OSIF RIGHTS AGREEMENT

Of

[COMPANY NAME]

**THIS OSIF RIGHTS AGREEMENT** (this “**Agreement**”) is made as of the [##] day of [Month], 20[##] (the “Effective Date”) by and between [Company Name], a Delaware corporation (the “**Company**”), and Ohio State Innovation Foundation, an Ohio not for profit corporation (“**OSIF**”).

RECITALS

**WHEREAS**, the Company desires to enter into that certain Exclusive License Agreement (agreement number [#####] – [####]) dated as of the Effective Date, pursuant to which OSIF is the Licensor and the Company is the Licensee (the “**License Agreement**”); and

**WHEREAS**, in order to induce OSIF to enter into the License Agreement, the Company hereby agrees to enter into this Agreement with OSIF.

**NOW, THEREFORE**, the Company and OSIF agree as follows:

# Definitions

. For purposes of this Agreement:

## “Affiliate” means any Person that: (a) directly or indirectly owns or controls; (b) is owned or controlled by; or (c) is under common ownership or control with another Person; where “ownership” and “control” mean: (i) possession, or the right to possession, of at least fifty percent (50%) of the voting equity securities of an entity; (ii) the power to direct the management and policies of an entity; (iii) the power to appoint or remove a majority of the board of directors, managing members, managers, general partners or other comparable Persons of the entity; or (iv) the right to receive fifty percent (50%) or more of the profits or earnings of the entity. While an entity is entitled to the benefits of an Affiliate under this Agreement for only the period of time the entity qualifies as an Affiliate under this definition, all obligations under this Agreement that accrued to the entity while an Affiliate shall survive until fulfilled even though the entity no longer qualifies as an Affiliate.

## “Agreement” has the meaning ascribed to such term in the introductory paragraph of this Agreement.

## “Applicable Percentage” has the meaning ascribed to such term in Section 2.1 of this Agreement.

## “Company” has the meaning ascribed to such term in the introductory paragraph of this Agreement.

## “Common Stock” means shares of the Company’s common stock.

## “Designee” means (i) OSIF or (ii) any entity to which any of OSIF’s rights under Section 2 have been assigned, including to any Affiliate of OSIF.

## “Effective Date” has the meaning ascribed to such term in the introductory paragraph of this Agreement.

## “Equity Financing” means a cash investment in exchange for any equity securities or securities exchangeable or convertible into equity securities, including, without limitation, any capital stock (common or preferred) convertible notes, options, or warrants.

## “Equity Financing Threshold” has the meaning ascribed to such term in Section 3.1 of this Agreement.

## “Equity Securities” has the meaning ascribed to such term in Section 2.1 of this Agreement.

## “Fully Diluted” means (i) the number of shares of Common Stock outstanding assuming conversion of all issued and outstanding securities convertible or exchangeable into Common Stock, and the exercise of all then outstanding options, warrants, and other rights to acquire capital stock, whether or not then exercisable, exchangeable or convertible; and (ii) the number of shares of common stock that have been, or in the future may be, authorized or reserved for issuance or award under the Company’s stock option plan pool or other equity compensation plan.

## “License Agreement” has the meaning ascribed to such term in the recitals to this Agreement.

## “Licensed Product” has the meaning ascribed to such term in the License Agreement.

## “Licensed Subject Matter” has the meaning ascribed to such term in the License Agreement.

## “OSIF” has the meaning ascribed to such term in the introductory paragraph of this Agreement.

## “OSIF Equity Securities” has the meaning ascribed to such term in Section 7.1 of this Agreement.

## “Person” means any individual, corporation, partnership, trust, limited liability company, association or other entity.

## “Related Party” has the meaning ascribed to such term in Section 7.3 of this Agreement.

## “Related Party Entity” has the meaning ascribed to such term in Section 7.1 of this Agreement.

## “Related Party Transaction” has the meaning ascribed to such term in Section 7 of this Agreement.

# Equity Consideration

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## On the Effective Date, the Company shall issue to Designee, equity securities in the form of shares of Common Stock (“Equity Securities”) constituting \_\_\_\_\_\_\_\_ percent (xx.x%) of the ownership of the Company on a Fully-Diluted basis (such percentage, the “Applicable Percentage”). Such Equity Securities shall be delivered to Designee in a certificate, affidavit, or other applicable form duly signed by the Company and issued in Designee’s name. All shares issued to Designee under this Section 2.1 will be considered fully paid, non-assessable, and have no requirement of contribution of any kind to the Company.

