

NON-EXCLUSIVE LICENSE AGREEMENT

**Regents of the University of Minnesota**

**and**

**[** **]**

TECHNOLOGY COMMERCIALIZATION

200 Oak Street, SE | Suite 280 | Minneapolis, MN 55455

OTC Agreement Number: **Insert Agreement Number**| OTC Case Number**:** **Insert OTC Case Number**

**NON-EXCLUSIVE LICENSE AGREEMENT**

**THIS NON-EXCLUSIVE LICENSE AGREEMENT** (this “Agreement”) is made as of the Effective Date by and between Regents of the University of Minnesota, a constitutional corporation under the laws of the state of Minnesota, having a place of business at 200 Oak Street, SE, Suite 280, Minneapolis, Minnesota 55455 (the “University”), and the Licensee identified below.

The Agreement consists of the **Business Terms**, **General Terms** and any attached and referenced exhibits or schedules.

**BUSINESS TERMS**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **LICENSEE** | | Insert Name of Licensee |
| **2** | **TERRITORY** | | Any country or territory in which a Licensed Patent has been issued and is unexpired or in which an application of the Licensed Patents is pending. |
| **3** | **FIELD OF USE** | | Insert field(s) of use |
| **4** | **TERM** | | From the Effective Date until the date on which no Licensed Patent is pending or valid and unexpired anywhere in the Territory, taking into account any form of patent term extension, market exclusivity period, or other grant of any extension or exclusivity relating to the Licensed Patents. |
| **5** | **LICENSED INTELLECTUAL PROPERTY** | | |
| **5.1** | **LICENSED PATENTS** | |  |  |  |  |  | | --- | --- | --- | --- | --- | | Patent No. | University Case No. | Country | Issue Date | Title | |  |  |  |  |  | |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | | Patent  Application  No. | University Case No. | Country | Application Date | Title | |  |  |  |  |  | |  |  |  |  |  | |  |  |  |  |  | | |
|  |  |  | |
| **5.2** | **TECHNICAL INFORMATION** | ☐ None ☐ Yes. Description is attached as Exhibit  A | |
| **6** | **FEDERAL GOVERNMENT RIGHTS** | | ☐ Yes  ☐ No |
| **7** | **PERFORMANCE MILESTONES** | | Licensee shall perform the following milestones:  (a) By      , Licensee will      ;  (b) By      , Licensee will      ;  (c) By      , Licensee will      .  Not applicable/None |
| **8** | **PAYMENTS** | | |
| **8.1** | **UPFRONT PAYMENT** | |  |
| **8.2** | **LICENSE MAINTENANCE FEE** | | Beginning       and each       thereafter in which Licensee does not sell Licensed Product, Licensee will pay to University a yearly maintenance fee of $      on or before the       day of each such. |
| **8.3** | **RUNNING ROYALTIES ON NET SALES** | | Licensee shall pay to University royalties equal to      % of Net Sales. Royalties are payable on a bi-annual basis, with amounts accruing during a given calendar half to be paid to University at the time reports are due under Section 3.4 of the Agreement. Royalties will accrue by the earliest of: (a) the date the Licensed Product is sold, leased, subscribed, provided, performed, or transferred for consideration; (b) an invoice is issued for the Licensed Product; or (c) the Product is transferred or performed for a third party without charge or nominal consideration |
| **8.4** | **ANNUAL MINIMUM AMOUNT OF RUNNING ROYALTIES** | | Beginning in the calendar year in which Licensee first sells Licensed Product and for each year thereafter during the Term, Licensee shall pay to University (by January 30 of the following calendar year) a minimum royalty of $     . The annual minimum royalty is creditable against royalties owed for such year but is not otherwise available for carryforward or carryback against royalties for other years or for other payments due under this Agreement. |
| **8.5** | **DOCUMENT FEE** | | Unless waived prior to the Effective Date, Licensee shall pay to University ten thousand dollars ($10,000), as a document fee, within thirty (30) days after the Effective Date. |
| **8.7** | **TRANSFER FEE** | | Within fourteen (14) days after the closing of a Transfer or Change of Control, Licensee shall pay to University, as a Transfer Fee, $     . |
| **8.8** | **MILESTONE PAYMENTS** | | Licensee shall pay to University the following amounts upon the achievement of the corresponding milestone for each Licensed Product that achieves the milestone:  (a) Upon      , Licensee shall pay to University $      ;    (b) Upon      , Licensee shall pay to University $      ; and  (c) Upon      , Licensee shall pay to University $      .  Not applicable/none required. |
| **8.9** | **AMENDMENT FEE** | | Unless waived by University in writing, Licensee shall pay to University, as an amendment fee, five thousand dollars ($5,000) in connection with each Licensee-requested amendment to this Agreement. |
| **8.10** | **EARLY TERMINATION FEE** | | Unless waived by University in writing, Licensee shall pay to University a fee of $      in the event if terminates the Agreement early under Section 9.4(b) of the General Terms. |
| **9** | **LICENSEE’S ADDRESS FOR NOTICE** | | Contact: Insert name of contact  Address: Insert Name of Licensee  Insert Address Line 1  Insert address Line 2  Insert city, state, and zip code  Phone  Email: |
| **10** | **LICENSEE’S CONTACT FOR BILLING AND FINANCE** | | Contact: Insert name of contact  Address: Insert Name of Licensee  Insert Address Line 1  Insert address Line 2  Insert city, state, and zip code  Phone  Email: |
| **11** | **DEADLINE FOR EXECUTION BY LICENSEE** | | If University executes this Agreement first and Licensee fails to execute and return it to University within 30 days of the date of University’s signature below, then the Agreement is null and void. |
| **12** | **PATENT RELATED EXPENSES**  **Include all that apply** | | Licensee shall reimburse University **only** for Patent Related Expenses incurred by University **before** the Effective Date, which are $xxx.  Licensee shall reimburse University for Patent Related Expenses incurred by University **both before and after** the Effective Date. Patent Related Expenses incurred prior to the Effective Date are $XXX;  Licensee shall reimburse University for Patent Related Expenses incurred by University **only after** the Effective Date.  Licensee is **not responsible** for reimbursing University for Patent Related Expenses.  **Past Patent Related Expenses are Less Than $25,000.** Within 12 months of the Effective Date, Licensee shall reimburse University for all Patent Related Expenses incurred by University before the Effective Date, with interest on this amount to accrue at 6% after 30 days from the Effective Date.  **Past Patent Related Expenses are $25,000 or Greater.** Within 12 months of the Effective Date, Licensee shall reimburse University for at least $25,000 of all Patent Related Expenses incurred by University before the Effective Date, with the balance due within 24 months of the Effective Date. Interest in the amount of 6% will accrue on the outstanding balance of Patent Related Expenses after 30 days from the Effective Date.  **All Ongoing Patent Related Expenses, US Patents, and the international phase of the PCT process.** Licensee shall reimburse University for Patent Related Expenses for US Patent applications, US patents and the international phase of the PCT process within 30 days from receipt of invoice.  **All Ongoing Patent Related Expenses Foreign.** Additionally, and without limiting Licensee’s reimbursement obligations in the previous sentence, Licensee shall pre-pay the following Patent Related Expenses with respect to international filings:   1. All out-of-pocket expenses for foreign national or regional applications including the examination fee 2. All out-of-pocket expenses for EP validation 3. Exceptional expenses   Insert other payment option if applicable |

