill and BioAmber S.A.S. in the event that BioAmber S.A.S. were to commercialize modified yeast
28 strain(s) developed under the Development Agreement.
- 29 4. Cargill and BioAmber S.A.S. were the parties to the Development Agreement and the Commercial
30 License Agreement at the time the two agreements were first signed. With Cargill consent,
31 BioAmber S. A. S. assigned the Development Agreement and the Commercial License Agreement to
32 BioAmber Luxembourg. Also with Cargill consent, BioAmber Luxembourg further assigned both
33 agreements to BioAmber Inc.
- 34 5. No further assignments of the two agreements by either Cargill or BioAmber Inc. occurred in whole
35 or in part through the time that Cargill terminated the Commercial License Agreement in 2019.
36 Consequently, Cargill and BioAmber Inc. were the two parties to the Commercial License Agreement
37 at the time of the 2019 termination.
- 38 6. Under the Development Agreement, Cargill personnel successfully developed modified CB1 strains
39 that were commercialized under the Commercial License Agreement by the BioAmber entities.
40 BioAmber S.A.S, and its successors BioAmber Luxembourg and BioAmber Inc., as Licensees, had
41 many obligations under the Commercial License Agreement, including an obligation to pay royalties
42 and annual royalty minimums to Cargill with respect to the commercialized strains. The royalties
43 further were subject to annual minimums.
- 44 7. The Development Agreement ended when its extended term expired. Cargill terminated the
45 Commercial License Agreement in December 2019 after BioAmber, Inc. (as licensee under the
46 Commercial License Agreement by virtue of being successor to BioAmber S.A.S. as described above)
47 failed to cure material breaches in a timely manner, including breaches of the obligations to pay
48 royalties and royalty minimums.
- 49 8. BioAmber bankruptcy proceedings that occurred in 2018 to 2019 are discussed below to show that
50 (i) those proceedings did not cause either of the two agreements between Cargill and BioAmber, Inc.
51 to be assigned to any other party in whole or in part; (ii) the Commercial License Agreement
52 remained in force after the bankruptcy proceedings ended, and (iii) the default of BioAmber, Inc.

and the corresponding liabilities to Cargill for failure to pay royalties and minimums were not extinguished in the proceedings.

9. A purpose of this Declaration is to show that, as a consequence of Cargill's termination of the Commercial License Agreement in December 2019, BioAmber Inc. simultaneously upon such termination assigned all of its rights, titles, and interests in four patent families (Patent Family N0097, Patent Family N00148, Patent Family N00187, and Patent Family N00188) to Cargill. The four patent families and their constituent patents and patent applications are shown in Exhibit A. As a consequence of such assignments, Cargill acquired 100% ownership of all the patents and patent applications in all four of these patent families. Further, no subsequent assignments of any of the patents or patent applications in any of the four patent families, in whole or in part, have occurred since the assignments to Cargill in December 2019. Consequently, Cargill's 100%, common ownership of all of the patent and patent applications in all four of the patent families is maintained to the present day.

C. THE N0097, N00148, N00187, AND N00188 PATENT FAMILIES AND THEIR INITIAL OWNERSHIP RESULTED FROM THE DEVELOPMENT AGREEMENT

10. Personnel of Cargill made several inventions in the course of research and development work under the Development Agreement. Cargill and BioAmber S.A.S. (and then its successor BioAmber, Inc.) pursued patent protection for many of these. Such patent protection included all of the U.S. and international patents and patent applications in the four N0097, N00148, N00187, and N0188 patent families shown in Exhibit A. Only Cargill personnel are named as inventors on the patents and patent applications in these four patent families.

