
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

T2 Biosystems, Inc.

(Exact name of registrant as specified in its charter)

| | | |
|---|--|--|
| Delaware (State or other jurisdiction of incorporation or organization) | 8071 (Primary Standard Industrial Classification Code Number) | 20-4827488 (I.R.S. Employer Identification No.) |
|---|--|--|

**101 Hartwell Avenue
Lexington, Massachusetts 02421
(781) 457-1200**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**John McDonough
President and Chief Executive Officer
T2 Biosystems, Inc.
101 Hartwell Avenue
Lexington, Massachusetts 02421
(781) 457-1200**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Johan V. Brigham
Peter N. Handrinis
Latham & Watkins LLP
John Hancock Tower,
20th Floor
200 Clarendon Street
Boston, Massachusetts 02116
(617) 948-6000**

**Brent B. Siler
Divakar Gupta
Brian F. Leaf
Cooley LLP
1114 Avenue of the Americas
New York, New York 10036
(212) 479-6000**

Approximate date of commencement of proposed sale to the public:
As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities To Be Registered | Proposed Maximum Aggregate Offering Price(1) | Amount of Registration Fee(2) |
|---|--|----------------------------------|
| Common Stock, \$0.001 par value per share | \$ | \$ |

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended. Includes the offering price of additional shares that the underwriters have the option to purchase.
- (2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

This filing is being submitted confidentially solely for the purpose of submitting Exhibit 10.12 to the Registration Statement on Form S-1 (the "Registration Statement"). No change is made to the prospectus constituting Part I of the Registration Statement or Items 13, 14, 15 or 17 of Part II of the Registration Statement.

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with this offering described in this registration statement, other than the underwriting discount, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and The NASDAQ Global Market fee.

| | Amount |
|--|---------------|
| SEC Registration fee | \$ * |
| FINRA filing fee | * |
| NASDAQ Global Market initial listing fee | * |
| Accountants' fees and expenses | * |
| Legal fees and expenses | * |
| Blue Sky fees and expenses | * |
| Transfer Agent's fees and expenses | * |
| Printing and engraving expenses | * |
| Miscellaneous | * |
| Total expenses | <u>\$ *</u> |

* To be provided by amendment

Item 14. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our restated certificate of incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation

unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our restated certificate of incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of us) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our restated certificate of incorporation provides that we will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

We have entered into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended, or the Securities Act, against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding shares of capital stock issued by us within the past three years. Also included is the consideration received by us for such shares and information relating to the section of the Securities Act, or rule of the Securities and Exchange Commission, under which exemption from registration was claimed.

(a) Issuance of Securities.

1. In August 2011, we issued an aggregate of 5,054,945 shares of series D preferred stock to investors at a price per share of \$4.55 for aggregate gross consideration of \$23.0 million. These shares will automatically convert into 5,054,945 shares of our common stock upon the closing of this offering.

2. In March 2013, we issued an aggregate of 6,930,967 shares of series E preferred stock to investors at a price per share of \$5.7712 for aggregate gross consideration of \$40.0 million. These shares will automatically convert into 6,930,967 shares of our common stock upon the closing of this offering.

(b) Stock Option Grants. From January 1, 2011 through May 27, 2014, we granted stock options to purchase an aggregate of 3,504,304 shares of our common stock at a weighted-average exercise price of \$1.85 per share, to certain of our employees, directors and consultants in connection with services provided to us by such persons. Of these, options to purchase 71,793 shares of common stock have been exercised through May 27, 2014 for aggregate consideration of \$101,277, at a weighted-average exercise price of \$1.41 per share.

(c) Warrants. Since May 2011, we issued one warrant to SVB and one to MDF in connection with various loan and security agreements. These warrants are immediately exercisable for the purchase of 49,780 shares of preferred stock. If none of these warrants are exercised, upon the closing of this offering, SVB's warrant for 19,780 shares of preferred stock will terminate while MDF's warrant for the purchase of 30,000 shares of preferred stock will automatically convert to common stock pursuant to a cashless net exercise.

The issuances of stock options, warrants and the shares of common stock issuable upon the exercise of the options described in this Item 15 were issued pursuant to written compensatory plans or arrangements with our employees, directors and consultants, in reliance on the exemption provided by Rule 701 promulgated under the Securities Act, or pursuant to Section 4(a)(2) under the Securities Act, relative to transactions by an issuer not involving any public offering, to the extent an exemption from such registration was required.