|  |  |
| --- | --- |
| **THE PARTIES HEREBY EXECUTE THIS AGREEMENT** | |
| **Regents of the University of Minnesota** | **Insert name of Full Legal Licensee here** |
|  |  |
| **By:** | **By:** |
| **Insert name of signatory**  Its: **Insert title of signatory**  Technology Commercialization | **Insert name of signatory**  Its: **Insert title of signatory** |
| **Date:** | **Date:** |
| The signatory warrants that they are authorized to execute this agreement on behalf of the Regents of the University of Minnesota. | The signatory warrants that they are authorized to execute this agreement on behalf of Licensee |

**GENERAL TERMS**

# DEFINITIONS AND INTERPRETATION

## Definitions

In this Agreement:

“**Change of Control**” means (a) the acquisition by a person or group of beneficial ownership of the capital stock of Licensee if after the acquisition the person or group beneficially owns 30% or more of either (i) the total number of the then outstanding shares of common stock of Licensee or (ii) the total number of the then outstanding shares of voting securities of Licensee; (b) a change in the composition of Licensee’s board of directors such that less than a majority of individuals who serve as such directors as of the Effective Date or who were nominated for election to the board of directors by at least three quarters of directors in office as of the Effective Date or whose nomination and election to the board of directors was similarly approved, are serving on Licensee’s board of directors; or (c) irrespective of whether Licensee is a surviving entity, the consummation of a merger, consolidation, reorganization involving Licensee or other exchange of shares of Licensee in one or a series of related transactions.

