

## PATENT LICENSE AGREEMENT

This Agreement is effective as of \_\_\_\_, 20\_\_ (the "EFFECTIVE DATE"), between \_\_\_\_\_ ("LICENSEE") having the address in Article 12 below, and the Regents of the University of Michigan, a constitutional corporation of the state of Michigan on behalf of Innovation Partnerships ("MICHIGAN").

Whereas, LICENSEE is or intends to be in the business of bringing to market technologies related to the subject matter of the PATENT RIGHTS;

Whereas, LICENSEE desires licenses to the PATENT RIGHTS, as defined below, including the right to provide such licenses to third parties;

Whereas, MICHIGAN, which has as a goal to maximize the positive societal impact of research discoveries from its laboratories and to collaborate with industry partners to bring these discoveries to broad public adoption, in which MICHIGAN has allowed the LICENSEE the flexibility to develop its own plans for technical and commercial development of MICHIGAN's PATENT RIGHTS, in accordance with the terms set forth below; and

Whereas, the parties discussed differing structures for the payment of royalties hereunder, however for the convenience of the parties in measuring the value of the licenses granted herein, the parties have negotiated the combination of fees and percentage of sales by LICENSEE and SUBLICENSEES (including the royalty base and rate provided below);

LICENSEE and MICHIGAN hereby agree as follows:

### **ARTICLE 1 – DEFINITIONS**

“FIELD OF USE” means all fields.

“FIRST COMMERCIAL SALE” means the first SALE through a bona fide arms length transaction of any LICENSED PRODUCT by LICENSEE or a SUBLICENSEE to a third party customer, excluding (a) any SALE of a LICENSED PRODUCT among LICENSEE, its AFFILIATE or a SUBLICENSEE if such SALE is not directly intended to lead to end use; (b) the SALE of a LICENSED PRODUCT for use in trials or other research or development activities; or (c) the disposal or transfer of a LICENSED PRODUCT for a charitable purpose, as a sample or that is of temporary availability.

“LICENSED PRODUCT(S)” means any product or process that (a) when made, used, imported, offered for sale, or sold would, but for the licenses granted in this Agreement comprise a direct

or an indirect infringement of a VALID CLAIM contained in the PATENT RIGHTS in the country in which any such product or process is made, used, imported, offered for sale and/or sold; or (b) is not a "LICENSED PRODUCT" under clause (a) above, but is covered by an issued, but expired claim that previously was a VALID CLAIM in PATENT RIGHTS.

"MICHIGAN," as used in Articles 9 and 10, shall include its Regents, officers, employees, students, and agents.

"NET SALES" means the amount billed or invoiced, and if any amount is not billed or invoiced, the amounts received, on sales, rental or lease, however characterized, by LICENSEE and/or SUBLICENSEES of LICENSED PRODUCTS, less the following deductions (but only to the extent such deductions are otherwise included in NET SALES and are not obtained in view of other consideration received by LICENSEE):

- (a) cash discounts actually granted to customers in such invoices for SALE of LICENSED PRODUCTS, but only in amounts customary in the trade;
- (b) sales taxes, tariff duties and/or use taxes separately stated in such bills or invoices with reference to particular SALES and actually paid by LICENSEE to a governmental unit;
- (c) actual, reasonable freight expenses between LICENSEE and customers, to the extent such expenses are not charged to or reimbursed by customers; or
- (d) amounts actually refunded or credited on returns.

Where LICENSEE or SUBLICENSEE receives any consideration other than cash for such transactions, fair market cash value for such consideration, to be agreed upon by the parties hereto, shall be included in NET SALES. Where a product or activity is a LICENSED PRODUCT hereunder due to contributory infringement or inducement of infringement, NET SALES shall include SALES of the product or process that constitutes a direct infringement of the PATENT RIGHTS.

"PATENT RIGHT(S)" means MICHIGAN'S legal rights under the patent laws of the United States or relevant foreign countries for all of the following:

- (a) the following United States and foreign patent(s) and/or patent application(s), and divisionals, continuations (except continuations-in-part), and foreign counterparts of the same: U.S. Serial No. \_\_\_/\_\_\_,\_\_\_; \_\_\_\_\_.

(b) United States and foreign patents issued from the applications listed in subparagraph (a) above, including any reviewed, reissued or reexamined patents based upon the same.

“ROYALTY PERIOD(S)” means the six-month periods ending on the last days of June and December each year.

“ROYALTY TERM” means, on a LICENSED PRODUCT-by-LICENSED PRODUCT and country-by-country basis, the period starting on the FIRST COMMERCIAL SALE of such LICENSED PRODUCT and expiring upon the later of (a) expiration of the last to expire issued VALID CLAIM of the PATENT RIGHT(S) that cover the applicable LICENSED PRODUCT in the applicable country, or (b) the tenth (10th) anniversary of the FIRST COMMERCIAL SALE of the applicable LICENSED PRODUCT in the applicable country, unless the entire Agreement is terminated sooner in accordance with another specific Article of this Agreement. For purposes of this definition, a VALID CLAIM “covers” a LICENSED PRODUCT if it would infringe such VALID CLAIM under applicable law if not for a license to such VALID CLAIM.

“SALE” means sale, rental, or lease, however characterized, and SOLD means the past tense of SALE.

“SUBLICENSEE(S)” means any person or entity in writing sublicensed, or granted an option for a sublicense, by LICENSEE or another SUBLICENSEE under this Agreement.

“TERRITORY” means all of the countries of the world.

“VALID CLAIM” means either (a) a claim of an issued and unexpired patent included within the PATENT RIGHTS, which has not been held permanently revoked, lapsed, abandoned, revoked, or held unenforceable, invalid, or non-patentable by decision of a court or other government agency of competent jurisdiction, in each case without the possibility of further appeal or refiling, and which MICHIGAN has not admitted to be invalid or unenforceable through disclaimer or dedication to the public; or (b) a claim of a pending patent application included within the PATENT RIGHTS, which claim has not been abandoned or finally disallowed without the possibility of further appeal or refiling, and which has not been pending for a period greater than seven (7) years.

## **ARTICLE 2 – GRANT OF LICENSE**

2.1 MICHIGAN hereby grants to LICENSEE an exclusive license under the PATENT RIGHTS, with the right to grant sublicenses, both subject to the terms and conditions of this

Agreement, in the FIELD OF USE and the TERRITORY to make, have made, import, use, market, offer for sale and sell LICENSED PRODUCTS.

2.2 Without limiting any other rights it may have, MICHIGAN specifically reserves the right for it and its affiliates to practice and have practiced the PATENT RIGHTS for research, public service, internal (including clinical) and/or educational purposes, and the right to grant the same limited rights to other non-profit research institutions.