# Anti-dilution

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## As equity protection, the Company shall issue to Designee (without cost) additional Equity Securities sufficient for Designee to preserve its Applicable Percentage until the Company has obtained cumulative paid in capital (i.e., cash contributed by investors through direct purchase of equity securities from the Company) from one or more investors of at least \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($xxxxxxxxx) (the “Equity Financing Threshold”). A cash investment in exchange for convertible securities shall not contribute to the Equity Financing Threshold at the time of issuance of such convertible securities but instead shall contribute to the Equity Financing Threshold only at the time that (i) the convertible securities (other than convertible notes) are convertible or exchangeable into Equity Securities and (ii) the convertible notes are converted into the Equity Securities. A rolling closing of a single financing round that achieves the Equity Financing Threshold will be deemed a single cash investment and not a series of separate investments. For clarity, in the event the Licensee receives Equity Financing in a certain transaction, a portion of which (“Applicable Portion”), when added to the prior aggregate amount of Equity Financing received by Licensee, brings the total amount of Equity Financing received by the Licensee up to the Equity Financing Threshold and a portion of which, when added to the aggregate amount of Equity Financing received by Licensee (inclusive of the Applicable Portion), brings the total amount of Equity Financing receive by the Licensee above the Equity Financing Threshold (“Excess Portion”), the anti-dilution provision in this Section 3.1 shall only apply to the Applicable Portion and not to the Excess Portion.

# REGISTRATION RIGHTS

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## In the event of a public offering, Designee shall be entitled to have its Equity Securities registered subject only to provisions no more restrictive than the least restrictive provisions binding any other pre-offering holder of the Company’s Equity Securities. Designee’s Equity Securities and related rights shall in no event be subject to revocation, refund or nullification for any reason.

# Participation Rights

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## If the Company undertakes an Equity Financing, then Designee will have the right to purchase up to that portion of the Equity Financing that equals Designee’s then-current percentage of ownership of the Company a Fully-Diluted basis on the same terms, timeline and conditions as are offered to the other purchasers in each such financing. The Company shall provide thirty (30) days advance written notice of each Equity Financing opportunity, including reasonable detail regarding the terms and purchasers in the Equity Financing.

# Co-sale rights (tag-long rights)

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## Designee shall have the right to be party to any definitive agreement among the Company and any of its equity holders that governs co-sale rights and will be entitled to all co-sale rights provided to any equity holder thereunder. Additionally, more than fifty percent (50%) of the Company’s outstanding equity securities, or more than fifty percent (50%) of the ownership of the Company, cannot be transferred, whether in one of a series of transactions, unless Designee is a party to such transaction or has had the right to sell its Equity Securities in the same proportion on substantially the same terms and conditions, but subject to the other terms in this Section 6.1; provided, however, that this Section 6.1 shall not apply (a) in the case of an equity holder that is an entity, upon a transfer to its stockholders, members, partners or other equity holders, or (b) in the case of an equity holder that is a natural person, upon a transfer of equity securities by such equity holder made for bona fide estate planning purposes, either during his or her lifetime or on death by will or intestacy to his or her spouse, child (natural or adopted), or any other direct lineal descendant of such equity holder (or his or her spouse) (all of the foregoing collectively referred to as “family members”), or any custodian or trustee of any trust, partnership or limited liability company for the benefit of, or the ownership interests of which are owned wholly by such equity holder or any such family members. Designee (i) shall not be required to give disproportionately greater or more onerous representations, warranties, indemnities or covenants than the selling equity holder(s), (ii) shall only make representations, warranties, indemnities and covenants severally and in its capacity as an equity holder concerning its valid equity ownership, free of all liens, and its authority, power and right to enter into and consummate such purchase and sale without violating any other agreements to which it is a party or its assets are bound, and (iii) shall not be obligated to bear more than its pro rata share of any expenses or any indemnification liability and only in an amount up to the net cash proceeds received by Designee in connection with the sale.

# Related Party transactions

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## Notwithstanding the foregoing, in the event the Company, prior to achieving the Equity Financing Threshold, enters into any agreement that constitutes a Related Party Transaction (such term excluding (i) an arms-length service agreement in which the Company receives fair consideration from the Related Party, or (ii) a transaction with a Related Party that is wholly owned by the Company) the Company shall cause the party with which it enters the Related Party Transaction (the “Related Party Entity”) to issue to Designee the Applicable Percentage of the fully-diluted equity of the Related Party Entity which, at the option of OSIF, may be in voting common stock or the same type and class of equity security issued to the Related Party investors (such equity securities the “OSIF Equity Securities”) concurrent with the closing of the Related Party Transaction.

## For purposes of this Section 7, a “Related Party Transaction” means any agreement or arrangement pursuant to which the Company, in its capacity as the Licensee under the License Agreement, directly or indirectly through intermediaries authorizes a Related Party to: (a) develop, manufacture, offer for sale, sell, lease, transfer, import and/or otherwise provide a Licensed Product; or (b) practice the Licensed Subject Matter; regardless of whether the agreement or arrangement requires or is captioned as a license or sublicense under the Licensed Subject Matter.

