**LICENSE AGREEMENT

by and between

[LICENSOR]
and
[LICENSEE]

dated as of [●]**

**IMPORTANT NOTE:** between Spring 2020 and Fall 2022, a group of universities, venture capital firms, and attorneys worked together to streamline the process of spinning life science startups out of universities. Those efforts, as profiled in BioCentury [here](https://www.biocentury.com/article/645701), began with the publication of three documents:

* A set of recommendations and guidelines for structuring term sheets for life science startups being spun out of university tech transfer offices - <https://techventures.columbia.edu/term-sheet-recommendations-for-launching-university-startups>
* A set of recommendations for process improvements on the negotiating process when VCs and entrepreneurs negotiate with university tech transfer offices for life science startups- <https://techventures.columbia.edu/recommended-process-improvements-for-launching-university-startups>
* Approximately one year later, the group released and endorsed the US-BOLT (University Startup Basic Out-Licensing Term Sheet), which is a full term sheet based on the first two documents above. The latest version of that document can be always found in the document libraries for the Association of University Technology Managers (AUTM) and the National Venture Capital Association (NVCA).

In the Fall of 2023, a subset of those participants created a sample template of a full license agreement, building on the principles of the US-BOLT Term Sheet. What do we mean by “sample”? The document that follows is meant to serve as a *reasonable starting point* for a life science startup license agreement which serves as a compromise for many terms that have historically been difficult to negotiate. Many of the participants in the prior work were clear that they already have their own templates, and hence may not use this one. For many of the participants, there were at least some individual clauses herein which would not be acceptable under their institutional or corporate policies (we have tried to highlight those with footnotes). However, for institutions, entrepreneurs, or VCs who do not have their own existing approach, or who are interested in finding middle ground more expeditiously, this sample license agreement may be a good starting point. We hope this template will save both time and money during your negotiations. Feel free to use it in full, in part, edited or unedited, or not at all.

If you have questions or comments, feel free to email techtransfervcstartups@gmail.com, and we will do our best to reply. We wish you the best of luck with the launch of your startup!

**LICENSE AGREEMENT**

**Model Draft: for discussion purposes**

This License Agreement (this “**Agreement**”) is dated as of [●] (the “**Effective Date**”), and is entered into by and between [Licensor], a \_\_\_\_\_\_\_\_\_ (“**Licensor**”), and [Licensee], a \_\_\_\_\_\_\_\_\_ (“**Licensee**”). Licensor and Licensee are each sometimes referred to herein as a “**Party**” or collectively as the “**Parties**.”

**RECITALS**

**WHEREAS**, Licensor is the [owner] of certain Licensed Technology and has the [exclusive] right to grant licenses under such Licensed Technology[[1]](#footnote-1); and

**WHEREAS**, Licensee desires to obtain a license under the Licensed Technology upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, Licensor and Licensee hereby agree as follows:

# DEFINITIONS

## “**Accounting Standards**” means, with respect to a Person, GAAP (generally accepted accounting principles as practiced in the United States) or IFRS (International Financial Reporting Standards), in each case, as generally and consistently applied by such Person.

## “**Achievement Date**” has the meaning set forth in Section 3.1(b).

## “**Affiliate**” means any Person which, directly or indirectly, Controls another Person, is Controlled by another Person, or is under common Control with another Person. “**Control**” means having the actual present capacity to elect a majority of the directors, or the power to direct greater than 50% of the voting rights entitled to elect directors of such Person; provided, however, that with respect to any Person in a country where the local law will not permit majority foreign equity participation, “**Control**” means the ownership or control (directly or indirectly) of the maximum percentage of such outstanding stock or voting rights permitted by local law. A Person will be deemed an Affiliate of Licensee solely for the term during which it satisfies the foregoing definition. [VC and its affiliated funds and their respective portfolio companies will not be deemed Affiliates.][[2]](#footnote-2)

## “**Active Ingredient**” means an active ingredient as defined in 21 CFR. 210.3(b)(7).

## “**Agreement**” has the meaning set forth in the preamble.

## “**Assignee**” has the meaning set forth in Section 4.2(b).

## “**CY**” means calendar year.

## “**Change of Control**” means (a) a consolidation or merger of the Licensee with or into any other Person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shares of capital stock of the Licensee immediately prior to such consolidation, merger or reorganization continue to represent a majority of the voting power of the surviving Person immediately after such consolidation, merger or reorganization; (b) any transaction or series of related transactions to which the Licensee is a party in which in excess of 50% of the Licensee’s voting power is transferred; or (c) the sale or transfer of Licensee’s business in its entirety, or all or substantially all of the Licensee’s assets to which the Agreement pertains, or the exclusive license of all or substantially all of the Licensee’s material intellectual property; provided that a Change of Control shall not include any transaction or series of transactions principally for *bona fide* equity financing purposes in which cash is received by the Licensee or any successor, indebtedness of the Licensee is cancelled or converted, or a combination thereof.