“**Early Termination**” means the termination of this Agreement permitted under Section 9.4 (b) of the General Terms.

“**Effective Date**” means the date of the last signature on this Agreement.

“**Field of Use**” means the field(s) of use described in Section 3 of the Business Terms.

“**Licensed Patents**” means: means (a) all patents and patent applications identified in Section 5.1 of the Business Terms; (b) all divisionals, continuations, continuations-in-part (but only to the extent the claims are supported by the specification of a patent or patent application in Section 5.1 of the Business Terms as of the Effective Date), foreign counterparts, and any other patent applications claiming priority to the patents and patent applications identified in Section 5.1 of the Business Terms; (c) all patents issuing thereon; and (d) all reissues, reexaminations, validations, and extensions of any of the foregoing.

“**Licensed Product**” means a product or service in the Field of Use: (a) the making, using, importing, selling, offer for sale, marketing, or providing of which, absent this license, infringes (directly or indirectly) or is otherwise covered by a claim of a Licensed Patent; or (b) which is made with, uses, was derived from, identified or validated by, incorporates, or was developed in whole or in part using any Licensed Technical Information.

“**Licensed Intellectual Property**” means the intellectual property identified in Section 5 of the Business Terms.

**“Licensed Technical Information”** means the information identified in Section 5.2 of the Business Terms.

“**Licensee**” means the entity identified in Section 1 of the Business Terms.

“**Net Sales**” means all gross revenues derived by Licensee, their distributors or designees from the sale, transfer or other disposition of Licensed Product to an end user in the Territory, less the following items, but only insofar as these items are commercially reasonable under the circumstances, documented in writing, pertain specifically to the sale of the Licensed Product, are appropriately accounted for under generally accepted accounting principles as consistently applied in the United States, and were not given in exchange for anything else of value (such as investments, loans, data, reciprocal discounts or credits, in-kind consideration, or commitments to purchase other products or services): (a) all quantity, prepayment and cash discounts actually allowed; (b) all credits and allowances actually granted due to rejections, returns, billing errors, and retroactive price reductions; (c) applicable duties; and (d) applicable excise, sale and use taxes.

“**Performance Milestone**” means an act or event specified described in Section 7 of the Business Terms.

“**Territory**” means the geographical area described in Section 2 of the Business Terms.

“**Third Party”** means any party other than Licensee.

**“Transfer”** means the assignment or sale (e.g., as part of an asset sale) of this License to a third party other than in connection with a Change of Control.

“**University Indemnitees**” means University, its regents, officers, employees, students, agents, faculty, representatives, volunteers, and, if applicable, other institutions with whom University has entered into an inter-institutional agreement covering the Licensed Patents, as well as the inventors and creators of the Licensed Intellectual Property.

**“Year”** means a calendar year during the term of this Agreement.

## Rules of Interpretation and Convention

In this Agreement, unless the context requires otherwise:

1. headings are for convenience only and do not affect interpretation;
2. the singular includes the plural and conversely;
3. a reference to any statute, rule, regulation or policy includes any amendment, and any statute, rule, regulation or policy replacing it;
4. all computations and payments made under this Agreement shall be in United States dollars. To determine the U.S. dollar value of transactions conducted in non-United States currencies on any particular day, the parties shall use the exchange rate for that currency as reported in the Wall Street Journal in the most recently published edition prior to the date of the transaction; and
5. all notices, reports, and other documents and instruments that a party elects or is required to deliver to the other party must be in English.

# LICENSE

## Grant of License. Subject to the terms and conditions of this Agreement, University grants to Licensee solely within the Field of Use a non-exclusive, non-sublicensable license under University’s rights in the Licensed Patents and the Licensed Technical Information to make, use, sell, offer for sale, and import Licensed Products in the Territory. Except as provided in this section, no other rights or licenses, express or implied, are granted to Licensee

## Retained Rights. University retains all rights not expressly granted in Section 2.1

# PAYMENT, RECORDS, AND AUDIT

## Licensee’s Payment Obligation

Licensee shall pay all amounts under Sections 8 and 12 of the Business Terms by the dates indicated therein. Licensee shall pay such amounts in U.S. Dollars by wire transfer, check (payable to the “Regents of the University of Minnesota” and sent to: Regents of the University of Minnesota, NW 5960, PO Box 1450, Minneapolis, MN 55485-5960; reference agreement number on check), or any other method of payment specified by University.