## For purposes of this Section 7, “Related Party” means any one or more investors, officers, employees or directors of the Company or any entity in which any such investor, officer, employee or director (or any of their respective Affiliates) has a direct or indirect financial interest of twenty percent (20%) or more. Nothing in this Section 7 shall be interpreted to diminish the obligations of the Company as set forth in Sections 2, 3, 4, 5, 6 and 8. The Company will ensure that, as a condition of entering into any Related Party Transaction, the Related Party Entity will provide the same rights to Designee as provided in Sections 3, 4, 5, 6, 7 and 8 of this Agreement.

## The Company and OSIF acknowledge that Section 6 of the Company’s by-laws provides that “. . . unless the provisions of this Section 6 are waived by the Board of Directors (whether in a specific instance or whether generally pursuant to the provisions of an agreement or otherwise), no stockholder of the Corporation shall transfer or encumber any stock of the Corporation now owned or hereafter acquired by such stockholder”. The Company hereby represents to OSIF that the Company’s board of directors has approved a resolution according to which it has waived the provisions of Section 6 of the Bylaws with respect to any transfer of the Company stock held by OSIF to any Affiliate(s) of OSIF.

# Financial statements

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## The capitalization table set forth as Appendix 5 to the License Agreement shows all outstanding, committed and reserved equity securities and convertible notes of the Company as of the Effective Date on a Fully-Diluted basis. Upon the consummation of any Financing or at OSIF’s request, the Company shall provide an updated capitalization table along with a certification from the Company’s chief financial officer certifying the tables’ completeness and accuracy and identifying any holders of equity securities who are employees of OSU. Additionally, so long as OSIF or OSIF’s Designee owns any equity in the Company, OSIF shall be entitled to receive all financial statements, budgets and business plans of the Company that the Company provides to any other shareholder, member, lender or prospective investor of the Company, provided that OSIF shall preserve the confidentiality of all such non-public information. For valid purposes, OSIF shall be entitled to access such other financial information and books and records of the Company as OSIF may reasonably request from time to time and in any event, annually, as allowed by applicable law, but shall not have access to proprietary information of a third party where such access would violate management’s duty of confidentiality to the third party.

# General provisions

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## This Agreement is binding upon the Parties hereto, their respective executors, administrators, heirs, assigns and successors in interest and inures to the benefit of the Parties and their permitted successors and assigns. Conveyances made in contravention with the terms of this Agreement shall be null and void.

## Both Parties agree that any ambiguity in this Agreement shall not be construed more favorably toward one Party than the other Party, regardless of which Party primarily drafted this Agreement. Headings are for the convenience of the Parties and do not impart independent meaning to this Agreement.

## This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A Party may evidence its execution and delivery of this Agreement by transmission of a signed copy of this Agreement via facsimile or email.

## This Agreement shall be construed and enforced in accordance with laws of the State of Delaware, without regard to choice of law and conflicts of law principles. The Parties agree that any claim or cause of action regarding this Agreement shall be brought in a court of competent jurisdiction in New Castle, County, Delaware, and this is the Parties’ sole and exclusive process for seeking a remedy for any and all claims and causes of action regarding this Agreement. The Company waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such claim or action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

## Any modification of this Agreement shall be effective only if it is in writing and signed by duly authorized representatives of both Parties.

## If any provision hereof is invalid, illegal or unenforceable in any jurisdiction, the Parties hereto shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties, and all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intentions of the Parties hereto as nearly as may be possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such other provisions in any other jurisdiction, so long as the essential essence of this Agreement remains enforceable.

## The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

## All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail (provided receipt is acknowledged by the intended recipient) or facsimile (provided the sender retains a record of successful transmission) during the recipient’s normal business hours, and if not sent during normal business hours, then on the recipient’s next business day; (iii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) upon delivery by a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties as set forth in Exhibit A (as such exhibit may be subsequently modified from time to time by a party by giving written notice of such modifications to the other party in accordance with this Section 9.8).

## This Agreement and the License Agreement constitutes the complete agreement between the parties with respect to the subject matter hereof and supersedes prior agreements and understandings.

## Neither party has relied upon any representation or promise not contained herein. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such non-breaching or non-defaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

(signature page to follow)

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the Effective Date.

[COMPANY NAME]

By:

Name:

Title:

OHIO STATE INNOVATION FOUNDATION

By:

Name:

Title:

EXHIBIT A

NOTICE INFORMATION

[Company Name]

[Street Address]

[City], [State] [ZIP Code]

Attn: [Name of Contact], [Title]

[fax number]

[email address]

Ohio State Innovation Foundation

1524 N. High St.

Columbus, OH 43201

Attn: Cheryl Turnbull, Vice President

(614) 247-8881

Turnbull.58@osu.edu