## “**Combination Product**” means a combination of (a) a Licensed Compound and (b) Other Components, where such combinations of (a) and (b) are co-formulated, co-packaged or sold under one pricing scheme (whether payment of such price is paid to the same or to more than one seller).

## “**Commercially Reasonable Efforts**” means, with respect to Licensee’s obligations as to a Licensed Product, the carrying out of such obligations with a level of efforts and resources consistent with those typically expended by a similarly situated Person in the applicable industry for the research, development and/or commercialization of a similarly situated therapeutic [or diagnostic product] at a similar stage of development and/or commercialization as such Licensed Product, taking into account the anticipated value of the commercial opportunity, the prevailing regulatory environment (including the likelihood of receiving regulatory approval, and regulatory or data exclusivity), the proprietary position of the Licensed Product, the expected and actual competitiveness of alternative Third Party products in the marketplace, and other relevant scientific, technical, and commercial factors.

## “**Cover**” or “**Covered By**”

[***For a Patent-only license***:]

[means the manufacture/making, use, marketing, sale, offer to sell, import, export, distribution, rent, end-use license or lease of a product, method or service, which absent the licenses to be granted in accordance with this Agreement, would infringe, or induce or contribute to infringement of, any Patent Rights.]

[***For a Patent and Know-How License***:]

[means the manufacture/making, use, marketing, sale, offer to sell, import, export, distribution, rent, end-use license or lease of a product, method or service (a) which absent the licenses to be granted in accordance with this Agreement, would infringe, or induce or contribute to infringement of, any Patent Rights; and/or (b) that uses, incorporates, or is discovered, developed or produced through the use of any Licensed Know-How.]

## “**Development Milestone**” has the meaning set forth in Section 4.7.

## “**Development Milestone Payment**” has the meaning set forth in Section 4.7.

## “**Diligence Milestone**” has the meaning set forth in Section 3.1(b).

## “**Dilution Cap**” has the meaning set forth in Section 4.2(a).

## “**Dispute**” has the meaning set forth in Section 12.1(a).

## “**Distributor**” means any Person appointed by a Selling Party to distribute, market and sell Licensed Product, with or without packaging rights, in one or more countries in the Territory, in circumstances where such Person purchases its requirements of Licensed Product from the Selling Party, but does not otherwise make any royalty or other payment to the Selling Party in consideration of intellectual property rights with respect to such Licensed Product.

## “**Effective Date**” has the meaning set forth in the preamble.

## [**Equity Agreements**” means [names of the equity agreements], dated as of [DATE], by and between Licensor and Licensee][[3]](#footnote-3)

## “**Extension Fee**” has the meaning set forth in Section 3.2.

## “**Field of Use**” means [any and all uses [in humans]]. [[4]](#footnote-4)

## “**First Commercial Sale**” means the first sale, rental, or lease, in all cases through a bona fide arm’s-length transaction, or commercial use, of any Licensed Product by a Selling Party, excluding Non-Commercial Sales as defined in Section 1.34.

## “**Fully Diluted Basis**” means the total number of shares of Licensee’s issued and outstanding common stock, assuming (a) the conversion of all issued and outstanding securities convertible into common stock; (b) the exercise of all issued and outstanding warrants or options, regardless of whether then exercisable; and (c) the issuance, grant, and exercise of all securities reserved for issuance pursuant to any Licensee stock or stock option plan then in effect.

## “**Improvement**” means any invention, patentable or otherwise, conceived by or under the direction of the [Principal Investigator] within [1-3] years from the Effective Date where the invention (a) is not encumbered by any Third Party rights, (b) has been disclosed to Licensor’s technology licensing office, and (c) for patentable Improvements, would necessarily infringe at least one Valid Claim in the Field of Use, if such Valid Claim were to be issued.

## “**Indemnitees**” has the meaning set forth in Section 8.1.

## “**Know-How Product**” means (a) any product, method, or service that is Covered by Licensed Know-How, but excludes Patent Products and (b) which has been nominated as a development candidate within [5] years from the Effective Date.[[5]](#footnote-5)

## “**Licensed Compound**” means any molecule or compound that constitutes a Patent Product or Know-How Product that is included within a Combination Product.

## “**Licensed Know-How**” means any know-how, technical information, tangible materials and/or data, that (a) is expressly identified in Exhibit B or (b) was developed at Licensor by or under the direction of [Principal Investigator] prior to the Effective Date; but excluding any know-how, technical information or data that was in the public domain prior to the Effective Date.

## “**Licensed Products**” means Patent Products and Know-How Products.

## “**Licensed Technology**” means Patent Rights and Licensed Know-How.

## “**Licensee**” has the meaning set forth in the preamble.

## “**Licensee Patents**” has the meaning set forth in Section 1.38.

## "**Licensee Technology”** means Licensee Patents and any know-how, technical information, tangible materials and/or data that is owned or developed by Licensee without use or reference to any Licensed Technology.

