

All provisions are subject to addition, elimination or revision by either Party. All provisions, communications and discussions are tentative until execution of a written agreement by both Parties.

EXCLUSIVE LICENSE AGREEMENT AGT. NO. _____

This Exclusive License Agreement (the “**Agreement**”) is made this _____ day of _____, 20__ (the “**Effective Date**”) by and between the Ohio State Innovation Foundation, with an address at 1524 North High Street, Columbus, OH 43201 (hereinafter, “**OSIF**”) and [LICENSEE NAME], with an address at _____ (hereinafter, “**Licensee**”); collectively, “**Parties**”, or singly, “**Party**”.

WHEREAS, OSIF, the technology transfer function for The Ohio State University (“**OSU**”), owns, controls or has the right to license the Licensed Subject Matter;

WHEREAS, OSIF desires to have the Licensed Subject Matter developed and used for the benefit of the public; and

WHEREAS, Licensee desires to license the Licensed Subject Matter to develop and commercialize Licensed Products under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties hereby agree as follows:

1. Definitions.

“**Affiliate**” means any entity that: (a) directly or indirectly owns or controls; (b) is owned or controlled by; or (c) is under common ownership or control with another entity; where “ownership” and “control” mean: (i) possession, or the right to possession, of at least fifty percent (50%) of the voting stock of the entity; (ii) the power to direct the management and policies of the entity; (iii) the power to appoint or remove a majority of the board of directors 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.

“**Confidential Information**” means all information, whether provided orally, in writing or through tangible materials, that is treated as confidential and/or proprietary when provided by one Party (“**Discloser**”) to the other Party (“**Recipient**”); unless the information: (a) was already in possession of Recipient (or when Recipient is OSIF, in its possession or that of OSU) when provided by Discloser, as shown by competent evidence, other than from an individual affiliated with both Parties; (b) is now, or becomes in the future, public knowledge other than through a violation of this Agreement; (c) is independently developed by individual(s) not affiliated with both Parties and without knowledge of or access to the Confidential Information, as shown by contemporaneously written records; or (d) is lawfully obtained without restriction from a third party who did not obtain the information directly or indirectly from Discloser (or when the Discloser is OSIF, from OSIF or OSU) or another individual affiliated with both Parties.

“**Contract Period**” means each of the three-month periods ending on March 31, June 30, September 30, and December 31 of each Contract Year.

“**Contract Year**” means each 12-month period ending on December 31.

All provisions are subject to addition, elimination or revision by either Party. All provisions, communications and discussions are tentative until execution of a written agreement by both Parties.

“Designee” means (i) OSIF or (ii) any entity to which any of OSIF’s rights under Section 3 have been assigned, including to any Affiliate of OSIF.

“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) in a corporation; membership units, shares, or interests in a limited liability company; or partnership interests or shares of a limited partnership.

“Field of Use” means _____.

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

“Government” means any agency, department or other unit of the United States of America or the State of Ohio.

“including” means including, but without limitation.

“Licensed Product” means any product or process that: (a) is claimed in whole or in part by the Patent Rights and/or whose manufacture or use is claimed in whole or in part by the Patent Rights; and/or (b) is itself, or whose development, manufacture, use, sale or importation, uses, incorporates, is made with and/or is or was created or derived from any Technology Rights.

“Licensed Subject Matter” means Patent Rights and/or Technology Rights.

“Net Sales” means the gross amount of consideration received by Licensee, Affiliates, and/or Sublicensees for Licensed Products sold, leased, transferred, used, performed or otherwise provided, less the amount specifically identified on the invoice for the following items directly attributable to the Licensed Products and borne by Licensee, Affiliates, or Sublicensees as the provider: (a) discounts and rebates granted; (b) sales, value added, use and other taxes and government charges, including import and export duties, but excluding income taxes; (c) freight, transport, packing and transit insurance charges; and (d) amounts refunded, allowed or credited due to rejections or returns, but not exceeding the original invoiced amount. Net Sales on Licensed Products transferred as part of a non-cash exchange or where the gross amount is not in immediately available funds shall be calculated at the average amount invoiced to third parties for such Licensed Products in the same country in the Contract Period. If there is no average amount, then OSIF shall select another reasonable benchmark.

“Non-Royalty Sublicensing Consideration” means the gross amount of consideration, excluding Net Sales, received directly or indirectly by Licensee, Affiliate, Related Party or Related Party Entity (as defined in Section 3) and/or each Sublicensee that grants a further Sublicense Agreement, including any: (a) fees, including fixed, option, distribution, license, maintenance and joint marketing fees; (b) payments, including milestones and minimum royalty payments; (c) non-cash consideration, including equity, the fair market value for each cross-license of intellectual and/or tangible property and debt forgiveness; (d) funding in excess of Licensee’s or such Sublicensee’s cost of performing the prospective research and

development; and (e) any other property, remuneration or value given or exchanged for a Sublicense Agreement regardless of how any party characterizes such consideration.

“Patent Rights” means OSIF’s rights in all: (a) patents and/or patent applications listed in Appendix 1; (b) patent applications that claim priority thereto, including all divisionals, continuations and continuations-in-part (but only to the extent of the subject matter that is fully disclosed and enabled by (a) to satisfy 35 U.S.C. §112); (c) patents issuing on (a) and/or (b); and (d) reissues, reexaminations, extensions and supplementary protection certificates referencing any of the foregoing.

“Payment Deadline” means each day that is thirty (30) days after the last day of any particular Contract Period.

“Sublicense Agreement” means any agreement or arrangement pursuant to which Licensee directly or indirectly through intermediaries authorizes a third 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.

“Sublicensee” means any third party, including an Affiliate, with a Sublicense Agreement.