## Licensee Responsible for Fees and Non-U.S. Taxes

Licensee shall be responsible for all fees and costs (e.g., bank transfer fees) associated with making payments to University and will pay all non-U.S. taxes related to payments made to University under this Agreement. University is a tax-exempt organization; therefore all amounts payable to University will be made without deduction or withholding for any taxes which would otherwise be required. Upon request, University will provide US Form 6166 from US Department of Treasury asserting tax exempt status. If, despite tax exempt status, any taxes, assessments, withholdings, or other governmental charges are still required, such charges will be assumed and paid by Licensee without reduction of the amount due to University.

## Interest

All amounts due under this Agreement will bear compound interest at 6% per annum, or the maximum rate of interest allowable under applicable law, on the entire unpaid balance computed from the due date until the amount is paid.

## Royalty Payments/Sales Reports

Within sixty (60) days after the last day of the second and fourth calendar quarters beginning in the calendar year in which Licensee first sells a Licensed Product, Licensee shall provide to University a written report in a form acceptable to University (even if there are no sales) containing a computation of royalties due on a country by country and Licensed Product by Licensed Product basis (including an accounting of deductions taken) during the preceding two calendar quarters, together with the earned royalty payment due under Section 8.3 of the Business Terms for such quarters.

## No Refund

All amounts paid to University are non-refundable.

## Termination Report

Licensee shall pay to University all amounts due under this Agreement and submit to University a written report within 90 days after the Agreement terminates. Licensee will continue to submit royalty payments and reports after this Agreement terminates, until all Licensed Products made or imported under the Agreement have been sold.

## Recordkeeping and Accounting

Licensee shall maintain records sufficient to verify their compliance with the terms of this Agreement, including records showing manufacture, importation, sale, use, and provision of a Licensed Product, for 5 years from the date of sale of the applicable Licensed Product. Records will include information in sufficient detail to enable University or its representative to determine the royalties owed under this Agreement. Upon request by University, Licensee shall deliver to University or its representative, copies of all documents and materials (including electronic records) reasonably relevant to Licensee’s performance of this Agreement.

## Audit

Licensee shall allow University or its designee to examine Licensee’s records to verify compliance with the terms of this Agreement. In connection with such audit, Licensee shall provide reasonable and efficient access (at a single location, or via remote/electronic means at University’s request) at no cost to conduct the audit.

## Paying for Audit

University will pay for any audit done under Section 3.8 of the General Terms. But if the audit reveals an underreporting of royalties due University of 5% or more for the period being audited, Licensee shall pay the audit costs.

## Royalty if Licensee Challenges the Licensed Patent

If Licensee brings an action seeking to invalidate a Licensed Patent, Licensee will pay royalties to University at the rate of two times the royalty rate specified in Section 8.3 of the Business Terms during the pendency of such action. Moreover, should the outcome of such action determine that any claim of a patent challenged by Licensee is valid, Licensee will pay royalties at the rate of three times the royalty rate specified in Section 8.3 of the Business Terms.

# GOVERNMENT RIGHTS AND REGULATIONS

## Bayh-Dole Requirements

***[Applicable only if Section 6 of the Business Terms is checked, “Yes.”]***

This Agreement is subject to Title 35, Sections 200-204 of the United States Code. Among other things, these provisions provide the United States Government with nonexclusive rights in the Licensed Patent; the licenses granted herein are subject to such rights. These provisions also impose the obligation that any Licensed Products sold or used in the United States be “manufactured substantially in the United States.” Licensee shall ensure all obligations of these provisions are met.

## Compliance with Laws

Licensee shall comply with all applicable laws when exercising any right or taking any action under this Agreement, and will ensure that the manufacture, use, sale, or transfer of Licensed Products complies with all applicable laws and regulations.