All of the foregoing securities are deemed restricted securities for purposes of the Securities Act. All certificates representing the issued shares of capital stock described in this Item 15 included appropriate legends setting forth that the securities have not been registered and the applicable restrictions on transfer.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

| <u>Exhibit Number</u> | <u>Description of Exhibit</u> |
|------------------------------|--|
| 1.1* | Form of Underwriting Agreement |
| 3.1** | Restated Certificate of Incorporation of the Registrant, as amended (currently in effect) |
| 3.2** | Bylaws of the Registrant (currently in effect) |
| 3.3* | Form of Restated Certificate of Incorporation of the Registrant (to be effective upon the closing of this offering) |
| 3.4* | Form of Amended and Restated Bylaws of the Registrant (to be effective upon the closing of this offering) |
| 4.1* | Specimen Stock Certificate evidencing the shares of common stock |
| 4.2** | Fourth Amended and Restated Investors' Rights Agreement, dated as of March 22, 2013 |
| 5.1* | Opinion of Latham & Watkins LLP |
| 10.1### | Amended and Restated 2006 Employee, Director and Consultant Stock Plan, as amended, and form of option agreements thereunder |
| 10.2##* | 2014 Incentive Award Plan and form of option agreements thereunder |
| 10.3##* | Non-Employee Director Compensation Program |
| 10.4* | Form of Indemnification Agreement for Directors and Officers |
| 10.5### | Employment Letter Agreement, dated as of March 14, 2008, by and between the Registrant and John McDonough |
| 10.6### | Employment Letter Agreement, dated as of March 8, 2013, by and between the Registrant and Marc Jones |
| 10.7### | Employment Letter Agreement, dated as of July 19, 2013, by and between the Registrant and Sarah Kalil |
| 10.8### | Employment Letter Agreement, dated as of February 15, 2014, by and between the Registrant and Michael Pfaller |
| 10.9### | Employment Letter Agreement, dated as of December 19, 2006, by and between the Registrant and Tom Lowery, Jr. |
| 10.10### | Consulting Agreement, dated as of July 20, 2006, by and between the Registrant and Michael Cima, as amended on March 19, 2013 |
| 10.11### | Consulting Agreement, dated as of July 20, 2006 by and between the Registrant and Robert Langer, as amended on March 20, 2013 |
| 10.12† | Sales Agreement, dated as of February 11, 2011, by and between GE Healthcare Bio-Sciences Corp. and the Registrant |
| 10.13†## | Exclusive License Agreement, dated as of November 7, 2006, as amended on December 2, 2008 and February 21, 2011, by and between The General Hospital Corporation d/b/a Massachusetts General Hospital and the Registrant |

| Exhibit Number | Description of Exhibit |
|-----------------------|---|
| 10.14** | Security Agreement, dated as of May 9, 2011, by and between the Registrant and Massachusetts Development Finance Agency |
| 10.15** | Loan and Security Agreement, dated as of August 30, 2007, as amended by the First Loan Modification Agreement on June 26, 2009 and the Second Loan Modification Agreement on June 25, 2013, by and between the Registrant and Silicon Valley Bank |
| 10.16** | Lease, dated as of May 6, 2013, as amended on September 24, 2013, by and between the Registrant and Columbus Day Realty, Inc. |
| 10.17** | Lease, dated as of August 6, 2010, by and between the Registrant and King 101 Hartwell LLC |
| 10.18** | Promissory Note, dated May 9, 2011, issued by the Registrant to Massachusetts Development Finance Agency |
| 23.1* | Consent of Ernst & Young LLP |
| 23.2* | Consent of Latham & Watkins LLP (included in Exhibit 5.1) |
| 24.1** | Power of Attorney (included on signature page) |

* To be filed by amendment.

** Previously filed.

Indicates management contract or compensatory plan.

† Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment pursuant to Rule 406 under the Securities Act of 1933.

(b) Financial Statement Schedules. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriter, at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) For the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (4) In a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Lexington, Commonwealth of Massachusetts, on this day of , 2014.

T2 BIOSYSTEMS, INC.