11. Agreement provisions (discussed further below) in the Development Agreement and Commercial License Agreement addressed ownership of the N0097, N00148, N00187, and N00188 patent families. Generally, the Development Agreement included provisions that established initial ownership of these, and the Commercial License Agreement included provisions that modified ownership of BioAmber S.A.S. and its successors BioAmber Luxembourg and BioAmber Inc. if the BioAmber entities committed one or more material, uncured breaches. Until the termination of the Commercial License Agreement in December 2019 based on material, uncured breaches, the

ownership of the N0097, N00148, N00187, and N00188 patent families as established by the Development Agreement was as follows,

a. Cargill and BioAmber S.A.S. became joint owners of the N00097 patent family through a chain of title starting with the Cargill inventors. After BioAmber S.A.S. assigned its joint interest to BioAmber Inc., Cargill and BioAmber Inc. were the joint owners. For example, with respect to US Pat. No. 9,605,285, which is a U.S. counterpart in the N0097 patent family, the assignment records of the U.S. Patent and Trademark Office (“USPTO”) show a) an assignment executed from the inventors to Cargill, Incorporated that is recorded at Reel 038940, Frame 0123, and b) an assignment from BioAmber S.A.S. to BioAmber Inc. that is recorded at Reel 040933, Frame 0527. The manner by which BioAmber S.A.S. acquired its initial joint ownership interest under the Development Agreement is explained further below.

b. BioAmber S.A.S. became the owner of 100% of the ownership interest of the N00148 patent family through a chain of title starting with the Cargill inventors. The Cargill inventors initially assigned ownership of the N00148 patent family to Cargill. Cargill assigned the entirety of its ownership interest to BioAmber S.A.S. BioAmber S.A.S. assigned its ownership interest to BioAmber, Inc. For example, with respect to U.S. Pat. No. 9,885,065, which is a U.S. counterpart in the N00148 patent family, the assignment records of the USPTO show a) an assignment from the Cargill inventors to Cargill recorded at Reel 030469, Frame 0569; b) an assignment from Cargill to BioAmber S.A.S. recorded at Reel 033369, Frame 0464; and c) an assignment from BioAmber S.A.S. to BioAmber Inc. recorded at Reel 040730, Frame 0727.

c. Cargill and BioAmber S.A.S. became joint owners of the N00187 patent family through a chain of title starting with the Cargill inventors. After BioAmber S.A.S. assigned its joint interest to BioAmber Inc., Cargill and BioAmber Inc. were the joint owners. For example, with respect to US Pat. No. 10,066,246, which is a U.S. counterpart in the N00187 patent family, the assignment records of the U.S. Patent and Trademark Office (“USPTO”) show a) an assignment executed from the inventors to Cargill, Incorporated that is recorded at Reel 035365, Frame 0596, and b) an assignment from BioAmber

S.A.S. to BioAmber Inc. that is recorded at Reel 040933, Frame 0527, The manner by which BioAmber S.A.S. acquired its initial joint ownership interest under the Development Agreement is explained further below.

d. Cargill and BioAmber S.A.S. became joint owners of the N00188 patent family through a chain of title starting with the Cargill inventors. After BioAmber S.A.S. assigned its joint interest to BioAmber Inc., Cargill and BioAmber Inc. were the joint owners. For example, with respect to US Pat. No. 9,850,507 and U.S. Patent Application No. 15/816,779, which are U.S. counterparts in the N00188 patent family, the assignment records of the USPTO show a) an assignment from the inventors to Cargill recorded at Reel 040165, Frame 0609, and b) the same assignment as above, from BioAmber S.A.S. to BioAmber Inc. recorded at Reel 040933, Frame 0527. The manner by which BioAmber S.A.S. acquired its initial joint ownership interest under the Development Agreement is explained further below.

12. No further assignments, in whole or in part, of any of the N0097, N00148, N00187, or N00188 patent families occurred until Cargill terminated the Commercial License Agreement in December 2019. A purpose of this Declaration is to show that BioAmber Inc. subsequently assigned all of its ownership interests in the N0097, N00148, N00187, and N00188 patent families to Cargill in December 2019 as a consequence of the termination of the Commercial License Agreement.

E. THE CARGILL AND BIOAMBER S.A.S./BIOAMBER INC. JOINT OWNERSHIP INITIALLY WAS ESTABLISHED BY OBLIGATIONS IN THE DEVELOPMENT AGREEMENT, BUT THE JOINT OWNERSHIP INTEREST OF BIOAMBER S.A.S./BIOAMBER INC. WAS TO BE FORFEITED AND ASSIGNED TO CARGILL UNDER THE COMMERCIAL LICENSE AGREEMENT IF CARGILL TERMINATED THE COMMERCIAL LICENSE AGREEMENT DUE TO AN UNCURED, MATERIAL BREACH BY BIOAMBER S.A.S./BIOAMBER INC.