“Technology Rights” means OSIF’s rights in unpatented subject matter, data (excluding protected health information as defined in the Health Insurance Portability and Accountability Act of 1996, codified as 42 U.S.C. 1320d or other personal protected information), and tangible materials, including Confidential Information, that are: (a) directly related to or disclosed in the Patent Rights or the Tech ID(s) listed in Appendix 1; (b) within the Field of Use; and (c) created at OSU before the Effective Date by inventors who are named on the Patent Rights existing as of the Effective Date or by innovators listed on such Tech ID(s).

“Territory” means _____.

2. License Grant and Commercialization.

2.1 **Grant.** Subject to the terms and conditions of this Agreement and Licensee’s compliance therewith, OSIF grants and Licensee accepts a non-transferable, except as provided in Section 15, and royalty-bearing:

- (a) exclusive license under Patent Rights in the Field of Use in the Territory to make, have made, use, sell, offer for sale and import Licensed Product in the Field of Use in the Territory; and
- (b) non-exclusive license in the Field of Use in the Territory to use Technology Rights to develop and make Licensed Products in the Field of Use in the Territory.

On behalf of itself and OSU, OSIF reserves the right to practice, have practiced and transfer the Licensed Subject Matter for teaching, research, education, public service, clinical and other research-related purposes and to publish in connection therewith, including to grant rights to, and transfer material embodiments of, the Licensed Subject Matter to OSU, other academic institutions, non-profit research institutions and governmental entities for these purposes.

Nothing contained in this Agreement or a Party's performance hereunder shall be construed as conferring, by implication, estoppel or otherwise, upon Licensee, Affiliates, Sublicensees, any party in privity therewith or any customer thereof, any right, title or interest under any intellectual or tangible property right at any time, except for those rights under the Licensed Subject Matter expressly granted in Section 2.1. OSIF reserves all rights, titles and interests not expressly granted in Section 2.1. Licensee shall give written notice with Licensed Products regarding the conditions and restrictions on the rights granted, including to disclaim any implied license. If the Technology Rights include tangible materials, then such materials are provided in bailment to Licensee solely for the use permitted in Section 2.1(b). Nothing herein shall be construed as a sale of the Licensed Subject Matter. Licensee agrees not to practice the Patent Rights or use the Technology Rights outside the Field of Use or outside the Territory.

2.2 **Sublicensing.** Subject to the terms and conditions of this Agreement and Licensee's and Sublicensee's compliance therewith, Licensee may grant Sublicense Agreements under the Licensed Subject Matter provided:

- (a) The Sublicense Agreement: (i) is in writing; (ii) has restrictions consistent with and terms that do not exceed the scope of rights granted to Licensee hereunder; (iii) states OSIF is a third party beneficiary thereunder; and (iv) includes a right of termination by Licensee in the event that Sublicensee acts in any manner that would constitute a breach of this Agreement if such action or inaction were that of Licensee. Notwithstanding Section 2.2(a)(ii), unless OSIF has provided prior written consent, no Sublicense Agreement shall be transferable, including to permit a Sublicensee to grant a further Sublicense Agreement.
- (b) Licensee shall deliver to OSIF a copy of each Sublicense Agreement granted and all modifications or terminations thereof, within thirty (30) days following the applicable execution, modification or termination.
- (c) Notwithstanding any Sublicense Agreement, Licensee shall remain liable to OSIF for all of Licensee's duties and obligations contained in this Agreement and Sublicensee's breach of its Sublicense Agreement and shall enforce the terms of the Sublicense Agreement, including to terminate for material breach, if requested to do so in writing by OSIF.

In the event a Sublicensee is an Affiliate of Licensee, the obligations of Sections 2.2(a)(i), 2.2(a)(iii) and 2.2(b) do not apply if an authorized officer of Licensee has certified in writing to OSIF that Licensee's corporate documents authorize it to obligate and bind the Affiliate named in the certification and Licensee has in fact done so in a manner that is consistent with the terms and conditions of this Agreement. Each such certification shall be attached and incorporated into this Agreement to evidence the Sublicense Agreement with the named Affiliate as a Sublicensee without the requirement for a formal amendment to this Agreement. Regardless of when the certification is attached to this Agreement, such Sublicense Agreement shall be given effect as of the date such certification is received by OSIF pursuant to Section 18.

2.3 **Government Rights.** Licensee understands that Licensed Subject Matter may have been conceived or first actually reduced to practice, or during the Term may be first actually reduced to practice, under a funding agreement with a Government and, if so, that Government has certain rights relative thereto. This Agreement is limited by and made subject to the Government's rights under any such agreement

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and under any applicable Government's law or regulation, including 35 U.S.C. §200 et seq. ("**Bayh-Dole Act**"). To the extent that there is a conflict between any such agreement, such applicable law or regulation and this Agreement, the terms and conditions of such Government agreement, and/or applicable law or regulation, shall prevail. Licensee agrees to comply and permit OSIF to comply with the Bayh-Dole Act, including to provide the reporting required, and unless waived pursuant to the Bayh-Dole Act to substantially manufacture Licensed Products and products produced through the use of Licensed Products in the United States.

- 2.4 **Diligent Commercialization.** Licensee, by itself or through its Sublicensees, shall use diligent and commercially reasonable efforts to commercialize Licensed Products in the Field of Use within the Territory. Without limiting the foregoing, Licensee shall, at a minimum: (a) maintain a bona fide, funded, ongoing and active research, development, manufacturing, marketing, and sales program to diligently make, offer for sale and sell Licensed Products so that Licensed Products are commercially available to the public as soon as commercially practicable; and (b) fulfill the milestone events stated below (the "**Diligence Milestones**"):

Diligence Milestone	Date to be Completed/Achieved

If any of the obligations under this Section 2.4 are not fulfilled, OSIF may treat such failure as a breach in accordance with Section 8.3(b).