By: _____

John McDonough
President and Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of T2 Biosystems, Inc., hereby severally constitute and appoint John McDonough and Marc R. Jones, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement (or any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-1 has been signed by the following persons in the capacities held on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---------------------------------|--|-------------|
| _____ John McDonough | President, Chief Executive Officer and Director (principal executive officer) | , 2014 |
| _____ Marc R. Jones | Chief Financial Officer (principal financial and accounting officer) | , 2014 |
| _____ David B. Aronoff | Director | , 2014 |
| _____ Joshua Bilenker, M.D. | Director | , 2014 |
| _____ Thomas J. Carella | Director | , 2014 |
| _____ Michael J. Cima, Ph.D. | Director | , 2014 |
| _____ Alan Crane | Director | , 2014 |

Signature

Title

Date

| | | |
|-----------------------|----------|--------|
| <hr/> | Director | , 2014 |
| Stacy A. Feld | | |
| <hr/> | Director | , 2014 |
| Robert Langer, D. Sc. | | |
| <hr/> | Director | , 2014 |
| Stanley N. Lapidus | | |
| <hr/> | Director | , 2014 |
| Harry W. Wilcox | | |

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SALES AGREEMENT

This Sales Agreement (“Agreement”) is entered into as of February 11, 2011 (the “Effective Date”) by and between [***] (“Seller’s Principal Office”), and **T2 Biosystems, Inc.** (“Purchaser”), a Massachusetts corporation, with its principal office located at 101 Hartwell Avenue, Lexington, MA 02421.

Whereas, Seller is a company with expertise in the development and production of superparamagnetic nanoparticles for diagnostic and life science purposes;

Whereas, Purchaser is engaged in the research, development and commercialization of medical diagnostic products that combine nanotechnology and miniaturized magnetic resonance technology;

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **Scope.** This Agreement sets forth the terms and conditions under which Seller will manufacture and supply its products, which are more particularly described on Exhibit A (“Products”), to Purchaser and Purchaser will purchase Products from Seller. Purchaser intends to incorporate, combine or integrate the Products into a Purchaser Product for sale or use by Purchaser’s customers (hereinafter “Purchaser’s Products”). Accordingly, Purchaser will utilize the Products for further manufacturing, re-packaging, and/or re-labeling such that the Purchaser’s Products will be marketed and sold under the Purchaser’s brand name. Seller assumes no responsibility or obligation, and provides no warranty or indemnification obligation for any Purchaser Product which has been manufactured, repackaged, and/or re-labeled by Purchaser.

A. **License.** For the term of this Agreement, Seller grants to Purchaser, a non-exclusive, worldwide, non-royalty bearing, sublicensable (only to third parties that may OEM, contract manufacture or sell Purchaser’s Product), license to use (including to modify and/or enhance) Products to research, develop, make and sell Purchaser Product(s) for in vitro industrial diagnostics, human diagnostics, and veterinary diagnostics (but excluding therapeutic) purposes. This license shall immediately terminate upon the expiration or termination of this Agreement.

B. **Specifications & Terms.** The Products shall comply with Seller specifications, if any, as set forth on Exhibit B (the “Specifications”). All purchases made pursuant to this Agreement and Purchaser’s purchase orders shall be subject to Seller’s standard terms and conditions of sale which are attached as Exhibit C as well as the additional terms set forth in Exhibit D.

2. **Pricing; Delivery; Payment.**

A. **Pricing.** The initial price for each Product is listed in Exhibit A to this Agreement. The prices listed in Exhibit A shall be firm for all Purchase Orders (defined below) received by Seller during the first Contract Year (defined below). Seller may increase the prices for the Products no more than once in any calendar year, usually on the first day of January, by giving notice to Purchaser at least 60 days prior to the effective date of such change. These Price increases shall be limited on an annual basis to the greater of (i) the change in the [***] for the preceding year, or (ii) [***]. Notwithstanding the foregoing, upon [***] written notice to the Purchaser, Seller may increase the purchase price for any Product to account for (i) [***]; or (ii) [***] the Product under this Agreement (any of these events shall be referred to as a “[***] Event” and such increase shall be referred to as a “[***] Increase”). At the time of providing a price increase notice as permitted under the preceding sentence, Seller shall provide the Purchaser with written evidence of the reason therefore, including any information relating to [***], as the case may be. Seller agrees to eliminate [***] Increases if the reason giving rise to such [***] Event is eliminated or otherwise disappears.