2.3 The licenses granted in this Agreement are subject to any rights required to be granted under prior research or sponsorship agreements, or retained by the U.S. government, for example in accordance with Chapter 18 of Title 35 of U.S.C. 200-212 and the regulations thereunder (37 CFR Part 401), when applicable. LICENSEE agrees to comply in all respects, and shall provide MICHIGAN with all reasonably requested information and cooperation for MICHIGAN to comply with applicable provisions of the same and any requirements of any agreements between MICHIGAN and any agency of the U.S. government that provided funding for the subject matter covered by the PATENT RIGHTS (collectively, "GOVERNMENT REQUIREMENTS").

2.4 LICENSEE agrees that LICENSED PRODUCTS used, leased or sold in the United States shall be manufactured substantially in the United States.

(a) Upon reasonable and timely request by LICENSEE, at LICENSEE's expense, MICHIGAN will request a waiver of this requirement from any applicable Federal funding agency and LICENSEE shall cooperate with MICHIGAN and provide all reasonably requested information in support of such waiver application(s); provided that LICENSEE (1) shall have complied with any milestone in Article 5 relating to U.S. manufacturing and (2) LICENSEE shall promptly reimburse MICHIGAN's expenses in making and prosecuting a waiver request.

(b) If both (1) substantial manufacture in the United States is not required by GOVERNMENT REQUIREMENTS and (2) LICENSEE makes a reasonable showing that such manufacturing in the U.S. is not commercially reasonable and/or commercially feasible, then MICHIGAN shall give reasonable deference to a request by LICENSEE to amend this Agreement to remove the requirement in the prior sentence, but only to the extent permitted by law.

2.5 Except as expressly set forth in this Agreement, neither party shall acquire under this Agreement any license or other right, title or interest, by implication, estoppel or otherwise, under any intellectual property owned or controlled by the other party or its affiliates. To the fullest extent permitted by applicable law, the doctrine of corporate opportunity, or any other analogous doctrine, shall not apply with respect to LICENSEE, and MICHIGAN (and any employees, student, representatives, or consultants to MICHIGAN) shall have no obligation to

refrain from (i) engaging in similar activities or lines of business as LICENSEE or developing or marketing any products or services that compete, directly or indirectly, with those of LICENSEE; (ii) investing or owning any interest publicly or privately in, serving as a director or officer of or developing a business relationship with, any third party engaged in similar activities or lines of business as, or otherwise in competition with, LICENSEE; (iii) doing business with any client or customer of LICENSEE; or (iv) employing or otherwise engaging a former officer or employee of LICENSEE; and neither LICENSEE nor MICHIGAN shall have any right by virtue of this Agreement in or to, or to be offered any opportunity to participate or invest in, any venture engaged or to be engaged in by the other party or its affiliates.

### **ARTICLE 3 - CONSIDERATION**

3.1 LICENSEE shall pay the following to MICHIGAN.

(a) LICENSEE shall pay to MICHIGAN a license issue fee equal to \$ \_\_\_\_\_ within fourteen days after the complete execution of this Agreement.

(b) LICENSEE shall pay to MICHIGAN a royalty on SALES equal to \_\_\_\_\_ percent (\_\_\_%) of NET SALES (“RUNNING ROYALTIES”). With respect to any LICENSED PRODUCT(S) defined only under subsection (b) of the definition thereof, royalty rates specified above shall be discounted by 50%.

(c) LICENSEE shall pay to MICHIGAN \_\_\_\_\_ percent (\_\_\_%) of any consideration that LICENSEE or SUBLICENSEES (or a designee) is due from or receives from SUBLICENSEES or assignees in consideration for rights under the PATENT RIGHTS (for example, license issue fees, maintenance fees, milestone payments, other royalties), and which is not a running royalty paid as a percent of sales of products (“NON-SALES BASED SUBLICENSING FEES”).

(d) LICENSEE shall pay to MICHIGAN the following fees due on January 31 of the indicated year (each an “ANNUAL FEE”). MICHIGAN shall credit each ANNUAL FEE against RUNNING ROYALTIES otherwise due on NET SALES made during the calendar year for which the ANNUAL FEE applies. For clarity, any ANNUAL FEE in excess of RUNNING ROYALTIES shall not be creditable to amounts due for future years. The ANNUAL FEES are:

(1) For \_\_\_\_\_: \$ \_\_\_\_\_;

(2) For \_\_\_\_\_: \$ \_\_\_\_\_;

(3) For \_\_\_\_\_: \$ \_\_\_\_\_; and

(4) For \_\_\_\_\_ and in each year thereafter during the term of this Agreement:  
\$ \_\_\_\_\_.

(e) LICENSEE shall reimburse MICHIGAN for patent expenses incurred prior to the EFFECTIVE DATE, according to the following schedule: \_\_\_\_\_. LICENSEE has had an opportunity to investigate and inquire as to such prior patent expenses prior to the execution of this agreement. Patent expenses incurred after the EFFECTIVE DATE are addressed in Article 7 below.

(f) Without limiting any other payment required under this Agreement by not noting it in this Section 3.1 for convenience, LICENSEE shall make any milestone or other payments required under Article 5.

3.2 With respect to RUNNING ROYALTIES, the following shall apply: (a) LICENSEE is not obligated to pay multiple royalties if any LICENSED PRODUCT is covered by more than one claim of PATENT RIGHTS or the same LICENSED PRODUCT is covered by claims in two or more countries; (b) LICENSEE shall pay RUNNING ROYALTIES to MICHIGAN during the entire ROYALTY TERM, as determined on a LICENSED PRODUCT-by-LICENSED PRODUCT and country-by-country basis, and this provision shall survive any termination of this Agreement; and (c) if LICENSEE makes any SALES to any party affiliated with LICENSEE, or in any way directly or indirectly related to or under the common control with LICENSEE, at a price less than the average price paid by other parties in the ROYALTY TERM, the RUNNING ROYALTIES due to MICHIGAN shall be computed on the basis of the fair market price to be agreed upon in good faith by LICENSEE and MICHIGAN. With respect to LICENSED PRODUCTS made, used, imported, or offered for sale before end of the ROYALTY TERM, but are then SOLD after the end of the ROYALTY TERM, NET SALES shall include amount for the SALE of those LICENSED PRODUCTS. Within sixty (60) days after the end of the ROYALTY TERM, LICENSEE shall provide to MICHIGAN a verified inventory identifying all LICENSED PRODUCTS on hand or not SOLD that were manufactured prior to end of the ROYALTY TERM.

3.3 Unless otherwise required, payments shall be made on a semi-annual basis on the same schedule as the reports required by Article 4. Payments shall be made to "The Regents of the University of Michigan" in United States dollars. Payments drawn directly on a U.S. bank may be made by either check to the address in Article 12, via ACH transfer, or by wire transfer. Any payment drawn on a foreign bank or foreign branch of a U.S. bank shall be made only by wire transfer.