Licensee shall provide a written report on the completion of each Diligence Milestone to OSIF within ten (10) days of completion.

- 2.5 **No Use of OSU Resources.** Licensee acknowledges that unless OSU executes a sponsored research agreement with Licensee, Licensee shall not satisfy its diligence obligations with work conducted at OSU. Licensee agrees not to develop Licensed Products at OSU, or absent a separate agreement executed by the Parties, otherwise benefit from any development of Licensed Products performed by OSU. The Parties shall evaluate the need for, and implement when necessary, a conflict of interest management plan for overseeing Licensee's activities related to the licensed rights in accordance with OSU's conflict of interest policies and procedures.

3. **Compensation.**

- 3.1 **License Fee.** Licensee shall pay to OSIF a non-refundable, up-front license fee in the amount of _____ dollars (\$____) ("**License Fee**") on/within _____ days of the Effective Date. The License Fee shall not be credited against any other amounts due under this Agreement.

- 3.2 **Royalties.** By each Payment Deadline, Licensee shall pay OSIF non-refundable and non-creditable running royalties as follows:

_____ percent (___%) of Net Sales of Licensed Products defined in (a) of the definition of Licensed Products; and

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_____ percent (___%) of Net Sales of Licensed Products defined in (b) of the definition of Licensed Products;

(collectively the “**Royalties**”). For clarity, if more than one royalty rate applies to a given Net Sale, only one rate will be used to calculate Royalties and that rate will be the higher of the rates.

3.3 **Minimum Annual Royalties.** On or before the _____ Contract Year and thirty (30) days prior to each Contract Year thereafter during the Term, Licensee shall pay OSIF a non-refundable minimum annual royalty as follows (each the “**Minimum Annual Royalty**”):

Amount	Contact Year Ending

Payment of the Minimum Annual Royalty may be credited toward Royalties due in the Contract Year to which the payment corresponds.

3.4 **Milestone Fees.** Licensee shall pay OSIF the following amounts within (XX) days of achievement of each corresponding Milestone according to the following (collectively the “**Milestone Fees**”):

Milestone	Milestone Fee

3.5 **Sublicense Fees.** For clarity, Net Sales by Sublicensees shall be subject to royalties payable to OSIF as provided in Section 3.2. Also, within thirty (30) days of receiving any Non-Royalty Sublicensing Consideration, Licensee shall pay to OSIF an amount equal to the percentage of all Non-Royalty Sublicensing Consideration as follows (collectively the “**Sublicensee Fees**”):

Event	% Non-Royalty Sublicensing Consideration

3.6 **Equity Consideration.** On the Effective Date, Licensee shall issue to Designee, equity securities in the form of [interests/shares] of [common/preferred] stock (“**Equity Securities**”) constituting [_____] percent (___%) of the ownership of Licensee on a Fully-Diluted basis (such fully-diluted percentage, the “**Applicable Percentage**”). Such Equity Securities shall be delivered to Designee in a certificate, affidavit, or other applicable form duly signed by the Licensee or, if a member-managed limited liability company, by the members of Licensee and issued in Designee’s name. All shares issued to Designee under this Section 3.6 will be

considered fully paid, non-assessable, and have no requirement of contribution of any kind to Licensee.

At least ten (10) business days prior to the Effective Date, Licensee shall have delivered to OSIF all applicable documents to which Designee is required to be a party in order to be issued the Equity Securities or to which Designee shall be bound as a holder of Equity Securities. Such documents shall not be amended or modified prior to the execution by Designee.

- 3.7. Anti-Dilution.** As equity protection, Licensee shall issue to Designee (without cost) additional Equity Securities sufficient for Designee to preserve its Applicable Percentage basis until Licensee has obtained paid in capital (i.e., cash contributed by investors through direct purchase of equity securities from Licensee) of at least _____ dollars (\$_____) (“**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 Equity Securities.

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 received by the Licensee above the Equity Financing Threshold (“**Excess Portion**”), the anti-dilution provision in this Section 3.7 shall only apply to the Applicable Portion and not to the Excess Portion.

- 3.8 Registration Rights.** In the event of a public offering, Designee shall be entitled to have its Equity Securities registered subject only to “lock-up” provisions no more restrictive than those binding any other pre-offering holder of Licensee’s Equity Securities. Designee’s Equity Securities and related rights shall in no event be subject to revocation, refund or nullification for any reason.

- 3.9 Observation Right.** OSIF, at its sole expense and discretion, may appoint one representative (“Observer”) to attend and participate in all meetings of the Licensee’s board of directors or board of managers or other governing body, as the case may be, (the “Board”) in a non-voting observer capacity. The Observer shall be entitled to receive copies of all notices, minutes, written consents, and other materials that the Licensee provides to members of the Board (“Board Materials”) at the same time that Licensee provides such Board Materials to members of the Board.

- 3.10 Participation Rights.** If Licensee 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 Licensee on a Fully-Diluted basis on the same terms and conditions as are offered to the other purchasers in each such financing. Licensee 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.

3.11 Co-Sale Rights (Tag-Along Rights). Designee shall have the right to be party to any definitive agreement among Licensee 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 Licensee's outstanding equity securities, or more than fifty percent (50%) of the ownership of Licensee, cannot be transferred, whether in one or 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 3.11; provided, however, that this Section 3.11 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 up to the net cash proceeds received by such equity holder(s) in connection with the sale.

3.12 Related Party Transactions. Notwithstanding the foregoing, in the event Licensee, prior to achieving the Equity Financing Threshold, enters into any agreement that constitutes a Related Party Transaction, Licensee 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 the Licensor or Designee, may be in voting common stock or the same type and class of equity security issued to the related investors (such voting or other securities, the "Investor Equity Securities") concurrent with the closing of the Related Party Transaction. Licensee 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 3.7, 3.8, 3.9, 3.10, 3.11 and 4.2 of this Agreement.