13. Only Cargill personnel are named as inventors on any of the patents and patent applications in the N0097, N00148, N00187, and N00188 patent families. No personnel of any of the BioAmber entities are named as inventors. Cargill acquired its initial joint ownership interest (now 100% ownership) in the N0097, N00187, and N00188 patent families by virtue of the assignments (described above) from the inventors to Cargill. In contrast, BioAmber S.A.S. acquired its initial joint ownership

interests (subsequently transferred to BioAmber Inc. and then to Cargill) in the N0097, N00148, N00187, and N00188 patent families pursuant to Section 5.2 of the Development Agreement. Section 5.2 of the Development Agreement reads as follows:

5.2 **Improvements.** Any invention or discovery relating to the Work Plan, in whole or in part, that is conceived during the term of this Development Agreement shall be an "Improvement". The scope for Improvements will be limited to the CB1 strain itself and the fermentation of the strain to produce succinic acid and succinate salts (the "Field"), but shall exclude any subsequent processing of succinic acid or salts. Bioamber will own any Improvement in the field of succinic acid and salts thereof and such Improvement shall be designated "Bioamber Improvements". Cargill will own any Improvement in all fields other than the field of succinic acid and salts thereof, subject to the rights provided in Section 5.2.1 below, and such Improvement shall be designated "Cargill Improvements". . . . For purposes of clarity, as examples, Cargill Improvements are those inventions relating to fumaric acid and malic acid. Additionally, where an Improvement has applications both in the Field and outside the Field, then such Improvement, as it applies to the Field, shall be a Bioamber Improvement and, as it applies outside the Field, such Improvement shall be a Cargill Improvement.

14. Cargill and BioAmber S.A.S agreed that all the patent applications and corresponding issued or granted patents with respect to the N0097, N00187, and N0188 patent families included both Cargill Improvements and BioAmber Improvements and, consequently, that the three patent families would be jointly owned by Cargill and BioAmber S.A.S. Although a separate confirmatory assignment was not created or recorded to document this understanding as to joint ownership, the joint ownership established by Paragraph 5.2 and this understanding of Cargill and BioAmber S.A.S. is reflected in the corresponding assignment records of the USPTO discussed above. The Application Data Sheets (37 CFR 1.76) filed in the prosecutions of U.S. counterparts of these three families also documents this joint ownership.

15. Cargill and BioAmber also agreed that all the patent applications and corresponding issued or granted patents with respect to the N00148 patent family included BioAmber improvements and would be owned by BioAmber S.A.S.

16. Consequently, BioAmber S.A.S. and its successors acquired their ownership interests with respect to all four of the N0097, N0148, N00187, and N0188 patent families on the basis that the four patent families included BioAmber Improvements.

17. Being BioAmber Improvements, the ownership interests of BioAmber, Inc. with respect to the N0097, N0148, N00187, and N0188 patent families were to be forfeited to Cargill under the Commercial License Agreement if BioAmber, Inc. failed to cure a material breach after notice from Cargill. Paragraph 7.3 authorizes Cargill to terminate the Commercial License Agreement in the event that Cargill notifies BioAmber of a material breach, and thereafter BioAmber fails to cure the breach within 120 days. Paragraph 7.3 provides the following:

7.3 Either Party may terminate this Commercial License at any time for a material breach by the other Party, provided (i) that the Party alleging the breach provides the other with written notice specifying the breach, and (ii) the breach is not cured within one hundred twenty (120) days. To the extent permitted under applicable law, either Party may terminate this Commercial License in the event of the other Party's bankruptcy, insolvency, or the filing of a petition therefore. A Party shall promptly give the other Party notice of its bankruptcy, insolvency, or intent to file a petition therefore, whereupon the other Party may immediately terminate this Commercial License on written notice to that Party.