## “**Licensor**” has the meaning set forth in the preamble.

## “**Net Sales**” means, with respect to a Licensed Product, for any period, the total amount billed or invoiced on sales of such Licensed Product during such period by the Selling Party in the Territory to Third Parties (including Third Party wholesalers and Third Party Distributors), in bona fide arm’s-length transactions, less the following documented deductions[[6]](#footnote-6), and in each case related specifically (or reasonably allocated by such Selling Party in accordance with its standard policies and procedures consistently applied across its products) to the Licensed Product, and not otherwise recovered by or reimbursed to the Selling Party:

### trade, cash and quantity discounts, charge-back payments, and rebates actually granted to trade customers, managed health care organizations, pharmaceutical benefit managers, group purchasing organizations, and national, state, or local governments;

### credits, rebates, or allowances actually allowed upon prompt payment or on account of claims, damaged goods, rejections, or returns of such Licensed Product, including in connection with recalls and retroactive price reductions;

### taxes to the extent included in the gross amount invoiced (excluding income or franchise taxes of any kind), duties, tariffs, mandated contribution, or other governmental charges levied on the sale of such Licensed Product, including VAT (net of reimbursement of any value added taxes actually received), excise taxes and sales taxes, that the Selling Party allocates to sales of such Licensed Product in accordance with its standard policies and procedures consistently applied across its products, as applicable;

### the portion of administrative fees paid during the relevant time period to group purchasing organizations, pharmaceutical benefit managers or Medicare Prescription Drug Plans relating to such Licensed Product;

### any invoiced amounts from a prior period that are not collected and are written off by the Selling Party, including bad debts (provided that if the debt is thereafter paid, the corresponding amount shall be added to the Net Sales for the period during which it is paid);

### that portion of the annual fee on prescription drug manufacturers imposed by the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (as amended) to the extent (a) reasonably allocable to sales of such Licensed Product and (b) the Selling Party actually includes such fee as a deduction from gross revenue in its [publicly filed] financial reports;

### packaging, freight, postage, shipping, transportation, warehousing, handling, export/import and insurance charges, in each case, actually allowed or paid for delivery of such Licensed Product, and any customary payments with respect to such Licensed Product actually made to wholesalers or other Distributors, in each case, actually allowed or paid for distribution and delivery of such Licensed Product, to the extent billed on actual invoices;

### any sales, credits, or allowances given or made with respect to such Licensed Product for wastage replacement; and

### any other similar and customary deductions that are consistent with Accounting Standards as consistently applied by Selling Party to all of its products, but which may not be duplicative of the above deductions.

For Combination Products, Net Sales will be calculated as follows:

### If the Licensed Product and all Other Components of the Combination Product were sold separately during the same or immediately preceding calendar quarter, the proration factor will be determined by the formula [A / (A+B)], where A is the weighted average[[7]](#footnote-7) invoice price of all Licensed Product components during such period when sold separately from the Other Component(s), and B is the weighted average gross invoice price of the Other Components during such period when sold separately from the Licensed Product (as applicable);

### If during the same or immediately preceding calendar quarter, the Licensed Product components containing only the Licensed Compound as its Active Ingredient are sold separately from the Other Components, but the Other Components in such Combination Product are not sold separately, then the proration factor will be determined by the formula [A / C], where A is the average gross sales price of all Licensed Product components containing only the Licensed Compound as its Active Ingredient during such period when sold separately from the Other Components, and C is the average gross sales price of the Combination Product during such period;

### If during the same or immediately preceding calendar quarter, the Licensed Product components containing only the Licensed Compound as its Active Ingredient are not sold separately from the Other Components, but the Other Components in such Combination Product are sold separately, then the proration factor will be determined by the formula [(C- B) / C], where B is the average gross sales price of the Other Components included in such Combination Product during such period if sold separately from the other component(s), and C is the average gross sales price of the Combination Product during such period; or

### If neither the Licensed Compound nor the Other Components included in the Combination Product were sold or provided separately during the same or immediately preceding calendar quarter, then [OPTION #1: the proration factor will be mutually agreed upon by the Parties in good faith based on the relative value contributed by each component and, to the extent the Parties are unable to establish such proration factor, then such proration factor will be established by Standard Dispute Resolution] [OPTION #2: the invoiced amounts for the Combination Product for purposes of calculating Net Sales will be multiplied by the fraction C/(C + D), where C is the average fully burdened cost of manufacture of the Licensed Products during the immediately preceding CY and D is the average fully burdened cost of manufacture of the additional items during the immediately preceding CY, in each case calculated in accordance with Accounting Standards].

Any allocation of revenue from the sale or other disposition of Combination Products, or any allocation of the costs of manufacture, shall be done in good faith, and will take into consideration revenue recognition guidance under Accounting Standards applicable to multiple-deliverable revenue arrangements.