Bank Name: Bank of America  
ACH ABA/Routing No.: 072000805  
Wire ABA/Routing No.: 026009593  
SWIFT Bank Identifier Code: BOFAUS3N  
Account No.: 5401125777  
Account Name: The Regents of the University of Michigan EFT Depository  
Bank Address: Troy, Michigan USA 48084

In computing royalties, LICENSEE shall convert any revenues it receives in foreign currency into its equivalent in United States dollars at the most recent exchange rate published in the Wall Street Journal on the last business day of the ROYALTY PERIOD during which such payments are received by LICENSEE, or at such other exchange rate as the parties may agree to in writing, and LICENSEE shall provide such rates and the basis of such conversions upon request by MICHIGAN.

3.4 LICENSEE shall also pay an interest charge on any and all amounts LICENSEE pays hereunder to MICHIGAN after an applicable deadline, at a monthly rate of one percent (or at the highest allowed rate if a lower rate is required by law), compounded monthly beginning on the day after the due date until the date of payment. The payment of such interest shall be required even if not shown on an invoice from MICHIGAN, and shall not foreclose MICHIGAN from exercising any other rights it may have resulting from any late or failed payment. LICENSEE shall reimburse MICHIGAN for the costs, including reasonable attorney fees, for expenses paid in order to collect any amounts overdue more than 120 days.

3.5 All payments made under this Agreement are and shall be non-refundable. MICHIGAN shall have no obligation whatsoever to pay, return, credit, or refund any amounts paid hereunder, except as may be specifically provided herein. By way of example only, notwithstanding the deductions permitted to NET SALES, MICHIGAN shall have no obligation to pay any amounts to LICENSEE even if such deductions should result in a negative amount for NET SALES in any given ROYALTY PERIOD. LICENSEE shall be responsible for the payment of all taxes, duties, levies, and other charges imposed by any taxing authority with respect to the royalties payable to MICHIGAN under this agreement. Should LICENSEE be required under any law or regulation of any government entity or authority to withhold or deduct any portion of the payments on royalties due to MICHIGAN, then the sum payable to MICHIGAN shall be increased by the amount necessary to yield to MICHIGAN an amount equal to the sum it would have received had no withholdings or deductions been made. LICENSEE shall not reduce any amount due, accrued, or paid hereunder by any taxes, fees, deductions or other charges ("Taxes") imposed by any government. MICHIGAN shall cooperate reasonably with LICENSEE in the event LICENSEE elects to assert, at its own expense, any exemption from any such Taxes.

3.6.1 Upon the issuance by LICENSEE of equity interest in LICENSEE (whether in the form of capital stock or otherwise) resulting in proceeds to LICENSEE since its incorporation of not less than a total of \$[ ] (the “THRESHOLD”) in new money only (exclusive of conversion of indebtedness) to one or more third party venture capital funds or institutional investors in one or more rounds of equity financing (the “REQUIRED FUNDING EVENT”), LICENSEE shall transfer to MICHIGAN that number of shares of capital stock or other equity interest of the same type and class of equity security issued in the ROUND that results in LICENSEE reaching the THRESHOLD equal to [ ]% of the FULLY DILUTED equity of LICENSEE (the “APPLICABLE PERCENTAGE”), taking into account all of the equity or rights to acquire equity issued in such ROUND (including all such equity or rights issued in one or more tranches of such ROUND). LICENSEE shall make such transfer pursuant to a stock transfer agreement to be negotiated in good faith by the parties (the “STOCK TRANSFER AGREEMENT”) after LICENSEE has reached the THRESHOLD.

3.6.2 Notwithstanding the foregoing, in the event either (a) no REQUIRED FUNDING EVENT shall have occurred by the date forty eight (48) months after the date of this Agreement (the “EQUITY DEADLINE”), or (b) LICENSEE shall have entered into any agreement or other arrangement prior to such date that will result in a CHANGE OF CONTROL that does not constitute a REQUIRED FUNDING EVENT, LICENSEE shall promptly notify MICHIGAN, and at any time thereafter requested by MICHIGAN, LICENSEE shall instead transfer to MICHIGAN the APPLICABLE PERCENTAGE (as of the date of MICHIGAN’s notice) of the then fully-diluted equity of LICENSEE in the form of the then authorized type and class of capital stock or other equity interest with the most senior rights, determined on the basis of the following order of priority: liquidation preference, conversion rights, anti-dilution protection, dividend or profits preference, redemption and voting. LICENSEE shall make such transfer pursuant to, and subject to the terms of, the STOCK TRANSFER AGREEMENT as of (1) in the case of the foregoing clause (a), the EQUITY DEADLINE, or (2) in the case of the foregoing clause (b), the date immediately prior to the date of closing of the transaction giving rise to the operation thereof.

3.6.3 Within thirty (30) days after the final closing of any ROUND, LICENSEE shall give MICHIGAN written notice of the consummation of such ROUND that includes a report setting forth the basic terms of such ROUND, including, without limitation, the amount of new money raised, the nature of the equity issued (including, without limitation, liquidation preference, conversion rights, anti-dilution protection, dividend or profits preference, redemption and voting rights), the identity of the investors and a summary of the post-financing capitalization of LICENSEE. The obligation of LICENSEE to give such notice shall terminate upon the first to occur of (a) the sale of LICENSEE’S capital stock to the public in a firmly underwritten offering registered under the Securities Act of 1933, as amended, and (b) a CHANGE OF CONTROL.



3.6.4 If LICENSEE proposes to offer, issue, sell or exchange (“OFFER”) any equity securities of LICENSEE, or any securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities (collectively, “NEW SECURITIES”), then LICENSEE shall first deliver to MICHIGAN a written notice of its intent to OFFER such NEW SECURITIES, by email to both: innovationpartnerships@umich.edu and notices@oup.vc. Such notice should specify in reasonable detail the NEW SECURITIES to be OFFERED, including the total number of securities, the applicable rights and preferences associated therewith, the purchase price, the purchaser, and the number of securities eligible for purchase by MICHIGAN under this provision. For thirty days after receipt of the written notice, MICHIGAN or its designee shall have the right to purchase up to 10% of the securities issued in said OFFERING on the same terms and conditions as are OFFERED to the other purchasers in each such financing. MICHIGAN shall be entitled to apportion this right among itself and its INVESTMENT AFFILIATES in such proportions as it deems appropriate. This right shall expire immediately prior to LICENSEE’s firm commitment bona fide initial public offering, and shall not be applicable to securities (a) that are issued to employees, officers or directors of, or consultants or advisors to, LICENSEE pursuant to equity compensation plans or arrangements approved by the Board of Directors of LICENSEE, (b) that are issued upon the conversion, exercise or exchange of other securities outstanding on the date of this Agreement, or (c) that are issued in a stock split or stock split in the nature of dividend by LICENSEE that is paid on a proportionate non-cash basis to all holders of LICENSEE's capital stock.