If Cargill were to terminate under 7.3, then Paragraph 7.6 both obligates and causes BioAmber upon termination to assign all of its interests in and to BioAmber Improvements, such as the N0097, N0148, N00187, and N0188 patent families, to Cargill:

7.6 Upon Termination of this Commercial License by Bioamber pursuant to Section 7.4 or upon Cargill's termination of this Commercial License pursuant to Section 7.3 as a result of Bioamber's breach: (i) all of Bioamber's rights specified in Sections 5.2.1 and 5.2.2 in the Development Agreement terminate; (ii) Bioamber shall and hereby does assign to Cargill all of its rights, title and interest in and to Bioamber Improvements and Bioamber will have no remaining rights respecting Bioamber Improvements; and (iii) such termination shall have no affect [sic] whatsoever on any license or other intellectual property rights

granted from Bioamber to Cargill under the terms of the Commercial License or the Development Agreement.

F. CARGILL TERMINATES THE COMMERCIAL LICENSE AGREEMENT DUE TO A MATERIAL, UNCURED BREACH BY BIOAMBER, INC. WITH THE RESULT THAT BIOAMBER ASSIGNED ALL OF ITS INTERESTS IN THE N0097, N0148, N00187, AND N0188 PATENT FAMILIES TO CARGILL.

18. After BioAmber failed to pay at least \$500,000 (US) of past due royalties and minimum royalties to Cargill, and in accordance with Section 7.3 of the Commercial License Agreement, Cargill provided BioAmber, Inc. with written notice of the material breaches on August 2, 2019, and requested that the breaches be cured. Exhibit B. After the cure period ran without BioAmber curing any aspect of the missing payments, Cargill terminated the Commercial License Agreement on December 20, 2019. Exhibit C. Under the obligations and operative assignment language of Section 7.6 of the Commercial License Agreement, due to the termination, BioAmber Inc. simultaneously assigned all BioAmber Improvements, including but not limited to BioAmber's joint ownership interest in all of the patent applications and patents in all four of the N0097, N0148, N00187, and N0188 patent families. As a result, on December 20, 2019, Cargill became sole and exclusive owner of 100% of the ownership interest in all of the patents and patent applications in the N0097, N0148, N00187, and N0188 patent families and all the other BioAmber Improvements. From December 20, 2019, to the present day, no further assignments of any of the patents or patent applications in any of the four patent families has occurred, in whole or in part, and Cargill has owned and still owns 100% of the common, ownership interest of all of the patents or patent applications in any of the four patent families.

G. BIOAMBER'S OBLIGATION TO ASSIGN AND ASSIGNMENT OF THE N0097, N0148, N00187, AND N0188 PATENT FAMILIES WERE NOT ALTERED BY THE BIOAMBER BANKRUPTCY PROCEEDINGS IN 2018-2019 OTHER THAN THAT THE ABILITY OF CARGILL TO TERMINATE WAS TOLLED DURING THE PERIOD OF THE BANKRUPTCY STAY.

19. The BioAmber entities were involved in bankruptcy proceedings in Canada and the United States, but these proceedings did not reject the Commercial License Agreement, extinguish any liability of BioAmber, Inc. to Cargill for unpaid royalties and royalty minimums, or assign any ownership interest of any of the N0097, N0148, N00187, and N0188 patent families, in whole or in part, to any third party.

20. In May 2018, the BioAmber entities in Canada each filed a petition to seek protection from creditors under Canada's Bankruptcy and Insolvency Act ("BIA") and the Companies' Creditors Arrangement Act ("CCAA")(the resultant proceedings referred to herein collectively as the "CCAA proceedings"). The filed papers identified Cargill as a creditor with an unsecured claim against BioAmber, Inc. in the amount of CAD 636,579.52 (\$500,000 U.S.). Cargill's claim in this amount is based on unpaid royalty and royalty minimums under the Commercial License Agreement. BioAmber, Inc. also filed a voluntary petition for bankruptcy in the United States under Chapter 11 of the United States Bankruptcy Code on May 4, 2018. Responsive to a petition under Chapter 15 filed in the United States, the United States bankruptcy authority recognized the CCAA proceedings in Canada as the foreign main proceeding with full authority to afford any relief under Section 1520 of the U.S. Bankruptcy Code with Sections 362 (automatic stay) and 365 (executory contracts and leases) also applying. The U.S. bankruptcy authority terminated the Chapter 11 proceedings on June 20, 2018, according the Canada CCAA authority comity with its orders and transactions given full force in the U.S. to the same extent given effect in Canada.