All allocations of discounts, allowances, credits, rebates and other deductions must be reasonable. Any amounts received or invoiced by a Selling Party will be accounted for only once. For purposes of determining Net Sales, a Licensed Product will be deemed to be sold when recorded as a sale by Selling Party in accordance with Accounting Standards.

Amounts received or invoiced by a Selling Party for the sale of a Licensed Product among Selling Parties will not be included in the computation of Net Sales, unless the purchasing Person is the end-user of such Licensed Product.

Net Sales will exclude any Licensed Product transferred or disposed of as samples or for clinical trials or at or below costs of goods therefor for any so-called treatment investigational new drug sales, named patient sales, expanded access program, compassionate or emergency use sales or pre-license sales made for non-commercial, compassionate purpose, or any indigent program or promotional or educational purposes (collectively, “**Non-Commercial Sales**”); in each case with respect to such Licensed Product and which are reported on the royalty report for such period when such Licensed Products are so transferred or disposed of.

Net Sales will be calculated in accordance with the standard internal policies and procedures of the Selling Party.

For purposes of calculating Net Sales, all Net Sales shall be converted into U.S. dollars.

## “**Other Components**” means any delivery system(s), devices(s), companion diagnostics and/or one or more additional Active Ingredients.

## “**Party**” and “**Parties**” have the meaning set forth in the preamble.

## “**Patent Actions**” has the meaning set forth in Section 6.1.

## “**Patent Challenge**” means any direct dispute or challenge instituted by Licensee or its Affiliate or a Sublicensee of the validity, patentability, [scope], priority, [construction], [non-infringement][[8]](#footnote-8), inventorship, ownership or enforceability of any Patent Right or any claim thereof, or opposition or assistance in the opposition of the grant of any letters patent within the Patent Rights, in any legal or administrative proceedings, including in a court of law, before the USPTO or other agency or tribunal in any jurisdiction, or in arbitration including, without limitation, by re-examination, *inter partes* review, opposition, interference, post-grant review, nullity proceeding, pre-issuance submission, Third Party submission, derivation proceeding or declaratory judgment action. The term Patent Challenge will not include (a) Licensee being an essential party in any patent interference proceeding before the USPTO, which interference Licensee acts in good faith to try to settle, or (b) Licensee, due to its status as an exclusive licensee of patent rights other than the Patent Rights, being named by the licensor of such patent rights as a real party in interest in such an interference, so long as Licensee either abstains from participation in, or acts in good faith to settle, the interference. A Patent Challenge will not include arguments made by Licensee that (i) distinguish the inventions claimed in patents or patent applications owned or controlled by Licensee (“**Licensee Patents**”) from those claimed in the Patent Rights but (ii) do not raise any issue of Patent Rights’ compliance with or sufficiency under applicable patent laws, regulations or administrative rules, in each case (A) in the ordinary course of *ex parte* prosecution of the Licensee Patents or (B) in *inter partes* proceedings before the USPTO or other agency or tribunal in any jurisdiction (excluding interferences or derivation proceedings), or in arbitration, wherein the Licensee Patents have been challenged.

## “**Patent Costs**” has the meaning set forth in Section 6.2.

## “**Patent Products**” means any product, method, or service that is Covered by a Valid Claim.

## “**Patent Rights**” means Licensor’s rights under the following:

### the patents and patent applications listed in Exhibit A;

### any non-provisional patent applications that claim priority to any provisional patent applications listed in Exhibit A;

### any foreign patent applications, foreign patents or related foreign patent documents that claim priority to a patent or patent application included in (a) or (b) above;

### any divisionals and continuations of patents or patent applications included in (a), (b), or (c) above (but not continuations-in-part, except as provided in (f) below);

### any patents, reissues, re-examinations, renewals, substitutions, and extensions issuing from the patent specification of any of the preceding; and

### any claims of continuation-in-part applications that claim priority to the U.S. patent applications listed in Exhibit A, but only to the extent such claims are directed specifically to subject matter described in at least one of the patents or patent applications identified in (a)-(e) above that meet the written description requirements of the first paragraph of 35 U.S.C. Section 112.[[9]](#footnote-9)

Patent Rights do not include any inventions conceived (as determined under U.S. patent law) after the Effective Date, provided that to the extent a Patent Right is an Improvement, such Improvement will be added to Exhibit A by way of amendment.

## “**Person**” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture, or similar entity or organization, including a government or political subdivision or department or agency of a government.

## [“**Principal Investigator**” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]

## “**Regulatory Exclusivity**” means any exclusive marketing rights or data exclusivity rights conferred by any regulatory authority with respect to a pharmaceutical product other than Patents, including orphan drug exclusivity, new chemical entity exclusivity, data exclusivity, or pediatric exclusivity.