B. **Delivery and Invoicing.** Seller shall use commercially reasonable best efforts to ship Products in accordance with the quantities, delivery dates, and delivery location specified in the written purchase order delivered by the Purchaser (“Purchase Order”). The Purchase Order shall be a firm commitment to purchase the Products in the quantities described therein. Seller shall ship the Products FCA Seller’s facility (Incoterms 2000) in accordance with the shipping instructions set forth in the relevant Purchase Order; however, if any Purchase Order does not contain shipping instructions or if such instructions cannot be reasonably achieved, then Seller shall select a carrier or carriers to effect each shipment pursuant to such Purchase Order. Upon delivery of Products to a carrier, Seller shall invoice Purchaser for the Products supplied. Prices and payment terms are subject to terms set forth on attached Exhibit C.

3. **Term and Termination**

A. This Agreement shall take effect on the Effective Date and shall remain in effect until the last day of the fifth Contract Year, unless this Agreement is terminated earlier as provided herein. A “Contract Year” shall be the

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

period commencing on each **January 1st** and terminating on **December 31st**, however, the first Contract Year shall commence on the **Effective Date** and terminate on **December 31, 2011**.

B. Except as otherwise provided in this Agreement, in the event either party breaches any of the terms, obligations, conditions or undertakings of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach, the non-breaching party, at its option, may by written notice to the breaching party terminate this Agreement, except termination shall not be effective with respect to those provisions which expressly survive termination of this Agreement. The termination shall be effective upon the receipt of the termination notice.

C. Either party may terminate this Agreement immediately by providing written notice to the other party if the other party becomes insolvent, if a petition in voluntary or involuntary bankruptcy is filed by or against the other party under any chapter of the United States bankruptcy laws and not bonded or discharged within thirty (30) days of the date a receiver or trustee is appointed, or if the other party makes an assignment for the benefit of creditors.

D. The termination, expiration or non-renewal of this Agreement shall not relieve either party from any obligation that accrues pursuant to this Agreement before the effective date of the termination or expiration nor shall it release the parties from any obligation that may have been incurred as a result of operations conducted under this Agreement.

4. **Ordering.**

A. **Forecasts.** Commencing on Purchaser's Commercial Launch of a Purchaser Product, and on the first business day of each calendar quarter thereafter during the term of this Agreement, Purchaser shall provide Seller with a non-binding (except as provided herein) twelve-month rolling forecast of the Products and quantities it intends to purchase during the succeeding twelve-month period. During the first [***] after Commercial Launch of the applicable Purchaser Product, [***] of the volume of Products specified by Purchaser for the first calendar quarter of each forecast for the applicable Purchaser Product will be binding upon the Purchaser and Purchaser shall issue a Purchase Order for such binding amount. In addition, Commencing [***] after Commercial Launch of the applicable Purchaser Product, [***] of the volume of Products specified by Purchaser for the first calendar quarter of each forecast for the applicable Purchaser Product will be binding upon the Purchaser and Purchaser shall issue a Purchase Order for such binding amount. If Purchaser fails to issue a Purchase Order for the binding portions of the forecasts as prescribed in this Section 4.A, Seller may issue a binding invoice to Purchaser for the outstanding amount. Except as provided herein, forecasts shall be estimates only and are not binding. All forecasts shall constitute Confidential Information of Purchaser, regardless or whether or not so marked. For purposes of this Agreement, Commercial Launch for a Purchaser Product shall mean Purchaser's first sale of such Purchaser's Product following regulatory approval to market the Purchaser Product.

B. **Lead-Time and Overage Commitment.** Prior to the Commercial Launch of a Purchaser Product, Seller shall have a lead-time of at least [***] from the date of receipt of a Purchase Order through the date of delivery of the Products listed on the Purchase Order. Following the Commercial Launch of the Purchaser Product, Seller shall have a lead-time of at least [***] from the date of receipt of a Purchase Order through the date of delivery of the Products listed on the Purchase Order. Prior to the Commercial Launch of the Purchaser Product, each Purchase Order placed by Purchaser shall be binding upon the Seller upon Seller's acceptance of such Purchase Orders as provided herein and the Product set forth therein shall be delivered within the applicable lead time set forth above. Following the Commercial Launch of the Purchaser Product, each Purchase Order placed by Purchaser shall be binding upon the Seller to the extent that the Purchase Order is equal to volumes contained in the portion of the Purchaser's forecast that is binding upon the Purchaser as set forth above. With respect to volumes included in Purchase Orders that are in excess of such binding portions, Seller will endeavor to deliver such excess Product as requested by any Purchase Order; but Seller has no obligation hereunder to expedite delivery for such excess Product unless the parties mutually agree on the terms of such expedited request. Seller shall provide Purchaser with a minimum of twelve (12) months written notice of Seller's intention to discontinue the supply of any Product.