3.6.5 For purposes of this Section 3.6, (a) “FULLY DILUTED” means the sum of (i) the number of all shares of capital stock or other equity interest of LICENSEE issued and outstanding, including the equity to be transferred to MICHIGAN, (ii) the number of shares of capital stock or other equity interest subject to, or reserved in respect of, any outstanding right to acquire capital stock or other equity interest in LICENSEE, and (iii) all shares of capital stock or other equity or profits interest reserved in respect of any plan or other arrangement for the issuance of capital stock or other equity or profits interest or rights to acquire the same, including, without limitation, any stock option, restricted stock or profits interest plan in place as of the date of the REQUIRED FUNDING EVENT; (ii) “ROUND(S)” means means the sale of capital stock or other equity interest issued in one or more tranches at the same per share or unit price and with identical rights with respect to liquidation preference, conversion, anti-dilution protection, dividend or profits preference, redemption and voting, as applicable; (c) “CHANGE OF CONTROL” means any of (i) the acquisition of LICENSEE by another person or entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of 50% or more of the outstanding voting power of LICENSEE, or (ii) a sale of all or substantially all of the assets of LICENSEE; and (d) “INVESTMENT AFFILIATES” means (i) any entity controlled by MICHIGAN, or (ii) any affiliate of MICHIGAN or any other entity in which MICHIGAN has a

financial interest or investment, provided that such affiliate or entity is an “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, which may include OUP Osage University Partners. The entirety of this Section 3.6 shall survive termination of this Agreement.

#### **ARTICLE 4 - REPORTS**

4.1 Until the FIRST COMMERCIAL SALE, by July 31 of each year LICENSEE shall provide to MICHIGAN a written annual report that includes reports on progress since the prior annual report and general future plans regarding: research and development, regulatory approvals, manufacturing, sublicensing, marketing and SALES. LICENSEE shall notify MICHIGAN within thirty (30) days after each of the following events:

- (a) the filing of an Investigational New Drug Application with the U.S. Food and Drug Administration and/or equivalent filing with the European Medicines Agency and/or Chinese National Medical Products Administration (a “REGULATORY AGENCY”);
- (b) the filing of a New Drug Application with the U.S. Food and Drug Administration or other REGULATORY AGENCY;
- (c) the completion of any phase of clinical trial in any country; and/or
- (d) the marketing approval of any LICENSED PRODUCT in any country.

4.2 LICENSEE shall specifically report to MICHIGAN the FIRST COMMERCIAL SALE within thirty days thereof, and provide a brief description of the products or services subject of the SALE, and terms thereof. After the FIRST COMMERCIAL SALE, LICENSEE shall provide semi-annual reports to MICHIGAN. Specifically, by each July 31 and January 31 (i.e., within one month after each ROYALTY PERIOD closes, including the close of the ROYALTY PERIOD immediately following any termination of this Agreement), LICENSEE shall report to MICHIGAN for the applicable ROYALTY PERIOD:

- (a) number of LICENSED PRODUCTS that were SOLD by LICENSEE and/or each SUBLICENSEE, and an identification of each PATENT RIGHT that forms the basis of each product being a such LICENSED PRODUCT.
- (b) NET SALES, excluding the deductions provided therefor, of LICENSED PRODUCTS that were SOLD by LICENSEE and/or all SUBLICENSEES, and an accounting for the country of SALE and the location of manufacture, including state if in the U.S., for each LICENSED PRODUCT resulting in those NET SALES.
- (c) deductions applicable as provided in the definition for NET SALES above, and an explanation of the rationale(s) therefor.

(d) Sublicense Fees due on payments from SUBLICENSEES under Paragraph 3.1 above, including supporting figures.

(e) foreign currency conversion rate and calculations (if applicable) and total royalties due.

(f) each milestone (e.g. under Article 3 or Article 5) having a deadline during the ROYALTY PERIOD, and a specific identification of whether or not it was achieved.

(g) for each sublicense or amendment thereto completed in the particular ROYALTY PERIOD (including agreements under which LICENSEE will have LICENSED PRODUCTS made by a third party): names, addresses, and U.S.P.T.O. Entity Status (as discussed in Paragraph 4.5) of such SUBLICENSEE; the date of each agreement and amendment; the territory of the sublicense; the scope of the sublicense; and the nature, timing and amounts of all fees, royalties to be paid thereunder.

(h) progress on research and development, regulatory approvals, manufacturing, sublicensing, marketing and SALES, and general plans for the future.

(i) if a FIRST COMMERCIAL SALE was made in the ROYALTY PERIOD, the LICENSEE shall specifically so indicate, and additionally provide the country and date of such SALE, the location of the manufacture of the LICENSED PRODUCT(s), and the circumstances thereof.

LICENSEE shall include the amount of all payments due, and the various calculations used to arrive at those amounts, including the quantity, description (nomenclature and type designation as described in Paragraph 4.3 below), country of manufacture and country of SALE or use of LICENSED PRODUCTS.

If no payment is due, LICENSEE shall so report to MICHIGAN that no payment is due. Failure to provide reports as required under this Article 4 shall be a material breach of this Agreement. LICENSEE agrees to reasonably cooperate with MICHIGAN regarding any questions it may have relating to compliance with this Agreement, for example to discuss the information in reports.

4.3 LICENSEE shall promptly establish and consistently employ a system of specific nomenclature and type designations for LICENSED PRODUCTS to permit identification and segregation of various types where necessary, and shall require the same of SUBLICENSEES.

4.4 LICENSEE shall keep, and shall require SUBLICENSEES to keep, true and accurate records containing data reasonably required for the computation and verification of payments due under this Agreement. LICENSEE shall and it shall require all SUBLICENSEES and those making LICENSED PRODUCTS to: (a) open such records for inspection upon reasonable notice during business hours, and no more than once per year, by either MICHIGAN auditor(s) or an independent certified accountant selected by MICHIGAN, for the purpose of verifying the amount of payments due, and shall provide information to MICHIGAN to facilitate such inspection; and (b) retain such records for six (6) years from date of origination.

The terms of this Article shall survive any termination of this Agreement. MICHIGAN is responsible for all expenses of such inspection, except that if any inspection reveals an underpayment greater than five percent of royalties due MICHIGAN, then LICENSEE shall pay all expenses of that inspection and the amount of the underpayment and interest to MICHIGAN within twenty-one days of written notice thereof. LICENSEE shall also reimburse MICHIGAN for reasonable expenses required to collect the amount underpaid.