For purposes of this Section 3.12, a "**Related Party Transaction**" means any agreement or arrangement pursuant to which Licensee 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 3.12, “**Related Party**” means any one or more investors, officers, employees or directors of Licensee 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 3.12 shall be interpreted to diminish the obligations of Licensee as set forth in Sections 3.7, 3.8, 3.9, 3.10 and 3.11.

4. Reports and Plans.

- 4.1 **Reports and Plans.** Utilizing the report forms in Appendices 2 and 3, incorporated herein by reference, Licensee shall provide to the attention of OSIF’s payment and reporting contact stated in Appendix 4: (a) an annual written progress report by January 31 of each Contract Year; (b) a payment and royalty report each Contract Period by the Payment Deadline; (c) annual funding and employment survey. If no payments are due in any Contract Period, then Licensee shall submit the report so stating. The obligations in this Section 4 are in addition to and not in lieu of the other reporting obligations in this Agreement.
- 4.2 **Financial Statements.** The capitalization table set forth as Appendix 5 shows all outstanding, committed and reserved equity securities and convertible notes of Licensee as of the date hereof on a Fully-Diluted basis. Upon the consummation of any Equity Financing or at OSIF’s request, Licensee shall provide an updated capitalization table along with a certification from the Licensee’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 Licensee, OSIF shall be entitled to receive all financial statements, budgets and business plans of Licensee that Licensee provides to any other shareholder, member, lender or prospective investor of Licensee, at the same time and in the same format as provided to such other parties. Without limitation to Section 5.5, OSIF shall be entitled to access such other financial information and books and records of Licensee as OSIF may reasonably request from time to time and in any event, annually.

5. Payment, Records, and Audits.

- 5.1 **Payments.** All amounts referred to in this Agreement are expressed in U.S. dollars without deductions for taxes, assessments, fees, or charges of any kind. All payments to OSIF shall be made in U.S. dollars by check or wire transfer (Licensee to pay all wire or other transfer fees) payable to Ohio State Innovation Foundation as stated in Appendix 4. Licensee may not make any tax withholdings from payments to OSIF.
- 5.2 **Sales Outside the U.S.** If any currency conversion shall be required in connection with the calculation of payments hereunder, such conversion shall be made using the rate used by Licensee for its financial reporting purposes in accordance with U.S. Generally Accepted Accounting Principles (or foreign equivalent).
- 5.3 **Late Payments.** Amounts that are not paid when due shall accrue a late charge from the due date until payment is received by OSIF, at a rate equal to 1.5% per month (or the maximum allowed by law, if less). Acceptance of late payments does not negate or waive any other right or remedy to which OSIF may be entitled.

All provisions are subject to addition, elimination or revision by either Party. All provisions, communications and discussions are tentative until execution of a written agreement by both Parties.

5.4 **Records.** For a period of six (6) years after the Contract Period to which the records pertain, Licensee agrees that it, Affiliates and Sublicensees shall keep complete and accurate records pertaining to any consideration relating to this Agreement and/or Sublicense Agreements, including Net Sales, Royalty payment calculations, Milestone Fees, Equity Financing and Non-Royalty Sublicensing Consideration, in sufficient detail to enable payments or securities due hereunder to be determined and audited.

5.5 **Auditing.** OSIF or its representatives, shall be permitted, at OSIF's expense, to periodically examine and/or audit the records required by Section 5.4 ("**Examination**") during regular business hours, at Licensee's and/or its Sublicensee's place of business, on at least thirty (30) days advance notice, to verify any payment, securities or report relating to this Agreement and/or any Sublicense Agreement. For each Sublicensee, Licensee shall obtain such Examination rights for OSIF and itself. If Licensee conducts an Examination of Sublicensee's records, Licensee shall furnish to OSIF a copy of the findings from such Examination. No more than one Examination of Licensee and each Sublicensee shall be conducted under this Section 5.5 in any Contract Year. If any amounts due OSIF have been underpaid as of the date of the Examination, then Licensee shall immediately pay OSIF the amount of such underpayment plus accrued interest due in accordance with Section 5.3. If the amount of underpayment is equal to or greater than five percent (5%) of the total amount due for the records so examined, Licensee shall also reimburse OSIF the costs of such Examination and any collection actions taken. Such Examinations may, at OSIF's sole discretion, consist of a self-audit conducted by Licensee and/or Sublicensee at their respective expense and certified in writing by an authorized officer of Licensee and/or Sublicensee.

6. Intellectual Property Management.

6.1 **Past Patent Expenses.** Within thirty (30) days after Licensee's receipt of invoice, Licensee shall reimburse OSIF for all costs and expenses associated with the Patent Rights incurred prior to the Effective Date (the "Past Patent Expenses"). Past Patent Expenses are presently estimated to total [must get total from accounting and attach schedule]. Licensee will pay OSIF for Past Patent Expenses according to the following schedule:

Amount Due	Date Due

6.2 **Ongoing Patent Expenses.** Licensee shall pay all costs and expenses associated with the Patent Rights on or after the Effective Date within thirty (30) days after Licensee's receipt of each invoice. Notwithstanding the foregoing, OSIF may require Licensee to pre-pay costs and expenses predicted for certain Patent Rights upon written request, including for nationalization of the Patent Rights. Without limitation, failure to strictly comply with Sections 6.1 or 6.2 shall be considered a payment default under Section 8.3(a).

6.3 **Responsibility & Coordination.** In its discretion, OSIF shall control the preparation, prosecution, defense and maintenance of the Patent Rights using

counsel of its choosing. So long as Licensee is not in default of Section 6.2, OSIF shall instruct such patent counsel to provide copies of all material documents it receives from or submits to patent offices regarding the Patent Rights in the Field of Use and Territory and OSIF shall reasonably consider Licensee's comments when timely provided. OSIF shall pay under large entity designation unless the Licensee and each of its Sublicensees are entitled to claim small entity designation with the USPTO and Licensee has provided OSIF written notice thereof. Licensee shall promptly notify OSIF upon loss of entitlement to small entity designation and, without limitation, pay all costs and expenses associated therewith.