C. **Confirmed Purchase Orders.** Seller shall provide written acceptance of each Purchase Order within three (3) calendar days of its receipt; provided, however, that Seller's failure to accept a Purchase Order shall not alter Seller's obligation to deliver Product that is the subject of a binding Purchase Order as described in 4B above. Purchase Orders shall be transmitted to Seller via and confirmed in writing to the fax number or email address detailed in this Agreement. Seller assumes no liability for carrier or shipping error or delay. Seller agrees to promptly notify Purchaser if it will be unable, for whatever reason to meet the requested delivery dates. Seller may deliver Product up to seven (7) days early if Seller's manufacturing / dispatch schedule would not

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

otherwise facilitate on-time delivery; provided Seller provides prior written notice to Purchaser of the delivery.

D. **Purchase Minimums.** During each Contract Year or portion thereof detailed below, the Purchaser shall purchase at least the below-listed quantity of Products (for each period, the "Minimum Purchase Obligation"):

| Contract Year | | Minimum Purchase Obligation |
|----------------------|-------|--------------------------------------|
| First Contract Year | [***] | [***] Product units ([***] grams) |
| Second Contract Year | [***] | [***] Product units ([***] grams) |
| Third Contract Year | [***] | [***] Product units ([***] grams) |
| Fourth Contract Year | [***] | [***] Product units ([***] grams) |
| Fifth Contract Year | [***] | [***] Product units ([***] grams) |

If, in any Contract Year, Purchaser fails to purchase the Minimum Purchase Obligation, then Purchaser shall either (i) pay to Seller an amount equal to the difference between the Minimum Purchase Obligation and the actual amount of Product sold; or (ii) within 30 days after the Contract Year in which the Minimum Purchase Obligation is not met, issue a PO to Seller for the difference or shortfall, provided, however, that such amount shall not count toward the subsequent year's Minimum Purchase Obligation. If Purchaser fails to pay this amount to Seller or issue a PO as described above, Seller may (i) offset any amounts owed to Seller or its affiliates by Purchaser; or (ii) increase the purchase price for the Products in addition to any purchase price increase authorized by Section 2.B, to reflect a lower volume of Product purchases by Purchaser, which increase shall be effective as of the first day of the Contract Year after the Contract Year in which Purchaser fails to achieve the Minimum Purchase Obligation.

E. **Seller's Warranties.** In addition to the warranties set forth in Exhibit C, Seller represents and warrants that it has the full legal right to enter into this Agreement with Purchaser. SELLER SHALL NOT BE HELD RESPONSIBLE FOR ANY CHANGE IN PRODUCT PERFORMANCE DUE TO MISHANDLING OR ADULTERATION OF THE PRODUCT BY PURCHASER OR ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO RE-MANUFACTURING, REPACKAGING, RELABELING OR INCORPORATION OF THE PRODUCT INTO PURCHASER'S PRODUCT. ANY ALTERATION, CHANGE, OR MODIFICATION MADE TO ANY PRODUCT BY ANY PERSON OTHER THAN SELLER OR OTHER THAN AS AUTHORIZED UNDER THIS AGREEMENT SHALL VOID THE PRODUCT WARRANTIES EXTENDED BY SELLER. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT SELLER DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR

OTHERWISE, INCLUDING IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND FREEDOM FROM INFRINGEMENT.

F. **Purchaser's Warranties.** Purchaser represents and warrants: (i) Purchaser has the full legal right to enter into this Agreement with Seller; and (ii) Purchaser will make no representations or warranties regarding the Product other than those representations and warranties provided in the Product package inserts.

5. **Regulatory Audit.** Purchaser (inclusive of its employees and representatives) shall have the right to audit Seller's facilities, as Purchaser deems necessary. Seller shall also cooperate with regulatory agency requests to audit Seller's facility, provided, Purchaser shall not be entitled to be present during any regulatory agency inspection. However, exercise of such right shall be subject to the following conditions: (a) Purchaser or its representatives, as the case may be, must sign Seller's standard confidentiality agreement ("Confidentiality Agreement"); (b) Purchaser shall be entitled to conduct only one audit per Contract Year unless additional audits are required by law or regulation or otherwise agreed or unless Purchaser can demonstrate that Seller has materially breached this Agreement; (c) Purchaser audits shall be conducted only after reasonable advance written notice of the audit is provided by Purchaser to Seller and then only at such time as is reasonably convenient to Seller; (d) all information gathered and data reviewed during any such audit shall be "Confidential Information" subject to the provisions of the Confidentiality Agreement; and (e) the scope of each such audit shall be limited to the production and delivery (copies of which shall not be removed from Seller's premises) of the Products under this Agreement and all documentation, data, and other records relating solely thereto, including but not limited to, production standard operating procedures that are not proprietary (e.g., QC, testing, training, etc.), and records and data relating to raw materials. Seller shall cooperate with Purchaser in the performance of such audit.