## Export Control

The parties shall comply with export controls and sanctions statutes and regulations, including the Export Administration Regulations (EAR, 15 C.F.R. pts. 730-774), the International Traffic in Arms Regulations (22 C.F.R. pts. 120-130), and the Foreign Assets Control Regulations (31 C.F.R. pts. 500-599), to the extent such statutes and regulations are applicable to the parties' activities. Licensee shall not use any Licensed Intellectual Property, Licensed Product, Licensed Technical Information, or derivative commodity, software, or technology thereof contrary to the requirements in Part 744 of the EAR, Control Policy: End-Use and End-User Based (15 C.F.R. pt. 744.

## Cooperation with Governmental Requests

Licensee shall comply upon reasonable notice from University with all governmental requests relevant to the Licensed Intellectual Property directed to either University or Licensee and provide all information and assistance necessary to comply with the governmental requests.

## Patent Marking

Licensee shall mark all Licensed Products to the extent required by and in compliance with 35 USC 287 and other similar foreign and domestic statutes. Where marking is to be performed, but the Licensed Product cannot be marked, the patent notice shall be placed on associated tags, labels, packaging, or accompanying documentation either electronic or paper as appropriate in accordance with applicable law.

# PATENT PROSECUTION AND MAINTENANCE

## Patent Prosecution and Maintenance

University has the sole right to control the preparation, filing, prosecution, defense, and maintenance (“Prosecution”) of the Licensed Intellectual Property.

# COMMERCIALIZATION

## Diligence

Licensee shall use its commercially reasonable efforts, consistent with sound and reasonable business practices and judgment, to commercialize the Licensed Intellectual Property and to manufacture and offer to sell and sell Licensed Products throughout the Territory during the term of this Agreement as soon as practicable and to maximize sales thereof.

## Performance Milestones

Licensee shall perform, or shall cause to happen or be performed, as the case may be, all the performance milestones described in Section 7 of the Business Terms. Failure to meet any milestones by the indicated date will constitute a material breach.

## Commercialization Reports

By March 1 of each year, Licensee will submit a written annual report to University covering the preceding calendar year if applicable. Each report will describe Licensee’s progress toward commercialization of Licensed Product, including work completed, key scientific discoveries, summary of work-in-progress, market plans for introduction of Licensed Product, and significant corporate transactions involving Licensed Product. Licensee will specifically describe how each Licensed Product is related to each Licensed Patent.

# INFRINGEMENT

Licensee shall notify University if it believes a third party is infringing a Licensed Patent and provide University with all credible evidence that is has to support this belief. The University, in its sole discretion, shall undertake such actions as it deems necessary and desirable to investigate the matter, to cause the third party to cease infringing a Licensed Patent, and to seek compensation for the acts of infringement and reimbursement for related costs and expenses. The University shall not have an obligation under this Agreement to take any step or commence or maintain an action. If any suit, action, or proceeding is brought or commenced against the Licensee alleging the infringement of a patent or other intellectual property right owned by a third party by reason of the manufacture, use or sale of Licensed Products, the Licensee shall give the University prompt notice thereof. If the validity of a Licensed Patent is questioned in such suit, action or proceeding, the Licensee shall have no right to make any settlement or compromise which affects the scope, validity, enforceability or otherwise the Licensed Patent without the University’s prior written approval.

# UNIVERSITY NAME AND MARKS

## No Use of University Name or Marks

No provision of this Agreement grants Licensee any right or license to use the name, logo, or any marks owned by or associated with University or the names, or identities of any member of the faculty, staff, or student body of University. Licensee shall not use any such logos, marks, names, or identities without University’s prior written approval.

# TERM AND TERMINATION

## Term. This Agreement shall be in effect for the Term, as defined in the Business Terms, unless terminated sooner as set forth in this Section 9.

## University’s Right to Terminate

University may terminate this Agreement if Licensee:

1. is delinquent on any report or payment;
2. misses a milestone under Section 7of the Business Terms;
3. is in breach of any material provision of this Agreement;
4. provides any materially false report; or
5. ceases operations, dissolves, or winds up its business; becomes insolvent, or attempts to use the Licensed Intellectual Property as collateral for any debt, or otherwise attempts to subject the Licensed Intellectual Property to any lien or similar encumbrance; enters into any bankruptcy, receivership, or similar proceeding or status; fails to provide required reporting or payments and does not respond to reasonable inquiries for a period of one (1) year; or does not make any additional running royalty payments, once begun, for a period of eight (8) consecutive calendar quarters.