21. In the course of the Canada CCAA proceedings, nearly all of the assets of BioAmber, Inc. were transferred to a third party. However, the Canada CCAA authority did not allow the third party to take assignment of the Commercial License Agreement or the affected BioAmber Improvements unless certain criteria were met, including that the third party would be required to cure all BioAmber defaults under the Commercial License Agreement. The third party did not want to cure the defaults associated with the Commercial License Agreement. Accordingly, the transfer of assets under the CCAA proceedings to the third party did not include an assignment of the Commercial License Agreement or any assignment or any other transfer of any ownership or other interest, in whole or in part, to any of the N0097, N0148, N00187, and N0188 patent families. The CCAA monitor confirmed this with me personally, and I personally observed an email in with the third party confirmed this with the CCAA monitor. As a part of confirming this, the CCAA monitor showed me a confidential schedule that listed the patent properties to be assigned in the CCAA Proceedings from the BioAmber entities to the third party. None of the patents or patent applications in any of the N0097, N0148, N00187, and N0188 patent families were on the confidential schedule. Accordingly, BioAmber, Inc. retained its joint ownership interest in these patent properties throughout the course of the CCAA proceedings, and BioAmber, Inc. remained a party in default to the Commercial Licensing Agreement.

22. At no point in the bankruptcy in the US proceedings or the CCAA Proceedings was the Commercial Licensing Agreement rejected, and at no point were BioAmber's defaults and corresponding liability to Cargill extinguished in the US bankruptcy or CCAA Proceedings. In fact, on January 6, 2020, the CCAA monitor issued an update to state, "There was no plan of compromise or arrangement made in the CCAA Proceedings in respect of the Companies to otherwise address creditor claims. As such those claims remain outstanding and rank in priority to equity claims." This shows that BioAmber, Inc. remained an existing business entity during the period from the time that Cargill gave notice of material breach to BioAmber, Inc. (August 2019) through the time that Cargill terminated the Commercial License Agreement (December 2019).

H. AFTER THE BANKRUPTCY STAY EXPIRED, CARGILL PROVIDED BIOAMBER WITH NOTICE OF THE MATERIAL BREACH AND THEN TERMINATED THE COMMERCIAL LICENSE AGREEMENT WHEN THE BREACH WAS NOT TIMELY CURED.

23. In the course of the Canada bankruptcy proceeding, a stay was in effect that prevented Cargill from enforcing its claims against BioAmber, Inc. for unpaid royalties and royalty minimums. On June 24, 2019, the Court denied a motion to extend the stay beyond July 2, 2019. Hence, as of July 3, 2019, the stay lifted and was no longer in effect. Thereafter, Cargill served its notice of breach on BioAmber, Inc. in August 2019 (discussed above) and, in due course, Cargill terminated the Commercial License Agreement in December 2019 (discussed above).

I. CONCLUSION

24. Under Paragraph 7.6 of the Commercial license agreement, Cargill's termination of the Commercial License Agreement caused BioAmber, Inc. to simultaneously assign all of BioAmber Inc.'s ownership interests in the N0097, N0148, N00187, and N0188 patent families to Cargill on December 20, 2019.

25. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Date: 31 December 2020

Signature: /Charles P. Wakefield/

Printed Name: Charles P. Wakefield

EXHIBIT A

Declaration of Charles P. Wakefield

Patents and Patent Applications in the N0097, N00148, N00187, and N00188 Patent Families

1. Patents and Patent Applications in the N0097 Patent Family (Title: COMPOSITIONS AND METHODS FOR SUCCINATE PRODUCTION)

Country/Region	Application	Publication No.	Grant No.
US Provisional	US 61/436,185		
WO	PCT/US12/22612	WO 2012103261 A2, WO 2012103261 A3	
US	13/981517	US 20130302866 A1	US9,605,285 B2
US	15/386506	US 20170107526 A1	
EP	12740007	EP 2668281 A2 EP 2668281 A4	
CA	2825525	CA 2825525 A1	

2. Patents and Patent Applications in the N00148 Patent Family (Title: METHODS FOR SUCCINATE PRODUCTION)

Country/Region	Application	Publication No.	Grant No.
US Provisional	US61/590795		
US	14/374464	US 20140363862 A1	US 9885065 B2
WO	PCT/US13/23300	WO 2013112939 A2 WO 2013112939 A3	
EP	13741520	EP 2807262 A2 EP 2807262 A4	

3. Patents and Patent Applications in the N00187 Patent Family (Title: YEAST CELLS HAVING NADP(H)-DEPENDENT REDUCTIVE TCA PATHWAY FROM PYRUVATE TO SUCCINATE)

Country/Region	Application	Publication No.	Grant No.
US Provisional	US 61/675,785		
WO	PCT/US13/52066	WO 2014018755 A1	
US	14/416631	US 20150176038 A1	US 10,066,246 B2

4. Patents and Patent Applications in the N00188 Patent Family (Title: YEAST CELLS HAVING REDUCTIVE TCA PATHWAY FROM PYRUVATE TO SUCCINATE AND OVEREXPRESSING AN EXOGENOUS NAD(P)+ TRANSHYDROGENASE ENZYME)

Country/Region	Application	Publication No.	Grant No.
US Provisional	US 61/675,788		
WO	PCT/US13/52069	WO 2014018757 A1	
US	14/416633	US 20150203877 A1	US 9,850,507
US	15/816779	US 20180100170 A1	
EP	13747560A	EP 2877568 A1	
BR	112015001601.00	BR 112015001601 A2	

EXHIBIT B

Declaration of Charles P. Wakefield

Cargill provides BioAmber, Inc. with written notice of material breach

FaegreBD.com

**FAEGRE BAKER
DANIELS**

USA • UK • CHINA

Christopher (C.J.) Harayda
Partner
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Direct +1 612 766 8033

Faegre Baker Daniels LLP
2200 Wells Fargo Center • 90 South Seventh Street
Minneapolis • Minnesota 55402-3901
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Fax +1 612 766 1600

August 2, 2019

BioAmber Inc.
1250 René-Lévesque Boulevard West, Suite 4310
Montréal, Québec, Canada, H3B 4W8
Attn: Manager Director/Chief Executive Officer

Re: **Notice of Breach Under Commercial License Agreement**

Dear Sir:

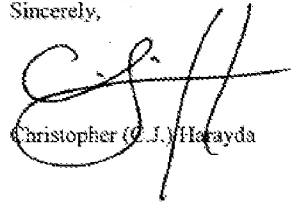
We represent Cargill, Incorporated and write regarding that certain Commercial License Agreement between BioAmber S.A.S. and Cargill, Incorporated ("Cargill") dated as of April 15, 2010 (as amended, the "License"). The License was amended by that certain Amendment to Development Agreement and Commercial License Relating to Succinic Acid and Ratification of Assignments, dated as of April 15, 2014, between Cargill and BioAmber International S.à.r.l. BioAmber International S.à.r.l. assigned its rights, obligations, and interests in the License to BioAmber, Inc. ("BioAmber") as assented to by Cargill on October 28, 2016.

Under Section 5 of the License, BioAmber is required to make certain payments to Cargill, in exchange for rights granted under the License. BioAmber has failed to make such payments in an amount totaling at least \$500,000 US as of the date of this notice (the "Royalty"). The Royalty includes amounts accrued prior to BioAmber's insolvency proceedings. There are additional monetary sums due to Cargill that accrued during BioAmber's insolvency proceedings. BioAmber's failure to pay the Royalty is a material breach under Section 7.8 of the License, of which you are hereby notified. Please be advised that unless and until the ongoing breach for nonpayment is cured, the Licenses cannot be assumed or assigned under Canada's Companies Creditors Arrangement Act or the United States Bankruptcy Code. BioAmber is also in breach under the License based on its commencement of insolvency proceedings under the Companies Creditors Arrangement Act in the Superior Court for the Province of Quebec, District of Montreal and bankruptcy proceedings under the United States Bankruptcy Code in the Bankruptcy Court for the District of Delaware.