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6. **Confidentiality.** The contents of this Agreement and any information or items marked confidential or identified as confidential by written notice to the receiving party delivered within thirty (30) days of delivery of the information or item furnished by either party to the other party under or relating to this Agreement may not be divulged by the receiving party to any third party, and such information shall not be used by the receiving party for any purpose other than in connection with this Agreement without the prior written consent of the disclosing party; provided, however, the obligations of confidentiality, nondisclosure and non-use shall not apply to information that (i) is already in, or subsequently comes into, the public domain other than through a violation of this Agreement, (ii) is received by the non-disclosing party on a non-confidential basis from a source which is not prohibited from disclosing such information pursuant to any legal, contractual or fiduciary obligation to the disclosing party, (iii) was already known by the receiving party, as established by written documentation only, at the time of receipt from the disclosing party, (iv) is independently developed, and (v) is required by a court of law or by any governmental, regulatory or administrative agency, body or tribunal to be disclosed by the receiving party, provided that the receiving party gives the disclosing party timely prior notice of such requirement and the receiving party reasonably cooperates with the disclosing party in any attempt made by the disclosing party to obtain protection for such Confidential Information. In protecting the Confidential Information of the disclosing party, the receiving party shall use the same degree of care it uses for its own Confidential Information, but in no event less than a reasonable degree of care. Notwithstanding the foregoing, each party shall have the right to disclose the other party's Confidential Information to such of its consultants, accountants, financial advisors, outside counsel and other representatives with a bona fide need to know the Confidential Information for the purpose of this Agreement or to potential investors (each, a "Representative"). Prior to any such disclosure to a Representative, the receiving party shall have informed the Representative of the requirements of this Agreement and shall have obtained from such Representative an agreement requiring the Representative to protect the Confidential Information under terms and conditions substantially similar to those contained herein. Each party shall be responsible for any breach of this Agreement by its Representatives. The covenants contained in this Section shall survive the termination of this Agreement, regardless of the cause of the termination, for a period of five (5) years from termination of the Agreement.

7. **Relationship of Parties.** Purchaser and Seller are independent entities and neither shall be considered an agent, employee, commercial representative, partner, franchisee or joint venturer of the other. Neither party shall have any authority, absent express written permission from the other party, to enter into any agreement, assume or create any obligations or liabilities, or make representations on behalf of the other party.

8. **Assignment.** Neither party may assign this Agreement to a third party unless both parties have agreed to such assignment in a writing signed by an authorized representative of each party hereto; provided, however, that upon providing written notice, either party may, without the other party's consent, assign this Agreement to an affiliated company or to any third party entity that acquires all or substantially all of its assets, provided such assignee agrees to be bound by the terms and conditions of this Agreement.

9. **Notice.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given on the earlier of the date when actually delivered by personal delivery, commercial courier, or telephonic facsimile transmission accompanied by a telephonic facsimile receipt and followed by a hard copy by the United States mail, or three (3) days after being deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, and in each case addressed as follows, unless and until any of such parties notifies the others in accordance with this Section of a change of address:

In the case of Seller, to:

[***]

With a copy to:

[***]

In the case of Purchaser:

John McDonough, President and CEO
101 Hartwell Avenue
Lexington, MA 02421

10. **Governing Law.** This Agreement is governed by and shall be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflicts of laws. The parties irrevocably submit to the jurisdiction of the State and Federal Courts of the Commonwealth of Massachusetts in any action arising out of or relating to this Agreement. This Agreement will not be subject to the United Nations Convention for the International Sale of Goods.