## “**Royalty Term**” means, on a Licensed Product-by-Licensed Product and country-by-country basis, the period commencing on the First Commercial Sale of a Licensed Product in any country and continuing until the latest of (a) the date on which such Licensed Product is no longer Covered by a Valid Claim in the country in which the manufacture or sale occurs; (b) the expiration of Regulatory Exclusivity for such Licensed Product in the country in which the sale occurs;[[10]](#footnote-10) and (c) the [x] year anniversary of the First Commercial Sale of such Licensed Product in the country in which the sale occurs.

## “**Selling Party**” means either Licensee, its Affiliate(s), or Sublicensee, as the case may be.

## “**Standard Dispute Resolution**” has the meaning set forth in Section 12.1(a).

## “**Sublicense**” means any agreement under which Licensee grants (or, through a previous license of Patent Rights, has granted) any of the rights to Licensed Technology or Licensed Products granted to Licensee under this Agreement, including, without limitation, any option for such rights, but excluding rights granted to subcontractors or Affiliates.

## “**Sublicensee**” means any Person that is granted a Sublicense.

## “**Sublicensing Income**” means anycash or equity consideration received by Licensee or its Affiliate from a Sublicensee in consideration of the grant of a Sublicense under the Licensed Technology, including any license fee, license maintenance fee, option fee, milestone payments, and annual fees in excess of earned royalties, but excluding (a) royalties paid by a Sublicensee, (b) equity or debt investments in, or loan proceeds to, Licensee, (c) payments by Sublicensees for payment or reimbursement of patent prosecution, defense, enforcement and maintenance and other related expenses, (d) payments by Sublicensees for bona fide research, development, manufacturing or commercialization activities (including, without limitation, payments for FTEs)[[11]](#footnote-11), (e) Development Milestone Payments, (f) any profit share for any product, provided such amounts are not otherwise captured in the form or royalties or milestones, and (g) payment received in connection with a transaction that constitutes a Change of Control, or an option to consummate a Change of Control. Notwithstanding the foregoing, if Licensee receives Sublicensing Income with respect to a Sublicensee’s achievement of any milestone that is substantially similar to a Development Milestone, Sublicensing Income may be reduced by the aggregate amount of such amounts received by Licensee that are due to Licensor for achievement of such Development Milestone.

## “**Term**” has the meaning set forth in Section 11.1.

## “**Territory**” means worldwide.

## “**Third Party**” means any Person other than Licensor or Licensee or their respective Affiliates.

## “**Valid Claim**” means, with respect to a particular country, (a) any claim of an issued and unexpired Patent Right in such country that (i) has not been held revoked, unenforceable or invalid by a decision of a court or governmental agency of competent jurisdiction, which decision is unappealable or unappealed within the time allowed for appeal and (ii) has not been abandoned, disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise in such country, or (b) a claim of a pending Patent Right application that has not been finally abandoned or finally rejected or expired and which has been pending [5-7] years from the date of filing of the earliest priority Patent Right application to which such pending Patent Right application is entitled to claim benefit. Any claim in a pending Patent application that is filed after [5-7] years from its earliest priority date will not be considered a Valid Claim until such claim is granted and meets the requirement of subsection (a).

# GRANT OF RIGHTS

## License

. Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee an exclusive license under the Patent Rights, and a non-exclusive license under Licensed Know-How, to research, discover, develop, manufacture/make, have made, use, market, sell, offer to sell, have sold, import, export, distribute, rent, license to end-users or lease Licensed Products in the Field of Use and the Territory.[[12]](#footnote-12) Licensee may extend the licenses granted in this Section 2.1 to any of its Affiliates if (i) the Affiliate consents to be bound by this Agreement to the same extent as Licensee, (ii) Licensee provides Licensor a copy of the Affiliate's consent and (iii) Licensee remains liable under the Agreement for any actions or omissions by its Affiliate.

## License to Improvements[[13]](#footnote-13)

. Licensor shall disclose to Licensee all Improvements . Patentable Improvements shall be added by amendment to the list of Patent Rights in Exhibit A and Improvements that are not patentable will be considered Licensed Know-How and shall be added to Exhibit B [in both cases by mutual agreement of the Parties] and shall be licensed on the same terms as those set forth herein, with the option of minor additional economic terms (e.g., an upfront fee). [*Note: add this language where a Sponsored Research Agreement is executed in conjunction with this Agreement:*] [In addition, any Improvements that are developed under the SRA[[14]](#footnote-14) in the laboratory of [Principal Investigator][[15]](#footnote-15) shall be included in this Agreement as Patent Rights in accordance with the SRA.)] Subject to Section 2.5, Licensor acknowledges and agrees that, during the Term, it shall not directly or indirectly grant any licenses or other rights inconsistent with this Section 2.2.