4.5 LICENSEE shall provide written notice to MICHIGAN at least 90 days prior to bringing any action, including administratively, seeking either to invalidate any claim of under any MICHIGAN patent rights or a declaration of non-infringement. LICENSEE shall include with such written notice an identification of all prior art it believes may invalidate or render unenforceable any such claim, along with an explanation thereof. LICENSEE agrees to dismiss with prejudice any action filed in violation of this provision.

4.6 So that MICHIGAN may pay the proper U.S. Patent and Trademark Office fees relating to the PATENT RIGHTS, if LICENSEE, any company related to LICENSEE, or any SUBLICENSEE (including optionees) does not qualify as a “Small Entity” under U.S. patent laws, LICENSEE shall notify MICHIGAN immediately. The parties understand that the changes to LICENSEE’s, SUBLICENSEE’s, or optionees’ businesses that might affect entity status include: acquisitions, mergers, hiring of a total of more than 500 total employees, sublicense agreements, and sublicense options.

4.7 LICENSEE shall provide to MICHIGAN an Affordable Access Plan of the scope set forth in this Section 4.7 within three (3) months after the first marketing approval of a LICENSED PRODUCT received by LICENSEE or a SUBLICENSEE from the U.S. Food and Drug Administration or the European Medicines Agency. LICENSEE agrees to use reasonable efforts to make progress toward completing the plans stated in the Affordable Access Plan, as it may be amended from time-to-time.

(a) “Affordable Access Plan” means a written statement setting forth: (a) the specific LMICs in which neither LICENSEE nor any SUBLICENSEE intends to commercialize the LICENSED

PRODUCTS (the “Non-Commercialized Territories”); (b) actions to be taken by LICENSEE and, if applicable, SUBLICENSEE(s) that reasonably intended to support affordable access in the Non-Commercialized Territories by patients to products that would constitute LICENSED PRODUCTS if covered by one or more of the PATENT RIGHTS; and (c) actions to be taken by LICENSEE and, if applicable, SUBLICENSEE(s) that are reasonably intended to support affordable access for the vulnerable, underserved and special needs populations in the U.S. Such actions, as referred to above, shall at a minimum include strategies, such as licensing or partnerships (which may include, for example, partnerships with non-profit organizations), and timelines therefor. As used herein, “LMICs” means Low and Middle Income Countries as the term is defined and/or used by the World Bank Group, its primary recognized member organizations, and/or successor of any of the foregoing. Upon LICENSEE’s request, MICHIGAN agrees to meet with LICENSEE to assist in the drafting of the Affordable Access Plan.

(b) Notwithstanding the foregoing, in lieu of providing an Affordable Access Plan, LICENSEE may instead submit a reasonably detailed written explanation as to why LICENSEE believes that an Affordable Access Plan is unreasonable or infeasible (the “Infeasibility Statement”), which is due on the same date that the Affordable Access Plan would have been due. After LICENSEE submits an Infeasibility Statement to MICHIGAN, LICENSEE agrees to promptly (but in no event less than two months thereafter) meet with MICHIGAN in person or by video conference to discuss the Infeasibility Statement (the “Initial Discussion”). If, following such meeting, MICHIGAN concludes that the Affordable Access Plan requirements of this Agreement are reasonable and desirable, LICENSEE shall nevertheless provide an Affordable Access Plan to MICHIGAN within three (3) months after MICHIGAN’S written request following the Initial Discussion (and, for clarity, the remaining provisions relating to the Affordable Access Plan shall apply).

(c) If LICENSEE fails to follow any plan, take any action, or meet any milestone by a deadline that is specifically or generally stated in the Affordable Access Plan, it shall promptly and in good faith negotiate an amended Affordable Access Plan with MICHIGAN. In addition, within thirty (30) days after a request by MICHIGAN (but not to be requested any more than once in any calendar year), LICENSEE agrees to confer with MICHIGAN in good faith to review LICENSEE’s progress, and to consider in good faith any reasonable modifications suggested by MICHIGAN concerning LICENSEE’s Affordable Access Plan (“Progress Discussion”). MICHIGAN may invite a designated entity to join either the Initial Discussion or Progress Discussion, provided that such discussions shall at all times be made subject to the confidentiality obligations of this Agreement (or another mutually agreed-upon nondisclosure agreement).

**ARTICLE 5 - DILIGENCE**

5.1 LICENSEE shall use commercially reasonable efforts to bring a full scope of LICENSED PRODUCTS to market through a thorough, vigorous and diligent program for utilizing the PATENT RIGHTS and to continue active, diligent marketing efforts throughout the life of this Agreement. LICENSEE has the responsibility to do all that is legally required and commercially reasonable to obtain and retain any governmental approvals to manufacture and/or sell LICENSED PRODUCTS for all relevant activities of LICENSEE and SUBLICENSEES. If the commercialization of multiple LICENSED PRODUCTS is commercially reasonable, then the requirements of this paragraph shall apply to all such LICENSED PRODUCTS. Further, for the sake of clarity, LICENSEE must make commercially reasonable amounts or levels of LICENSED PRODUCTS available.

5.2 Without limiting Paragraph 5.1, LICENSEE agrees to reach the following commercialization and research and development milestones for the LICENSED PRODUCTS (together the "MILESTONES") by the following dates:

1) \_\_\_\_\_

2) \_\_\_\_\_

3) LICENSEE shall complete the REQUIRED FUNDING CLOSING by

\_\_\_\_\_.

5.3 LICENSEE must achieve each MILESTONE on or before the deadline dates indicated and MICHIGAN shall have the sole discretion to determine the validity of a MILESTONE being reached. LICENSEE shall notify MICHIGAN within ten days after each such deadline as to whether or not such MILESTONE was met. If LICENSEE fails to meet any MILESTONE under this Article by the date of any MILESTONE deadline, LICENSEE will be deemed to be in material breach of this Agreement, and MICHIGAN may terminate the Agreement effective on thirty days notice, unless LICENSEE achieves the MILESTONE within this thirty day period. Notwithstanding, MICHIGAN may terminate this Agreement immediately if LICENSEE fails to achieve a MILESTONE by the indicated date and does not provide the notice to MICHIGAN referred to above.

5.4 MICHIGAN has the right to immediately terminate this license upon written notice if the FIRST COMMERCIAL SALE does not occur on or before the date \_\_\_\_ years after the EFFECTIVE DATE.

## **ARTICLE 6 - SUBLICENSING**

6.1 LICENSEE shall notify MICHIGAN in writing of every sublicense agreement and each amendment thereto within thirty days after their execution, and indicate the name of the SUBLICENSEE, the territory of the sublicense, the scope of the sublicense, and the nature, timing and amounts of all fees and royalties to be paid thereunder, and whether or not the SUBLICENSEE has greater or fewer than 500 employees. Upon request, LICENSEE shall provide MICHIGAN with a copy of sublicense agreements.