August 2, 2019

Cargill reserves its rights to exercise any remedy available to it under the terms of the License and any other documents executed in connection therewith or under law at any time that Cargill deems necessary or appropriate upon the expiration of any stays imposed by operation of law or court order.

Sincerely,

A handwritten signature in black ink, appearing to be "C.J. Harayda", written over a horizontal line.

Christopher (C.J.) Harayda

CHH/bw

cc: Thomas Desbiens, Esq.
Mica Arlette

EXHIBIT C

Declaration of Charles P. Wakefield

Cargill terminates Commercial License Agreement

FaegreBD.com

**FAEGRE BAKER
DANIELS**

USA • UK • CHINA

Christopher (C.J.) Harayda
Partner
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2200 Wells Fargo Center • 90 South Seventh Street
Minneapolis • Minnesota 55402-3901
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Fax +1 612 766 1600

December 20, 2019

BioAmber Inc.
1250 René-Lévesque Boulevard West, Suite 4310
Montréal, Québec, Canada, H3B 4W8
Attn: Manager Director/Chief Executive Officer

BioAmber, Inc.
1000 Westgate Drive, Room 115
St. Paul, MN 55114
Attn: Manager Director/Chief Executive Officer

Re: **Notice of Termination of Commercial License Agreement**

Dear Sir:

I write on behalf of Cargill, Incorporated ("Cargill") regarding that certain Commercial License Agreement between BioAmber S.A.S. and Cargill dated as of April 15, 2010 (as amended, the "License"). The License was amended by that certain Amendment to Development Agreement and Commercial License Relating to Succinic Acid and Ratification of Assignments, dated as of April 15, 2014, between Cargill and BioAmber International S.à.r.l. BioAmber International S.à.r.l. assigned its rights, obligations, and interests in the License to BioAmber, Inc. ("BioAmber") as assented to by Cargill on October 28, 2016. Capitalized terms used herein but not otherwise defined shall have the meanings given to such terms in the License.

On August 2, 2019, Cargill provided notice to BioAmber that it was in default of its obligations under the License. Specifically, that BioAmber's failure to pay the royalties due to Cargill for Net Sales of Product under the License as required by Section 5 of the License (the "Royalty") and commencement of insolvency proceedings under the Companies Creditors Arrangement Act in the Superior Court for the Province of Quebec, District of Montreal and bankruptcy proceedings under the United States Bankruptcy Code in the Bankruptcy Court for the District of Delaware are material breaches of the License under sections 5 and 7.8 of the License (collectively, referred to as the "Material Breaches").

Based on the Material Breaches, and effective as of the date of this notice, the License is terminated under Section 7.3 of the License. This notice terminates all rights of BioAmber under the License, including

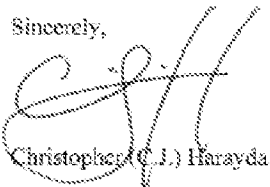
US125086119.01

December 20, 2019

with respect to any licenses, sublicenses, and all of BioAmber's rights under Sections 5.2.1 and 5.2.2 of the License. Additionally, under Section 7.6(ii) of License, upon this notice of termination, BioAmber assigns all of its right, title and interest, in and to the BioAmber Improvements to Cargill. BioAmber no longer has any rights with respect to the BioAmber Improvements. This termination does not, however, affect any license or intellectual property rights granted by BioAmber to Cargill under the License, Development Agreement or otherwise.

Cargill reserves its rights to exercise any remedy available to it under the terms of the License and any other documents executed in connection therewith or under law at any time that Cargill deems necessary or appropriate.

Sincerely,



Christopher (C.J.) Harayda

CJH/bw

cc: Thomas Desbriens, Esq.
Mica Arlene

US122986119.01