## Sublicenses

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### Licensee shall have the right to grant Sublicenses through multiple[[16]](#footnote-16) tiers of Sublicensees, provided that Licensee shall obtain Licensor’s prior written consent for the grant of any Sublicense pursuant to this Section 2.3 if (i) Licensor has delivered a notice of termination to Licensee pursuant to Sections 11.3 that has not been withdrawn or resolved, or (ii) the dispute resolution mechanisms of Section Article 12 have been initiated by either Party related to a notice of termination to Licensee pursuant to Sections 11.3, and are ongoing (i.e. have not been withdrawn or resolved) at the time of such Sublicense is granted. Within 30 days after execution of each Sublicense, Licensee shall furnish Licensor with a complete copy of the Sublicense and any amendments to the Sublicense; provided, however, that Licensee has the right to redact any portion of the Sublicense that does not relate to the Licensed Products, Patent Rights or Licensed Know-How. Licensee will require that all Sublicenses be consistent with the terms and conditions of this Agreement, including e.g., the following duties: to keep records; to properly mark Licensed Products with patent numbers; to defend, hold harmless, and indemnify Licensor; to maintain insurance; to restrict the use of Licensor’s name and to control exports.[[17]](#footnote-17) Sublicensing of Licensed Know-How is permitted only in conjunction with the sublicensing of Patent Rights.

### Licensor shall keep its copy of the Sublicense in its confidential files, shall not disclose the terms of any such Sublicense to any Third Party, and shall use such Sublicense solely for the purpose of monitoring Licensee’s and such Sublicensee’s compliance with their respective obligations under this Agreement and enforcing Licensor’s rights under this Agreement.

### If this Agreement terminates for any reason, Licensor will provide to each Sublicensee the right to enter into a license of the Licensed Technology in the applicable Sublicense directly with Licensor, under the same terms and conditions as this Agreement (as reasonably applied to such Licensed Technology); provided that (i) Licensor and Sublicensee will discuss in good faith appropriate conforming modifications to such terms and conditions and (ii) Licensor is not obligated to enter into a license agreement having a scope of Licensed Technology, Field of Use, Territory, or other obligation on the part of Licensor that would exceed those in the applicable Sublicense. Licensor’s obligation set forth in the preceding sentence will apply only if (A) Licensor is legally, contractually, and per its policies permitted to enter into such license at the time; (B) Sublicensee provides written notice to both Licensor and Licensee within 90 days after the effective date of termination of its desire for such discussions, and Licensee does not dispute the termination; (C) Sublicensee is not an Affiliate of Licensee; and (D) Sublicensee is not in material breach of the Sublicense. The Sublicensee’s rights under the Licensed Technology included in the applicable Sublicense shall survive, and shall not be terminated during the 90 day notice period and the negotiation period between Licensor and Sublicensee.

## Subcontractors

. Licensee may engage a subcontractor to perform, on behalf of Licensee, research, development, and manufacturing services under this Agreement, provided that (a) any subcontract will not relieve Licensee from any of its obligations hereunder; (b) any act or omission by a subcontractor shall be deemed an act or omission of Licensee; [(c) any subcontract provides for the automatic assignment to Licensee of any and all intellectual property generated by the subcontractor, its employees, and consultants in the course of performing the subcontracted services to Licensee (other than with respect to intellectual property generated that relates to such subcontractor’s platform or background intellectual property, ownership of which may remain with such subcontractor);][[18]](#footnote-18) and (d) Licensee shall be responsible for each of its subcontractors complying with all applicable obligations of Licensee under this Agreement. A subcontractor that Licensee has engaged through an agreement complying with the terms set forth in this Section 2.4 shall not be deemed to be a Sublicensee under this Agreement, regardless of whether such subcontract includes a grant of a sublicense under any Patent Rights or Licensed Know-How. Licensee will not be required to provide subcontracts to Licensor. For the avoidance of doubt, an Affiliate shall not be considered a Subcontractor.

## Institution Reservation of Rights

/Government Rights. Without limiting any other rights it may have, Licensor retains, on behalf of itself, the right to practice or have practiced the Patent Rights, and to use or have used the Licensed Know-How for any research, public service, internal (excluding any studies that are required to be reported to the FDA under 21 CFR Parts 58 and/or 312) and/or educational purposes with non-profit research institutions, including sponsored research and collaborations with such non-profit research institutions, and to publish their respective results, and the right to grant the same limited rights to other non-profit research institutions; provided that Licensor will, and will include in any grant of rights to such non-profit research institutions the obligation to use its best efforts to provide a draft of any planned disclosure from the laboratory of [Principal Investigator] based upon the foregoing to Licensee 45 days in advance of such disclosure, and if Licensee determines new patent applications need to be filed in order to protect the Patent Rights, Licensed Know-How or Improvements, then Licensor agrees to delay such disclosure by an additional 45 days during which the Licensee will prepare and file patent applications with respect to the foregoing at its own cost. The grant of rights to the Licensed Technology is subject to any existing right of the U.S. Government under Title 35, United States Code, Section 200 et seq. and under 37 Code of Federal Regulations, Section 401 et seq., (aka the Bayh Dole Act) including but not limited to the grant to the U.S. Government of a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced any invention conceived or first actually reduced to practice in the performance of work for or on behalf of the U.S. Government throughout the world. Licensed Products shall be substantially manufactured in the United States to the extent (if at all) required by 35 U.S.C. Section 204.[[19]](#footnote-19)