11. **Arbitration.** If there is a dispute, claim, or controversy between the parties arising out of or in connection with this Agreement, the parties shall settle such matter by binding arbitration under the Commercial

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Arbitration Rules of the American Arbitration Association in effect on the date of this Agreement. In the event either party commences an arbitration proceeding, the arbitration proceeding shall be held in the county where the Seller's Principal Office is located. Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof. This arbitration clause shall survive the termination of this Agreement. **EACH PARTY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY.**

12. **Entire Agreement & Amendments.** This Agreement (including its Exhibits) represents the entire agreement between the parties pertaining to its subject matter, and supersedes all prior and contemporary agreements and understandings. The parties intend this Agreement to be the final expression of their agreement with respect to its terms, and the complete and exclusive statement of those terms. No modification, amendment or waiver of any Agreement term shall be binding unless executed in writing by both parties. If there is a conflict between the terms of sale set forth in Exhibit C and this Agreement, the terms in this Agreement shall take precedence.

13. **Parties in Interest.** This Agreement shall not be binding on either party until signed by both parties. This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors, and permitted assignees. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assignees, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action against any party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in multiple original counterparts by their duly authorized officers, agents all as of the day and year first above written.

[***]

T2 BIOSYSTEMS, INC.

By: /s/ John McDonough

Print Name:

Title:

Date: 2/11/2011

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**EXHIBIT A
Product/Price**

| Product/Part Number | Bottle Size | Price per bottle | Quantity Range (mL) |
|----------------------------|--------------------|-------------------------|----------------------------|
| [***] | [***] | [***] | [***] |

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**EXHIBIT B
Specifications**

| Product/Part Number | Parameter | Specification range | Shelf life | Manufacture lot size |
|----------------------------|------------------|----------------------------|-------------------|-----------------------------|
| [***] | [***] | [***] | [***] | [***] |

EXHIBIT C Terms and Conditions of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **GENERAL.** Microgenics Corporation ("Seller") hereby offers for sale to the buyer named on the face hereof ("Purchaser") the products listed on the face hereof (the "Products") on the express condition that Purchaser agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Purchaser are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Purchaser's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Purchaser's document. Purchaser's receipt of Products or Seller's commencement of the services provided hereunder will constitute Purchaser's acceptance of this Agreement. These Terms and Conditions of Sale and the Sales Agreement to which they are attached as Exhibit C, and all other Exhibits attached to the Sales Agreement represent the complete and exclusive statement of the contract between Seller and Purchaser with respect to Purchaser's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Purchaser. Seller's failure to object to terms contained in any subsequent communication from Purchaser will not be a waiver or modification of the terms set forth herein.

2. **PRICE.** All prices shall be as set forth in Exhibit A of the Sales Agreement.

3. **TAXES AND OTHER CHARGES.** Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Purchaser. If Purchaser claims any exemption, Purchaser must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

4. **TERMS OF PAYMENT.** Seller may invoice Purchaser upon shipment for the price and all other charges payable by Purchaser in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of Buyer's receipt of the invoice. If Purchaser fails to pay any amounts when due, Purchaser shall pay Seller interest thereon at a periodic rate of [***] per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Purchaser full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Purchaser's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Purchaser, F.C.A. Seller's shipping point Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Purchaser fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Buyer shall have the option to cancel the Purchase Orders in process without penalty if a mutually acceptable delivery schedule cannot be agreed upon within 30 days of Buyer's receipt of notification of the delay. Orders in process may not be changed except with mutual consent by the parties, including, when applicable, an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above and subject to the provisions of Section 7 below and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Purchaser upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

7. **WARRANTY.** Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Purchaser for equipment and ninety (90) days for all other products (the "Warranty Period"). Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Purchaser shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Purchaser with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Purchaser may return the defective Products to Seller with all costs prepaid by Purchaser. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Purchaser of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. Consumables are expressly excluded from the warranty under this warranty. Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Purchaser any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Purchaser, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Purchaser has requested warranty services are not covered by the warranty hereunder, Purchaser shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by the warranty provided in this warranty, Purchaser shall pay Seller therefor at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY

USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

8. INDEMNIFICATION.

8.1 By Seller. Seller agrees to indemnify, defend and save Purchaser, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Purchaser's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Purchaser, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Purchaser's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Purchaser shall

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provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Purchaser agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Purchaser the right, at no additional expense to Purchaser, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Purchaser the amortized amounts paid by Purchaser with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

8.2 By Purchaser. Purchaser shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Purchaser, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Purchaser; (iv) use of a Product in an application or environment for which it was not designed; (v) modifications of a Product by anyone other than Seller without Seller's prior written approval; or (vi) claims that Purchaser's Product infringes any valid United States patent, copyright or trade secret.