## Termination Date; Licensee’s Right to Remedy Breach

Termination under Section 9.2(a)-(d of the General Terms takes effect (without any further action by University) 30 days after written notice by University to Licensee of any default under Section 9.2(a)-(d) of the General Terms, unless within that 30-day period Licensee:

1. remedies the default and notifies University of the same; and
2. pays to University an administrative fee of $10,000.

Termination under Section 9.2(e) of the General Terms takes effect immediately upon written notice to Licensee in accordance with the contact information provided pursuant to Section 9 of the Business Terms and Section 13.12 of the General Terms, regardless of whether Licensee acknowledges receipt of such notice.

## Licensee’s Right to Terminate

Licensee may terminate this Agreement:

1. if University is in default of any material provision of this Agreement and fails to remedy the default within 30 days of Licensee’s written notice; or
2. for convenience (“Early Termination”) by delivering to University a written notice of termination at least 60 days prior to the date of termination and upon payment of the Early Termination Fee as described in Section 8.10 of the Business Terms, if applicable.

## Effect of Termination.

Upon Termination, the grant of rights under Section 2.1 of the General Terms terminates. Licensee may, however, sell or dispose of Licensed Products manufactured prior to termination for one year thereafter, provided that Licensee continues to pay royalties on the sale of Licensed Products and otherwise complies with all terms of this Agreement with respect to such Licensed Products

## Sections of the Agreement Surviving Termination.

Surviving any termination or expiration are:

1. Licensee's payment obligations for payments accrued prior to termination; and
2. the provisions of those sections which, by their sense and purpose are intended to survive termination, shall survive termination.

# INDEMNIFICATION AND INSURANCE

## Indemnification

Licensee shall indemnify, hold harmless, and defend all University Indemnitees against all losses, liabilities, damages, expenses, and fees (including attorney fees) of any kind arising from any claim, allegation, proceeding, suit or action of any kind arising out of or related to: (i) the exercise of any rights granted Licensee under this Agreement or to a, and their business pertaining to (including sale, use, and marketing of) Licensed Products; (ii) Licensee’s breach of any provision of this Agreement; (iii) Licensee’s negligence, misconduct, and violation of applicable law.

## Insurance

Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing and selling Licensed Products subject to this Agreement and that the insurance coverage lists University of Minnesota as an additional insured. Upon University’s request, Licensee shall present evidence to University that this coverage is being maintained.

# DISCLAIMER OF WARRANTIEs

## Warranties

University warrants that to the best of its actual knowledge as of the date of execution of this Agreement it has the right to grant the licenses to the Licensed Intellectual Property contained in this Agreement.

## Disclaimer of all Other Warranties

UNIVERSITY PROVIDES LICENSEE THE RIGHTS GRANTED IN THIS AGREEMENT AS IS AND WITH ALL FAULTS, IF ANY. UNIVERSITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED CONCERNING THE LICENSED INTELLECTUAL PROPERTY.

AMONG OTHER THINGS, UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES CONCERNING AND MAKES NO REPRESENTATIONS:

1. that any or all applications of the Licensed Patents will be allowed or granted or that a patent will issue from such application(s);
2. concerning the validity, enforceability, interpretation of claims or scope of any Licensed Patent;
3. that the exercise of the rights or licenses granted to Licensee under this Agreement will not infringe or violate a third party’s intellectual property rights;
4. that the exploitation of Licensed Patent or Intellectual Property Rights will be successful; or
5. as to the merchantability, suitability, accuracy, completeness, and safety of the Licensed Intellectual Property.

# LIMITATION ON TYPE AND AMOUNT DAMAGES

## Limitation on Type of Damages

University is not liable for any special, consequential, lost profit, loss of business opportunity, expectation, punitive or other indirect damages in connection with any claim arising out of or related to this Agreement.

## Limitation on Amount of Damages.

In no event shall University’s liability to Licensee exceed the payments made to University by Licensee during the 6 months prior to the event that gave rise to the claim.