- 6.4 **Foreign Filings.** In addition to the U.S., the Patent Rights shall, subject to applicable bar dates and Licensee's compliance with Section 6.2, be pursued in such foreign countries as Licensee so designates in writing to OSIF in sufficient time to reasonably enable the preparation of such additional filings (in no event less than thirty (30) days prior to any deadline), and in those foreign countries in which OSIF has filed applications prior to the Effective Date. If Licensee does not choose to pursue patent rights in a particular foreign country and OSIF chooses to do so, Licensee shall so notify OSIF, and thereafter said patent application or patent shall no longer be included in the Licensed Subject Matter and Licensee shall have no further rights thereto.
- 6.5 **Withdrawal from Paying Patent Costs.** If at any time Licensee wishes to cease paying for any costs for a particular Patent Right, including for patent prosecution in a particular jurisdiction, Licensee must give OSIF at least ninety (90) days prior written notice and Licensee shall continue to be obligated under Section 6.2 for costs and expenses incurred during said notice period. Thereafter, said patent application or patent shall no longer be included in the Licensed Subject Matter and Licensee shall have no further rights thereto.
- 6.6 **Challenge.** In the event Licensee, its Affiliate and/or any Sublicensee intends to challenge the validity or enforceability of any of the Patent Rights, whether through a declaratory judgment action, opposition, post-grant proceeding or otherwise, then Licensee shall: (a) give OSIF ninety (90) days prior written notice; (b) continue to make all payments due hereunder directly to OSIF, provided, however, payments due under this Agreement (other than those for reimbursement of costs) shall be doubled for the remainder of the Term; and (c) have no right to pay into escrow or other account any amounts due OSIF. For purposes of clarity, no payment made to OSIF is refundable or may be offset, including any amounts paid under this Agreement prior to or during the period of the challenge, even if the challenge is successful or it is otherwise determined that the Patent Rights are invalid or unenforceable.
- 6.7 **Paid In Capital.** When Licensee has obtained paid in capital (i.e., cash provided by investors or their agents to purchase equity securities from Licensee) or grant funding of at least two hundred fifty thousand dollars (\$250,000), Licensee will allocate a minimum of five percent (5%) of any additional paid in capital or grant funding to pay first, toward any outstanding patent costs and expenses at the time such paid in capital or grant funding is received by Licensee, and second, toward any patent costs and expenses incurred after the time such paid in capital or grant funding is received by Licensee. The foregoing is neither intended to nor does waive or excuse any failure to strictly comply with Sections 6.1 or 6.2 and without limitation, failure to strictly comply with Sections 6.1 or 6.2 shall be considered a payment default under Section 8.3(a).

7. Infringement and Litigation.

- 7.1 **Enforcement.** OSIF intends to protect the Patent Rights against infringers or otherwise act to eliminate infringement, when, in OSIF's sole judgment, such action may be necessary, proper, and justified and makes reasonable business sense considering all factors. In the event that Licensee or its Sublicensee(s) believe there is infringement of any Patent Rights under this Agreement which is to its substantial detriment, Licensee will provide OSIF with notification and reasonable evidence of such infringement. Upon request by OSIF, Licensee will provide OSIF with such assistance and information as may be useful to OSIF in connection with OSIF's taking such action (if the cause of action arose during the term of this Agreement and OSIF reimburses Licensee for Licensee's reasonable out-of-pocket expenses). For clarity, in no event will Licensee or any Sublicensee have the right to demand that OSIF initiate or join in any suit for infringement.
- 7.2 **Cooperation between OSIF and Licensee.** In any infringement suit or dispute regarding the Patent Rights, the Parties agree to cooperate fully with each other in a reasonable manner. In the event OSIF receives Net Assertion Recovery, OSIF shall distribute to Licensee [same percentage as royalty rate set forth in Section 3.2] of Net Assertion Recovery within 90 days of receiving Net Assertion Recovery.
- (a) "Net Assertion Recovery" means all monetary recovery actually received by OSIF from assertion and/or enforcement (including enforcement through litigation and any other legal means deemed appropriate by OSIF) of Patent Rights against any infringement or potential infringement by any third party and any settlement arising therefrom, less all Patent Assertion Expenses. In the event of a merger, acquisition or other business combination of Licensee by a third party in connection with or as a consequence of OSIF's assertion and/or enforcement activities under Section 9.3(a), the Net Assertion Recovery shall be determined by a third party valuation expert mutually acceptable to each of OSIF and Licensee within 60 days of such merger, acquisition or other business combination of Licensee. The parties agree to provide all information reasonably necessary to perform the subject valuation upon request of such expert.
- (b) "Patent Assertion Expenses" means all expenses and fees, including, but not limited to, expenses for attorney time, staff time, printing costs, discovery costs, travel costs, research database fees, and all other costs associated with legal representation, litigation funding, and third party expert fees, incurred by, for, or on behalf of OSIF to (1) evaluate infringement or potential infringement of Patent Rights by any third party; (2) assert and/or enforce (including enforcement through litigation and any other legal means deemed appropriate by Licensor) Patent Rights against any infringement or potential infringement by any third party; and (3) settle any disputes arising from activities described in (1) and (2).

8. Term and Termination.

- 8.1 **Term.** Unless earlier terminated as provided herein, the term of this Agreement shall commence on the Effective Date and continue until the longer of: (a) the last to expire of the Patent Rights; or (b) twenty (20) years ("**Term**").
- 8.2 **Termination by Licensee.** Licensee, at its option, may terminate this Agreement by providing OSIF written notice stating its reason for termination, and such

termination shall become effective ninety (90) days after receipt of such notice by OSIF.