9. SOFTWARE. With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Purchaser intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Purchaser" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Purchaser a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Purchaser's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Purchaser's own internal business purposes. This license terminates when Purchaser's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Purchaser agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Purchaser may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Purchaser fails to comply with any term or condition herein. Purchaser agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Purchaser agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO TWICE THE TOTAL ANNUAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SUCH PARTY (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT. THE LIMITATIONS OF LIABILITY DESCRIBED IN THIS

SECTION 10 SHALL NOT APPLY TO DAMAGES RESULTING FROM BREACHES BY A PARTY OF ITS DUTY OF CONFIDENTIALITY IMPOSED HEREUNDER OR UNDER THE SALES AGREEMENT.

11. **EXPORT RESTRICTIONS.** Purchaser acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively “Items”), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Purchaser shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Purchaser shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Purchaser shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Purchaser or its employees, consultants, agents, or customers.

12. **MISCELLANEOUS.** (a) Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (b) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (c) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (c) One party’s failure to enforce, or such party’s waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (d) Purchaser agrees that all pricing, discounts and technical information that Seller provides to Purchaser are the confidential and proprietary information of Seller. Purchaser agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Purchaser’s internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public.

[***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT D — Additional Terms

1. **WARRANTY.** The following representations and warranties shall be added:

A. Both parties shall comply with all federal, state/province laws, regulations and orders applicable to its operations, including without limitation, all applicable laws and regulations having jurisdiction over the manufacturing, storage, import, export, handling or sale of the Product (“Applicable Laws”), including the maintenance of such records necessary to demonstrate compliance. Both parties obtained and will maintain for the term of the Agreement, all licenses, permits, authorizations, approvals and reviews required by any federal, state/province or local governmental authority for performance of any activities under this Agreement.

B. To the best of Seller’s knowledge, the Products provided by Seller do not violate any valid patent, trade secret or other proprietary or intellectual property right of any third party, and all Product delivered to Purchaser shall be free of any liens or encumbrances.

C. Neither Seller nor Purchaser, nor their officers, personnel or any other person used by Seller or Purchaser to perform this Agreement has been (a) debarred, convicted, or is subject to a pending debarment or conviction, pursuant to section 306 of the United States Food Drug and Cosmetic Act, 21 U.S.C. § 335a or any non-U.S. equivalent regulation, (b) listed by any government or regulatory agencies as ineligible to participate in any government healthcare programs or government procurement or non-procurement programs (as that term is defined in 42 U.S.C. 1320a-7b(f) or any non-U.S. equivalent), or excluded, debarred, suspended or otherwise made ineligible to participate in any such program, or (c) convicted of a criminal offense related to the provision of healthcare items or services, or is subject to any such pending action. The parties shall inform each other in writing promptly if it or any person who is performing services hereunder is subject to the foregoing, or if any action, suit, claim, investigation, or proceeding relating to the foregoing is pending, or to the best of such party’s knowledge, is threatened.

2. **QUALITY**

The following quality requirements shall apply to the Products and this Agreement:

A. In addition to the audit described in Section 5 of the Sales Agreement, Seller will use commercially reasonable efforts to comply with requirements for supplier evaluation and qualification performance, which consist of (i) an initial supplier qualification audit by Buyer, (ii) Seller’s completion of the supplier questionnaire attached hereto as Exhibit E.

B. Seller shall maintain complete and accurate records relating to its activities under this Agreement. Seller shall retain all such records for not less than seven (7) years following the date of manufacture.

C. Seller shall comply with applicable industry standard quality principles, including without limitation, , in areas such as production and process controls, material controls, process validation and equipment qualification, calibration and maintenance, (e.g., conformance with ISO 13485:200, Quality management systems — Requirements).

D. The parties shall cooperate with all quality-related investigations and resolution of any non-conformance issues involving Products.

3. **INSURANCE**

During the term of this Agreement and for [***] thereafter, each party shall maintain appropriate insurance, (including workers compensation, general commercial liability insurance, product liability and automobile insurance) with respect to its’ obligations under this Agreement, including without limitation, the manufacture of Product or Purchaser’s Product, as the case may be. The levels of insurance coverage maintained shall be commensurate with those that

are customary in the industry for similar activities and shall be with financially sound and reputable insurers. Upon request, either party shall have its insurance agent forward a certificate of insurance evidencing such insurance to the other party.

***] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.