## Unmet Needs

.[[20]](#footnote-20) Licensor would like Licensee to address unmet needs, such as those of neglected patient populations or geographic areas, giving particular attention to improved therapeutics, diagnostics and agricultural technologies for low and middle income countries. If (a) Licensee is unable or unwilling to serve an unmet need for which there is an adequately-resourced company willing to be a Sublicensee, and (b) such potential Sublicensee has provided Licensee with a bona fide, detailed proposal to serve such unmet needs (which Licensee will provide to Licensor), then, unless Licensee can demonstrate to Licensor’s reasonable satisfaction that Licensee will serve such unmet need itself or through another Third Party, Licensee will, at Licensor’s request, negotiate in good faith a Sublicense with said potential Sublicensee on reasonable commercial terms. If the Sublicense is not executed within [12] months due to the inability of the parties to agree to terms, then Licensor has the right to grant a license to serve such unmet need exclusively or non-exclusively, on reasonable commercial terms that, in the judgment of Licensee, will not impair its business, and Licensor will notify Licensee of such a license. Notwithstanding the foregoing, in no event will Licensee be compelled to negotiate a Sublicense [within the field of X/for X indications], it being understood and agreed that any such Sublicense would be competitive with or otherwise materially impair Licensee’s business as proposed to be conducted.

## No Additional Rights

. Except as expressly stated herein, nothing in this Agreement shall be construed to confer any rights upon Licensee by implication, estoppel, or otherwise.

# LICENSEE DILIGENCE OBLIGATIONS

## Diligence Requirements

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### Licensee shall use Commercially Reasonable Efforts to develop at least one Licensed Product in the Territory and commercialize such Licensed Product following regulatory approval.

### In addition, Licensee (either itself or through the acts of any of its Affiliates, Sublicensees and/or a subcontractor) is required to use Commercially Reasonable Efforts to achieve the following due diligence milestones (each a “**Diligence Milestone**”) by the dates set forth below (for each Diligence Milestone, the “**Achievement Date**”): [*Examples of Diligence Milestones:*] [[21]](#footnote-21)

#### [Obtaining financing in an amount of at least [$] by [DATE]

#### Nomination of a development candidate by [DATE]

#### Initiation of GLP toxicity studies by [DATE]

#### Submission of the first IND for a Licensed Product by [DATE]

#### First subject dosed in Phase 1 clinical trial by [DATE]]

## Deferral of Diligence Milestones

## . Licensor acknowledges that due to long development times, scientific, potential safety and development hurdles and challenges and regulatory requirements and processes associated with Licensee’s industry, Licensee may be unable to achieve a particular Diligence Milestone by the applicable Achievement Date. Licensee will notify Licensor in writing in advance of any such anticipated delay, and as long as Licensee is fulfilling its obligations of Commercially Reasonable Efforts, the Parties will negotiate in good faith an extension of the relevant Achievement Date upon the payment of a fee (the “**Extension Fee**”) equal to [$x/x% of the relevant Development Milestone Payment], which extension Licensee must exercise no later than [x days] before the relevant Achievement Date. [Licensee may extend each Diligence Milestone as set forth above only [once/twice]].[[22]](#footnote-22)

# EQUITY, ROYALTIES, AND PAYMENT TERMS

## License Issue Fee. Licensee shall pay an up-front fee of $\_\_\_ within [x] days of the Effective Date.[[23]](#footnote-23)

## Equity.[[24]](#footnote-24) Licensee shall issue to Licensor[[25]](#footnote-25) shares of its common stock representing [x] percent on a Fully Diluted Basis [[at the Effective Date] or [at the closing of Licensee’s next round of equity financing]][[26]](#footnote-26) [in accordance with the Equity Agreements]. Licensor shall be entitled to the following rights and privileges in connection with the common stock issued to Licensor:

### Licensee will issue Licensor, without further consideration, additional shares of common stock as is necessary to ensure that the number of shares issued to Licensor do not represent less than [x%] of the shares issued and outstanding on a Fully Diluted Basis. This anti-dilution protection will continue until an amount of at least [$X,000,000], when aggregated with prior closings, has been raised by Licensee in *bona fide* financings through the sale of securities (which may include instruments convertible into equity) (“**Dilution Cap**”). If the Dilution Cap is reached or exceeded during a specific round of funding, anti-dilution protection [will] [will not] extend to the total amount of funding raised through the closing of that specific round of funding.[[27]](#footnote-27)

### If Licensee proposes to sell any equity securities or securities that are convertible into equity securities, Licensor and/or its Assignee may purchase up to [[their pro rata] or [x%]][[28]](#footnote-28) of the securities issued in each financing on the same terms and conditions as are offered to the other purchasers in each such financing. Licensee will provide [x] days advance written notice of each such financing, including reasonable detail regarding the terms and purchasers in the financing. “Assignee” means (A) [insert name of entity to which Licensor’s preemptive rights may be assigned] or (B) any Person that is controlled by Licensor.