# MISCELLANEOUS

## Choice of Law and Jurisdiction

The internal laws of the state of Minnesota, without giving effect to its conflict of laws principles, govern the validity, construction, and enforceability of this Agreement. All suits, claims, petitions, and other actions to enforce the terms of this Agreement or otherwise in relation to the Licensed Intellectual Property may be brought only in the state courts of Hennepin County, Minnesota. Licensee hereby submits to the jurisdiction of that court and waives any objections it may have to that court asserting jurisdiction over the subject matter of this Agreement, Licensee or its assets and property and to exclusive venue in that jurisdiction.

## Amendment and Waiver

The Agreement may be amended from time to time only by a written instrument signed by the parties. No term or provision of this Agreement may be waived, and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. No waiver of a breach is to be deemed a waiver of a different or subsequent breach

## Data Practices Act

The parties acknowledge that University is subject to the terms and provisions of the Minnesota Government Data Practices Act, Minnesota Statutes §13.01 et seq. (the “Act”), and that the Act requires, with certain exceptions, University to permit the public to inspect and copy any information that University collects, creates, receives, maintains, or disseminates, including the existence of and the terms of this Agreement.

## Confidentiality

To the extent permitted by law, including as provided in the Act, University shall hold in confidence and disclose only to University employees, agents and contractors who need to know:

1. the reports described in Sections 3.4, and 6.3 of the General Terms; and
2. the records inspected in accordance with Sections 3.7 and 3.8 of the General Terms. No provision of this Agreement is to be construed to further prohibit, limit, or condition University’s right to use and disclose any information in connection with enforcing this Agreement, in court or elsewhere.

## Transfer

Licensee shall not Transfer its interest under this Agreement without the prior written consent of the University and payment of the Transfer Fee under Section 10.7 of the Business Terms. Any Transfer attempted to be made in violation of this section is void. Absent the consent of all the parties, an assignment or delegation will not release the assigning or delegating party from its obligations.

Licensee may assign this Agreement as part of a Change of Control to the surviving entity by providing University written notice of the assignment within 30-days of the Change of Control. To be effective notice must include the new assignee’s contact information and the new assignee’s acknowledgement in writing to be bound by this agreement.

## Change of Control

## Upon a Change of Control Licensee shall give the University written notice of the Change of Control and, within 30 days, pay the University the full Transfer Fee.

## Consent and Approvals

Except as otherwise expressly provided, to be effective, all consents or approvals required under this Agreement must be in writing.

## Entire Agreement

The parties intend this Agreement (including all attachments, exhibits, and amendments hereto) to be the final and binding expression of their contract and agreement and the complete and exclusive statement of the terms thereof. The Agreement cancels, supersedes, and revokes all prior negotiations, representations and agreements among the parties, whether oral or written, relating to the subject matter of this Agreement. No representations or statements of any kind made by either party, which are not expressly stated herein, will be binding on such party.

## Enforceability

If a court of competent jurisdiction adjudges a provision of this Agreement to be unenforceable, invalid, or void, such determination is not to be construed as impairing the enforceability of any of the remaining provisions hereof and such provisions will remain in full force and effect.

## No Third-Party Beneficiaries

No provision of this Agreement, express or implied, is intended to confer upon any person other than the parties to this Agreement any rights, remedies, obligations, or liabilities hereunder.

## Relationship of Parties

In entering into, and performing their duties under this Agreement, the parties are acting as independent contractors and independent employers. No provision of this Agreement creates or is to be construed as creating a partnership, joint venture, or agency relationship between the parties. No party has the authority to act for or bind the other party in any respect.

## Notices

In order to be effective, all notices, requests, and other communications that a party is required or elects to deliver must be in writing and must be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given under this Section:

If to University: University of Minnesota

Technology Commercialization

200 Oak Street, SE

Suite 280

Minneapolis, MN 55455

Fax: 612.624.6554

E-mail: otcagree@umn.edu

For notices sent University of Minnesota

under Section 8, Office of the General Counsel

with a copy to: Attn: Director, Transactional Law Services

360 McNamara Alumni Center

200 Oak Street S.E.

Minneapolis, MN 55455-2006

Facsimile No.: 612.626.9624

Email: contracts@mail.ogc.umn.edu

If to Licensee: As indicated in Section 9 of the Business Terms.

## Security Interest

In no event may Licensee grant, or permit any person to assert or perfect, a security interest in Licensee’s rights under this Agreement.

## Execution in Counterparts

This Agreement may be executed in counterparts and by facsimile or electronic transmission.