8.3 **Termination by OSIF.** OSIF, at its option, may immediately terminate this Agreement, in whole or in part, upon delivery of written notice to Licensee of OSIF's decision to terminate, if any of the following occur:

- (a) Licensee has failed to make any payment when due under this Agreement, and does not make the required payment within ten (10) days after delivery of written notice thereof from OSIF;
- (b) Licensee is in breach of any non-payment provision of this Agreement, and does not cure such breach within thirty (30) days after delivery of written notice from OSIF; or
- (c) To the extent not prohibited by applicable law, Licensee or its Affiliate or Sublicensee initiates any proceeding or action to challenge the validity, enforceability, ownership or scope of one or more of the Licensed Subject Matter, or assist a third party in pursuing such a proceeding or action.

8.4 **Other Conditions of Termination.** This Agreement shall terminate:

- (a) Immediately unless prohibited by applicable law, without the necessity of any action being taken by OSIF or Licensee if: (i) Licensee files a bankruptcy action or becomes bankrupt or insolvent; (ii) Licensee's Board of Directors elects to liquidate its assets or dissolve its business; (iii) Licensee ceases its business operations; (iv) Licensee makes an assignment for the benefit of creditors; or (v) if the business or assets of Licensee are otherwise placed in the hands of a receiver, assignee or trustee, whether by voluntary act of Licensee or otherwise; or
- (b) At any time by mutual written agreement between Licensee and OSIF.

8.5 **Effect of Termination.** If this Agreement:

- (a) Is terminated, then all Sublicense Agreements in compliance with this Agreement where the Sublicensee is in compliance as of the date of such termination with such Sublicense Agreement shall remain in effect and shall be assigned to OSIF, except that OSIF shall not be bound by terms or conditions set forth in any Sublicense Agreement that extend beyond the duties and obligations of OSIF set forth in this Agreement;
- (b) Is terminated, then all rights granted under this Agreement immediately revert to OSIF, and Licensee and any Sublicensee that is not in compliance with this Agreement and its Sublicense Agreement, shall cease to practice the Licensed Subject Matter, including making, having made, distributing, having distributed, using, providing, selling, offering to sell, leasing, loaning and importing any Licensed Products after the effective date of termination;
- (c) Is terminated, then within forty-five days thereof, Licensee shall provide OSIF with a copy of all data, including clinical data, owned or controlled by Licensee and/or Sublicensee(s) relating to each Licensed Product, and without further consideration Licensee hereby grants OSIF the right to access use and refer to, and have accessed, have used and to have referred to the foregoing, including

any regulatory documents relating thereto for example an Investigational New Drug application, solely in connection with a license under the Subject License Matter;

- (d) Is terminated or expires, then Licensee immediately shall tender payment of all accrued payments due to OSIF as of the effective date of termination or expiration, including payment of all unreimbursed costs and expenses incurred under Section 6 prior to the effective date of termination or expiration upon receipt of invoice therefor, and render a final report covering the subject matter described in Section 4; in each case regardless of whether otherwise due hereunder;
- (e) Is terminated or expires, then nothing in this Agreement shall be construed to release either Party from any right or obligation that matured prior to the effective date of termination or expiration; and
- (f) Is terminated or expires, then this provision Section 8.5(f) and the provisions of Sections 1 (Definitions), payment obligations in 7.1 (Licensee's Enforcement Rights), 7.3 (Cooperation between OSIF and Licensee), 9 (Confidentiality), 11.2 (OSIF Disclaimers), 12 (Limit of Liability), 13 (Indemnification Obligation), 14 (Insurance Requirements), 17 (Use of Name), 18 (Notices), and 19 (General Provisions) shall survive any termination or expiration of this Agreement until their purposes are fulfilled. In addition, the provisions of Sections 3 (Compensation), 4 (Reports and Plans), 5 (Payment, Records and Audits), 6 (Intellectual Property Management) and 8 (Term and Termination) shall survive with respect to all activities and payment obligations accruing prior to the termination or expiration of this Agreement. In addition the termination or expiration of this Agreement has no effect on the equity issued to OSIF or Designee.

9. Confidentiality.

9.1 Treatment of Confidential Information. Recipient shall use reasonable care to safeguard the confidentiality of the Confidential Information and shall not provide any Confidential Information to third parties or use other than as permitted below without Discloser's prior written consent.

9.2 Right to Disclose.

- (a) Licensee consents to OSIF disclosing Confidential Information to OSU, and other third parties to the extent it is reasonably necessary to fulfill its obligations or exercise its rights under this Agreement, on the condition OSIF has confidentiality obligations and non-use restrictions at least as stringent as those on OSIF hereunder with OSU and/or such third parties.
- (b) To the extent it is reasonably necessary to fulfill its obligations or exercise its rights under this Agreement, Licensee may disclose Confidential Information on the condition that the party to whom it provides the Confidential Information has agreed to terms and conditions of confidentiality and non-use at least as stringent as those on Licensee herein. In no event shall Licensee or anyone receiving Confidential Information from Licensee use Confidential Information in a manner detrimental to OSIF, OSU or their respective rights.

- (c) If Recipient is required by law, regulation, or court order to disclose any of the Confidential Information, then it may do so provided it had promptly notified Discloser and had reasonably assisted Discloser, if needed, for Discloser to try to obtain a protective order or other remedy of Discloser's election and expense.
- (d) Notwithstanding anything to the contrary, neither Party is obligated to maintain the existence of this Agreement as Confidential Information.

9.3 Further Exclusions to Obligations of Confidentiality. When Recipient is OSIF, Recipient is under no obligation for any Confidential Information which is provided by Discloser to anyone other than OSIF.