6.2 LICENSEE shall not receive from SUBLICENSEES anything of value other than cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of MICHIGAN.

6.3 Each sublicense granted by LICENSEE under this Agreement shall provide for its termination upon termination of this Agreement. Each sublicense shall terminate upon termination of this Agreement unless LICENSEE has previously assigned its rights under the sublicense to MICHIGAN and MICHIGAN has agreed at its sole discretion in writing to such assignment.

6.4 LICENSEE shall require that all sublicenses: (a) be consistent with the terms and conditions of this Agreement; (b) contain the SUBLICENSEE'S acknowledgment of the disclaimer of warranty and limitation on MICHIGAN's liability, as provided by Article 9 below; and (c) contain provisions under which the SUBLICENSEE accepts duties at least equivalent to those accepted by the LICENSEE in the following Paragraphs: 4.4 (duty to keep records), 10.1 (duty to defend, hold harmless, and indemnify MICHIGAN), 10.3 (duty to maintain insurance), 13.4 (duty to properly mark LICENSED PRODUCTS with patent notices), and 13.6 (duty to restrict the use of MICHIGAN's name).

## **ARTICLE 7 - PATENT APPLICATIONS AND MAINTENANCE**

7.1 MICHIGAN shall have the right to control all aspects of filing, prosecuting, and maintaining all of the patents and patent applications that form the basis for the PATENT RIGHTS, including (a) administrative reexaminations and reviews; and (b) disputes (including litigation) regarding inventorship and derivation, and interferences. LICENSEE shall fully cooperate with MICHIGAN in activities relating to the PATENT RIGHTS, including said activities. Upon MICHIGAN's request, to the fullest extent permitted by law, LICENSEE shall apply for and prosecute, or support in any reasonable way MICHIGAN's application for, a patent term extension for patents included in the PATENT RIGHTS.

7.2 MICHIGAN shall notify LICENSEE of all information received by MICHIGAN relating to the filing and prosecution of the PATENT RIGHTS, and shall make reasonable efforts to allow LICENSEE to review, comment, and advise upon such information. LICENSEE shall hold such information confidential and to use the information provided by MICHIGAN only for the purpose of advancing MICHIGAN's PATENT RIGHTS.

7.3 LICENSEE shall reimburse MICHIGAN for all fees and costs relating to the activities described in this Article. Such reimbursement shall be made within thirty days of receipt of MICHIGAN's invoice and shall be subject to the interest and other requirements specified in Article 4 above. LICENSEE agrees that unless it fully complies with all Paragraphs in this Agreement relating to entity status, LICENSEE shall be obligated to reimburse MICHIGAN for "Large Entity" patent fees.

### **ARTICLE 8 - ENFORCEMENT**

8.1 Each party shall promptly advise the other in writing of any known acts of potential infringement of the PATENT RIGHTS by another party. [After the earlier of (a) the FIRST COMMERCIAL SALE or (b) LICENSEE makes any required Investigational Device Exemption or Investigational New Drug Application (or equivalent) filing with the Food and Drug Administration, LICENSEE has the first option to enforce the PATENT RIGHTS against infringement by other parties within the TERRITORY and the FIELD OF USE, including those prior to the EFFECTIVE DATE. LICENSEE shall not file any suit without (a) first performing a thorough, diligent investigation of the merits of such suit, including with respect to the validity and enforceability of the PATENT RIGHTS; (b) there being reasonable legal and economic bases for doing so; and (c) notifying MICHIGAN twenty days before any such filing. This right to enforce includes filing, prosecuting, and settling all infringement actions at its expense, except that LICENSEE shall make any such settlement only with the advice and consent of MICHIGAN. LICENSEE has the right to file suit using counsel of its choosing, subject to MICHIGAN's approval, which shall not be unreasonably withheld or delayed. LICENSEE may grant to third parties the right to enforce hereunder, but only with the express written permission of MICHIGAN.

8.2 If LICENSEE has complied with Paragraph 8.1, MICHIGAN shall provide reasonable assistance to LICENSEE with respect to such actions, but only if LICENSEE promptly reimburses MICHIGAN for out-of-pocket expenses incurred in connection with any such assistance rendered at LICENSEE'S request or reasonably required by MICHIGAN, including but not limited to expenses incurred in complying with discovery duties. LICENSEE shall defend, indemnify and hold harmless MICHIGAN with respect to any claims asserted by an alleged infringer reasonably related to the enforcement of the PATENT RIGHTS under this



Article, including but not limited to antitrust counterclaims and claims for recovery of attorney fees.

8.3 MICHIGAN and its employees have a vital interest in the validity, interpretation, and enforceability of the PATENT RIGHTS. If a third party files a suit, including as a counterclaim, alleging that any of the PATENT RIGHTS is invalid or unenforceable, then the parties shall jointly control the defense of such claim. Each party shall consult with the other with respect to the defense of such claim, and shall reasonably consider the other party's input. In furtherance of such joint control, at the onset of such claim and as reasonable during the pendency of any such claim, the parties shall meet and confer in good faith to set a plan for handling the defense thereof. The parties expect that in general LICENSEE will have the right to lead daily activities, including but not limited to discovery, relating to the defense. Notwithstanding, in the event that the parties cannot agree on how to proceed with respect to such claim, MICHIGAN shall have the right to control the defense thereof on either a temporary or permanent basis. LICENSEE shall be responsible for the reasonable costs and fees associated with the activities under this Paragraph 8.3. The parties shall consider reasonable controls on costs and fees as part of an aforementioned meet and confer with respect to the handling of the defense. Notwithstanding, if a third party asserts jurisdiction for any such action solely as the result of acts of MICHIGAN, then MICHIGAN shall be responsible for such reasonable costs and fees.

8.4 If LICENSEE enforces the PATENT RIGHTS and recovers damages in litigation or settlement thereof, the award shall be applied first to satisfy LICENSEE's and MICHIGAN's reasonable expenses and legal fees for the litigation. The remaining balance shall be divided equally between LICENSEE and MICHIGAN. This provision shall control the division of revenues where a sublicense, covenant not to sue, or assignment of rights is granted as part of a settlement of such lawsuit (including prospective rights).

#### **ARTICLE 9 - NO WARRANTIES; LIMITATION ON MICHIGAN'S LIABILITY**

9.1 **MICHIGAN GRANTS THE RIGHTS HEREIN "AS IS." MICHIGAN MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO DESIGN, DEVELOPMENT, MANUFACTURE, USE, SALE OR OTHER DISPOSITION BY LICENSEE OR SUBLICENSEES OF LICENSED PRODUCTS. LICENSEE AND SUBLICENSEES ASSUME THE ENTIRE RISK AS TO PERFORMANCE OF LICENSED PRODUCTS.**

9.2 MICHIGAN makes no representations or warranties that any claim within the PATENT RIGHTS is or will be held valid, patentable, or enforceable, or that the manufacture, importation,

use, offer for SALE, SALE or other distribution of any LICENSED PRODUCTS will not infringe upon any patent or other rights.

9.3 In no event shall MICHIGAN be responsible or liable for any direct, indirect, special, punitive, incidental, or consequential damages or lost profits or other economic loss or damage with respect to LICENSED PRODUCTS, or the PATENT RIGHTS to LICENSEE, SUBLICENSEES or any other individual or entity regardless of legal or equitable theory. The above limitations on liability apply even though MICHIGAN may have been advised of the possibility of such damage. The only liabilities that are assumed by MICHIGAN are those specifically described in this Agreement.

9.4 With respect to any breach of this Agreement, in no event shall either party hereunder be liable to the other for any indirect, special, punitive, or consequential damages of any kind, whatsoever resulting from any breach or default of this Agreement regardless of legal or equitable theory.

9.5 MICHIGAN and LICENSEE represent and warrant that as of the EFFECTIVE DATE this Agreement constitutes the legal, valid and binding obligation of MICHIGAN and LICENSEE, respectively, enforceable against the parties in accordance with its terms.

#### **ARTICLE 10 - INDEMNITY; INSURANCE**

10.1 LICENSEE shall defend, indemnify and hold harmless and shall require SUBLICENSEES to defend, indemnify and hold harmless MICHIGAN for and against any and all claims, demands, damages, losses, and expenses of any nature (including attorneys' fees and other litigation expenses) ("Claims") arising from or in connection with, any of the following: (1) any manufacture, use, SALE or other disposition by LICENSEE, SUBLICENSEES or transferees of LICENSED PRODUCTS; and/or (2) the use by any person of LICENSED PRODUCTS made, used, sold or otherwise distributed by LICENSEE or SUBLICENSEES. For clarity, this Paragraph 10.1 does not include any Claims resulting from any breach by either LICENSEE or MICHIGAN this Agreement.

10.2 MICHIGAN is entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, damages, losses and expenses under Paragraph 10.1 above. LICENSEE shall not settle any such legal action with an admission of liability of MICHIGAN without MICHIGAN's written approval.

10.3 Prior to any distribution or commercial use of any LICENSED PRODUCT by LICENSEE, LICENSEE shall purchase and maintain in effect commercial general liability insurance, product liability insurance, and errors and omissions insurance which shall protect

LICENSEE and MICHIGAN with respect to the events covered by Paragraph 10.1, and LICENSEE shall require the same of any SUBLICENSEE. Each such insurance policy must provide reasonable coverage for all claims with respect to any LICENSED PRODUCTS manufactured, used, sold, licensed or otherwise distributed by LICENSEE -- or, in the case of a SUBLICENSEE's policy, by said SUBLICENSEE -- and must specify MICHIGAN as an additional insured. LICENSEE shall furnish proof of such insurance to MICHIGAN, upon request.

## **ARTICLE 11 - TERM AND TERMINATION**

11.1 If LICENSEE fails to make any payment due to MICHIGAN, upon ten days' written notice by MICHIGAN, this Agreement shall automatically terminate unless MICHIGAN specifically extends such date in writing. Such termination shall not foreclose MICHIGAN from collection of any amounts remaining unpaid or seeking other legal relief. If LICENSEE ceases to operate its business, or liquidates or dissolves, this Agreement shall immediately terminate upon MICHIGAN's attempt to deliver a termination notice to the address for notices provided herein.

11.2 Upon any material breach or default of this Agreement by LICENSEE (other than as specifically provided herein, the terms of which shall take precedence over the handling of any other material breach or default under this Paragraph), MICHIGAN has the right to terminate this Agreement effective on thirty days' written notice to LICENSEE. Such termination shall become automatically effective upon expiration of the thirty day period unless LICENSEE cures the material breach or default before the period expires.

11.3 Upon any termination of this Agreement, and except as provided herein to the contrary, all rights and obligations of the parties hereunder shall cease, except any previously accrued rights and obligations and further as follows: (a) obligations to pay royalties and other sums, or to transfer equity or other consideration, including payments upon changes in control, accruing hereunder up to the day of such termination, whether or not this Agreement provides for a number of days before which actual payment is due and such date is after the day of termination and whether or not a required funding event or other stock transfer trigger or change of control event has yet been met; (b) MICHIGAN's rights to inspect books and records as described in Article 4, and LICENSEE's obligations to keep such records for the required time; (c) any cause of action or claim of LICENSEE or MICHIGAN accrued or to accrue because of any breach or default by the other party hereunder; (d) the provisions of Articles 1, 9, 10, and 13; and (e) all other terms, provisions, representations, rights and obligations contained in this Agreement that by their sense and context are intended to survive until performance thereof by either or both

parties. Termination by either party hereunder shall not alter or affect any other rights or relief that either party may be entitled to under law.

11.4 Upon termination of this Agreement, if LICENSEE has filed patent applications or obtained patents to any modification or improvement to LICENSED PRODUCTS within the scope of the PATENT RIGHTS, LICENSEE agrees upon request to enter into good faith negotiations with MICHIGAN or MICHIGAN's future licensee(s) for the purpose of granting licensing rights to said modifications or improvements in a timely fashion and under commercially reasonable terms.

11.5 If LICENSEE or a SUBLICENSEE, or any affiliate of the foregoing, asserts the invalidity or unenforceability of any claim included in the PATENT RIGHTS, including by way of litigation or administrative proceedings, either directly or through any other party, then MICHIGAN shall have the right to immediately terminate this Agreement upon written notice to LICENSEE.

11.6 If LICENSEE files a petition in bankruptcy, has an involuntary petition in bankruptcy filed against LICENSEE that is not dismissed within sixty days after the filing thereof, or makes a general assignment for the benefit of creditors, this Agreement shall immediately terminate upon MICHIGAN's attempt to deliver a termination notice to the address for notices provided herein. If LICENSEE makes or attempts to make an assignment for the benefit of creditors, or if proceedings in voluntary or involuntary bankruptcy or insolvency are instituted on behalf of or against LICENSEE, or if a receiver or trustee is appointed for the property of LICENSEE, this Agreement shall automatically terminate. LICENSEE shall notify MICHIGAN of any such event mentioned in this Paragraph as soon as reasonably practicable, and in any event within five days after any such event.