9.4 Surviving Obligations. All Confidential Information of the other party shall be returned or destruction certified at the end of the Term, at Discloser's election, provided that Recipient shall be permitted to retain one copy of the Confidential Information in its legal function in order to verify its compliance hereunder and electronic records maintained for archival purposes need not be destroyed. The Parties' confidentiality and non-use obligations under this Agreement shall survive the expiration or termination of this Agreement, and shall continue for a period of three (3) years thereafter.

9.5 Injunctive Relief. In addition to and not in lieu of any other rights or remedies, Discloser may seek specific performance, injunctive and other equitable relief as a remedy for any breach or threatened breach of this Section 9 without showing actual monetary damages in connection therewith.

10. Export Compliance. Without limiting Section 11.3(c), Licensee shall observe all applicable United States and foreign laws and regulations with respect to the research, development, manufacture, marketing and transfer of Licensed Products and related technical data, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulation and hereby represents and covenants that Licensee: (a) is neither a national of, nor controlled by a national of, any country to which the United States prohibits the export or re-export of goods, services, or technology; (b) is not a person specifically designated as ineligible to export from the United States or deal in U.S. origin goods, services, or technologies; (c) shall not export or re-export, directly or indirectly, any goods, services, or technology to any country or person (including juridical persons) to which the United States prohibits the export of goods, technology or services; and (d) in the event that a United States government license or authorization is required for an export or re-export of goods, services, or technology (including technical information acquired from OSIF under this Agreement and/or any products created by using such technical information or any part thereof), shall obtain any necessary United States government license or other authorization prior to undertaking the export or re-export. Without limitation, Licensee shall require a provision in Sublicense Agreement, substantially similar to this Section 10, requiring that Sublicensees comply with all then-current applicable export laws and regulations and other applicable laws and regulations.

11. Representations and Disclaimers.

11.1 **OSIF Representations.** Except for the rights, if any, of the Government, OSIF represents and warrants to Licensee that to the knowledge of OSIF: (a) OSIF is the owner or agent of the entire right, title, and interest in and to Patent Rights (other than the right, title and interest of any joint owner); (b) OSIF has the right to grant the license(s) hereunder; and, (c) OSIF has not knowingly granted and shall not

knowingly grant licenses or other rights under the Patent Rights that are in conflict with the terms and conditions in this Agreement.

11.2 **OSIF Disclaimers.** EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 11.1, LICENSEE UNDERSTANDS AND AGREES THAT OSIF MAKES NO OTHER REPRESENTATIONS OR WARRANTIES AND OSIF, ON BEHALF OF ITSELF AND OSU, EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING AS TO THE LICENSED PRODUCTS, THE OPERABILITY OR FITNESS FOR ANY USE OR PARTICULAR PURPOSE, MERCHANTABILITY, SAFETY, EFFICACY, APPROVABILITY BY REGULATORY AUTHORITIES, TIME AND COST OF DEVELOPMENT, PATENTABILITY, NONINFRINGEMENT, BREADTH OF PATENT RIGHTS, WHETHER ANY CLAIM WILL ISSUE OR IS VALID, AND AS TO WHETHER THERE ARE ANY PATENTS NOW HELD, OR WHICH MAY BECOME HELD, BY ANY ENTITY THAT MIGHT BE REQUIRED FOR THE PRACTICE OF LICENSED SUBJECT MATTER.

11.3 **Licensee Representation.** Licensee represents and warrants that: (a) Licensee has: (i) not been induced in any way by OSIF or its employees to enter into this Agreement; (ii) been given an opportunity to conduct sufficient due diligence with respect to all items and issues pertaining to this Agreement; (iii) adequate knowledge and expertise to conduct the due diligence; and (iv) accepted all risks inherent herein; (b) it is a duly organized and validly existing entity in good standing under the laws of its jurisdiction of organization, and has all necessary corporate or other appropriate power and authority to execute, deliver and perform its obligations hereunder; (c) it shall comply with all applicable international, national, or local laws and regulations in its performance under this Agreement, including export control laws; (d) it shall diligently pursue the development, manufacture, and sale of Licensed Products throughout the Term; and (e) it shall continue to maintain throughout the Term and beyond insurance coverage as set forth in Section 14.

12. **Limit of Liability.** IN NO EVENT SHALL OSIF, OSU OR THEIR RESPECTIVE AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, STUDENTS, TRUSTEES, AGENTS OR INDEPENDENT CONTRACTORS IN THEIR CAPACITY FOR OSIF OR OSU OR SUCH AFFILIATE, BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS OR REVENUE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR LICENSED SUBJECT MATTER, REGARDLESS OF WHETHER ANY SUCH PARTY KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN FOR LIABILITIES AGAINST LICENSEE FOR WHICH IT PROVIDES INDEMNIFICATION (SECTION 13) OR FOR MISUSE, MISAPPROPRIATION OR INFRINGEMENT OF OSIF'S INTELLECTUAL PROPERTY RIGHTS, LICENSEE SHALL NOT BE LIABLE TO OSIF FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER LICENSEE KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

13. **Indemnification Obligation.** Licensee agrees to hold harmless, defend and indemnify OSIF, OSU, their respective Affiliates, and their respective officers, directors, employees,

students, inventors, trustees, agents, and independent contractors (“**Indemnified Parties**”) from and against any liabilities, damages, causes of action, suits, judgments, liens, penalties, fines, losses, costs and expenses, including reasonable attorneys’ fees and other expenses of litigation, resulting from claims or demands brought by third parties (collectively “**Liabilities**”) against an Indemnified Party on account of any injury or death of persons, damage to property, or any other damage or loss arising out of or in connection with this Agreement, and/or the exercise or practice of the rights granted hereunder by or under authority of Licensee and/or Sublicensee, or third party person or entity having a Licensed Product; provided, however, Licensee shall have no responsibility or obligation under this Section to the extent of Liabilities caused solely by the gross negligence or willful misconduct by OSIF.