## **ARTICLE 12 - NOTICES**

12.1 Any notice, request, or report required or permitted to be given or made under this Agreement by either party is effective when mailed if sent by recognized overnight carrier, certified or registered mail, or electronic mail followed by confirmation by U.S. mail, to the applicable address set forth below (or such other address as such party specifies by written notice given in conformity herewith). Any notice, request, or report not so given is not effective until actually received by the other party.

(a) For the purpose of all written communications and notices between the parties, other than as specified below (e.g., other than reports, invoices/payments, and patents), their addresses are:

To MICHIGAN:

Innovation Partnerships  
Attn: U-M Agreement No. \_\_\_\_\_  
University of Michigan  
1600 Huron Parkway, 2nd Floor  
Ann Arbor, MI 48109-2590

To LICENSEE:

{Licensee, Inc.}  
{Street address}  
{City, State ZIP}

(b) Reports. For the purpose of all communication between the parties regarding reports due under Article 4 by the LICENSEE, their addresses are:

To MICHIGAN: *Please send all reports via email to:* licensee-reports@umich.edu

To LICENSEE: {Contact for reports, if different}

(c) Payments. For the purpose of all communication between the parties regarding payments due by the licensee under this license agreement, their addresses are:

To MICHIGAN: \_\_\_\_\_. See Paragraph 3.3 for more information.

To LICENSEE: {Contact for billing, if different}

### **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

13.1 This Agreement shall be governed by and construed under the laws of the state of Michigan without regard for principles of choice of law, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted. Any claims, demands, or actions asserted against MICHIGAN, its Regents, fellows, officers, employees or agents shall only be brought in the Michigan Court of Claims. LICENSEE, its successors, and assigns consent to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this agreement or the relationship between the parties.

13.2 MICHIGAN and LICENSEE agree that this Agreement sets forth their entire understanding concerning the subject matter of this Agreement. The parties may amend this Agreement from time to time, such as to add new rights, but no modification will be effective unless both MICHIGAN and LICENSEE agree to it in writing.

13.3 If a court of competent jurisdiction finds any term of this Agreement invalid, illegal or unenforceable, that term will be curtailed, limited or deleted, but only to the extent necessary to remove the invalidity, illegality or unenforceability, and without in any way affecting or impairing the remaining terms.

13.4 LICENSEE agrees to mark the LICENSED PRODUCTS sold in the United States with all applicable United States patent numbers as necessary to meet the requirements of 35 U.S.C. 287 so that the full benefits of patent enforcement may be realized. All LICENSED PRODUCTS shipped to or sold in other countries shall be marked to comply with the patent laws and practices of the countries of manufacture, use and SALE.

13.5 No waiver by either party of any breach of this Agreement, no matter how long continuing or how often repeated, is a waiver of any subsequent breach thereof, nor is any delay or omission on the part of either party to exercise or insist on any right, power, or privilege hereunder a waiver of such right, power or privilege. In no event shall any waiver be deemed valid unless it is in writing and signed by an authorized representative of each party.

13.6 LICENSEE shall, and shall require its affiliates to, refrain from using and to require SUBLICENSEES to refrain from using the name of MICHIGAN or its employees in publicity or advertising without the prior written approval of MICHIGAN. Reports in scientific literature and presentations of joint research and development work are not publicity. Notwithstanding this provision, without prior written approval of MICHIGAN, LICENSEE and SUBLICENSEES may state publicly that LICENSED PRODUCTS were developed by LICENSEE based upon an invention(s) developed at the University of Michigan and/or that the PATENT RIGHTS were licensed from the University of Michigan.

13.7 LICENSEE agrees to comply with all applicable laws and regulations, including but not limited to all United States laws and regulations controlling the export of commodities and technical data. In no case may LICENSEE take any action that would cause MICHIGAN to be in violation of any applicable export control, import, or economic sanctions law or regulation. LICENSEE shall be solely responsible for any such violation involving LICENSEE or its SUBLICENSEES, and shall defend, indemnify, and hold harmless MICHIGAN if any legal action of any nature results from any such violation. MICHIGAN makes no representation or warranty (a) that MICHIGAN has analyzed the classification of, or restriction for, any product or

material related to this Agreement (“Materials”) under any export laws of the United States or any other country; or (b) that either LICENSEE or MICHIGAN has the legal ability to use any Materials, export any Materials, or subject any Materials to a deemed export. By way of example only, LICENSEE may be obligated under the laws of the United States and/or other countries to seek a license or identify an exemption under applicable law prior to (a) transferring any Materials to any location outside the United States (even if to a location controlled by LICENSEE) and/or (b) allowing access to any Materials by, or transferring any Materials to, the citizen of any country other than the United States (even if an employee of LICENSEE and such employee is located in the United States).

13.8 The relationship between the parties is that of independent contractor and contractee. Neither party is an agent of the other in connection with the exercise of any rights hereunder, and neither has any right or authority to assume or create any obligation or responsibility on behalf of the other.

13.9 Neither party hereto is in default of any provision of this Agreement for any failure in performance resulting from acts or events beyond the reasonable control of such party, such as Acts of God, acts of civil or military authority, civil disturbance, war, strikes, fires, power failures, natural catastrophes or other "force majeure" events.

13.10 LICENSEE shall not assign this Agreement without the prior written consent of MICHIGAN. LICENSEE shall not pledge any of the license rights granted in this Agreement as security for any creditor. Any attempted assignment or pledge without the express prior consent of MICHIGAN shall be void from the beginning. No permitted assignment by LICENSEE will be effective until the intended assignee agrees in writing to accept all of the terms and conditions of this Agreement, and such writing is provided to MICHIGAN.

13.11 If the registration, recordation, or reporting to a national or supranational agency of this Agreement, its terms, or assignment thereof is or becomes required or advisable (e.g., as a prerequisite to enforceability of the Agreement in such nation), LICENSEE shall, at its expense, promptly undertake such action. LICENSEE shall provide prompt notice thereof to MICHIGAN along with copies of relevant documentation.

#### **ARTICLE 14 - CONFLICT OF INTEREST MANAGEMENT**

14.1 This Agreement and the licenses granted hereunder are subject to approval by a two-thirds majority vote of the Board of Regents of the University of Michigan.

14.2 Unless MICHIGAN provides appropriate formal approvals, continuing development of LICENSED PRODUCTS shall take place without the use of MICHIGAN funds, facilities, or other resources of or funds administered by MICHIGAN.

LICENSEE shall cooperate with MICHIGAN in developing and implementing appropriate plans for management of potential conflicts of interest and conflicts of commitment of MICHIGAN employees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

FOR LICENSEE

FOR THE REGENTS OF THE  
UNIVERSITY OF MICHIGAN

By \_\_\_\_\_  
(authorized representative)

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_