14. Insurance Requirements. Prior to any Licensed Product being used, including for the purpose of obtaining regulatory approval, or offered for sale by Licensee or Sublicensee, and for a period of five (5) years after this Agreement expires or is terminated, Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in commercially reasonable and appropriate amounts for the Licensed Product to ensure its obligations under this Agreement. Licensee shall use commercially reasonable efforts to have OSIF, OSU and their respective Affiliates, officers, directors and employees named as additional insureds. Such commercial general liability insurance shall provide, without limitation: (a) product liability coverage; (b) broad form contractual liability coverage for Licensee’s indemnification under this Agreement; and (c) coverage for abatement and/or litigation costs. Upon request by OSIF, Licensee shall provide OSIF with written evidence of such insurance. Additionally, Licensee shall provide OSIF with advance written notice of at least sixty (60) days prior to Licensee cancelling, not renewing, or materially changing such insurance.

15. Assignment. This Agreement is not assignable or otherwise transferable, including by operation of law, merger or other business combination, by Licensee without the prior written consent of OSIF, which consent shall not be unreasonably withheld if any assignee at the time of such assignment has the financial and development expertise to perform the obligations of Licensee hereunder, as reasonably determined by OSIF. For any permitted assignment or transfer to be effective, Licensee must be in good standing under this Agreement and the assignee must assume in writing all of Licensee’s interests, rights, duties, liabilities and obligations under this Agreement and agree to comply with all terms and conditions of this Agreement as if assignee were an original Party to this Agreement. OSIF shall be provided a copy of such writing within twenty-four (24) hours of its execution. OSIF may assign this Agreement and/or all or some of its rights hereunder, including Section 3.6 and will provide written notice thereof to Licensee.

16. Patent Markings. Licensee agrees that all Licensed Products shall be marked as permitted in accordance with each country’s patent marking laws, including Title 35, U.S. Code, in the United States.

17. Use of Name. Licensee shall not use the name, trademarks or other marks of OSIF or OSU without the advance written consent of OSIF and OSU. OSIF and OSU may use Licensee’s name for annual reports, brochures, website and internal reports without prior consent.

18. Notices. Any notice or other communication of the Parties required or permitted to be given or made under this Agreement shall be in writing and shall be deemed effective on the date received when sent in a manner that provides confirmation or acknowledgement of delivery and received at the applicable address set forth in Appendix 4, incorporated

herein by reference. Notices required under this Agreement may be delivered via E-mail provided such notice is confirmed in writing as indicated. Late payment notices are sufficiently delivered via E-mail only.

19. General Provisions.

- 19.1 **Binding Effect.** 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.
- 19.2 **Construction of Agreement.** 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.
- 19.3 **Counterparts and Signatures.** 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.
- 19.4 **Registration of Licenses.** Licensee agrees to register and give required notice concerning this Agreement, at its expense, in each country where an obligation exists under law to so register or give notice and shall reasonably consider OSIF's comments regarding redaction.
- 19.5 **Governing Law; Jurisdiction.** This Agreement shall be construed and enforced in accordance with laws of the State of Ohio, 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 Franklin County, Ohio 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 that are permitted to be brought in Franklin County, Ohio. Licensee waives any objection to the jurisdiction of the courts in Franklin County.
- 19.6 **Modification.** Any modification of this Agreement shall be effective only if it is in writing and signed by duly authorized representatives of both Parties unless provided under Sections 2.2, 2.3, 6.4 or 6.5.
- 19.7 **Severability.** 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.
- 19.8 **Third Party Beneficiaries.** Nothing in this Agreement shall be interpreted as placing the Parties in an employment, partnership, joint venture or agency

All provisions are subject to addition, elimination or revision by either Party. All provisions, communications and discussions are tentative until execution of a written agreement by both Parties.

relationship and neither Party shall have the right or authority to obligate or bind the other Party on its behalf. Nothing in this Agreement, express or implied, is intended to confer any benefits, rights or remedies on any entity, other than the Parties, OSU, and their permitted successors and assigns. However, if there is a joint owner of any Patent Rights (other than Licensee), then Licensee hereby agrees that the following provisions extend to the benefit of the co-owner identified therein (excluding Licensee to the extent it is a co-owner) as if such co-owner was identified in each reference to OSIF: the retained rights under Section 2.1 (Grant), Section 2.3 (Government Rights); Section 6 (Intellectual Property Management); Section 7 (Infringement and Litigation); Section 9 (Confidentiality); Section 11.3 (OSIF Disclaimers); Section 12 (Limit of Liability); Section 13 (Indemnification Obligation); Section 14 (Insurance Requirements); Section 15 (Assignment); Section 17 (Use of Name); and Section 19.8 (Third Party Beneficiaries).

- 19.9 **Waiver.** Neither Party shall be deemed to have waived any of its rights under this Agreement unless the waiver is in writing and signed by such Party. No delay or omission of a Party in exercising or enforcing a right or remedy under this Agreement shall operate as a waiver thereof.
- 19.10 **Cross Default.** In the event that Licensee is a party to any other agreement with OSIF or OSU, a default by Licensee of this or any other agreement shall be deemed a default under all other agreements with OSIF and OSU.
- 19.11 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior written or verbal agreements, representations and understandings relative to such matters.

All provisions are subject to addition, elimination or revision by either Party. All provisions, communications and discussions are tentative until execution of a written agreement by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

Ohio State Innovation Foundation	[LICENSEE]
BY:	BY:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

All provisions are subject to addition, elimination or revision by either Party. All provisions, communications and discussions are tentative until execution of a written agreement by both Parties.

Appendix 1 Description of Licensed Subject Matter

Patent Rights

Technology Rights