### Unless otherwise agreed by the parties, Licensor's Board observer rights, if any, shall terminate when Licensee completes its first round of institutional investment .[[29]](#footnote-29)

## Royalty Rate[[30]](#footnote-30).

### For Patent Products, Licensee shall pay Licensor x% of Net Sales, with [50]% reduction for Patent Products that are no longer Covered by a Valid Claim [and are no longer under Regulatory Exclusivity], but are Covered by Licensed Know-How.

### For Know-How Products, Licensee shall pay Licensor [½]x% of Net Sales.

### Running royalties shall be payable by Licensee to Licensor solely during the Royalty Term and due within [60] days after the end of each calendar quarter during the Royalty Term.

## Minimum Annual Royalty. Licensee shall pay Licensor minimum annual royaltiesas set forth below. Earned royalties paid during a given CY may be used as credit against the minimum annual royalty due for that same CY, but cannot be used as credit against a minimum annual royalty obligation owed for any other CY.

#### [First full CY] after Effective Date: [$\_\_\_\_\_\_]

#### [Second through fourth full CY after Effective Date]: [$\_\_\_\_]

#### [Fifth full CY after Effective Date and each CY thereafter until First Commercial Sale]: [$\_\_\_\_\_\_]

#### [First CY after First Commercial Sale and each CY thereafter]: [$\_\_\_\_\_\_)][[31]](#footnote-31)

## Royalty Stacking.[[32]](#footnote-32) Licensee will be entitled to deduct, from the cumulative royalties otherwise due Licensor in respect of Net Sales of Licensed Products, [X%][[33]](#footnote-33) of all such royalties paid or payable by Selling Party(ies) to one or more Third Parties in respect of such Licensed Products if, in the absence of a license, sublicense, acquisition or access to a Third Party’s intellectual property rights, the researching, discovering, developing, manufacturing/making, having made, using, marketing, selling, offering to sell, having sold, importing, exporting, distributing, renting, licensing to end-users or leasing of a Licensed Product would or may infringe (or in the case of a pending patent application, assuming the corresponding patent issues) or misappropriate such intellectual property rights. In no event will such deduction reduce any royalty payments to be made by Licensee by more than [X%] for any calendar quarter; and provided further that any reduction, or portion thereof, may be carried forward for use in a future calendar quarter. With respect to any Third Party exclusive licensors, the foregoing royalty stacking provisions will only apply in the event such Third Party exclusive licensors receiving royalties of [x]% or more are also subject to similar royalty stacking provisions.[[34]](#footnote-34)

## No Multiple Royalties. If the manufacture, use or sale of any Licensed Product is Covered by more than one of the Patent Rights and/or the Licensed Know-How, multiple royalties shall not be due.

## Development Milestone Payments.[[35]](#footnote-35) Each of the following payments (each a “**Development Milestone Payment**”) will be due upon achieving the indicated milestone (each such milestone, a “**Development Milestone**” for [each Licensed Product] [the first Licensed Product] [the first [2][3] Licensed Products].[[36]](#footnote-36) Licensee shall make each such payment irrespective of whether the associated Development Milestone was reached by Licensee or its Affiliate, by a Sublicensee and/or by a Third Party acting on behalf of Licensee or a Sublicensee.   *[****Examples of typical Development Milestones****]*[[37]](#footnote-37):

### [First/third/fifth][[38]](#footnote-38) subject dosed in Phase [1/2/3] clinical trial: [$\_\_\_\_]

### Submission of the first IND for a Licensed Product: [$\_\_\_\_]

### FDA approval of a Licensed Product: [$\_\_\_\_]

### First Commercial Sale of a Licensed Product: [$\_\_\_\_]

Licensee shall provide Licensor with written notice and the applicable Development Milestone Payment within [X] days after achieving each Development Milestone.

## Sublicensing Consideration.[[39]](#footnote-39)

### Licensee shall pay to Licensor a portion of all Sublicensing Income as follows:[[40]](#footnote-40)

#### W% of Sublicensing Income received as the result of any Sublicense entered into prior to [event or date X];

#### X% of Sublicensing Income received as the result of any Sublicense entered into after [event or date X] but before [event or date Y];

#### Y% of Sublicensing Income received as the result of any Sublicense entered into after [event or date Y] but prior to [event or date Z]; and

#### Z% of Sublicensing Income received as the result of any Sublicense entered thereafter.

### Such amounts shall be payable for each calendar quarter and shall be due to Licensor within X days after the end of the calendar quarter during which Licensee receives such Sublicensing Income.

### Licensee may apportion a commercially reasonable percentage of Sublicensing Income between the Licensed Technology and Licensee Technology that are included in the same Sublicense, provided that (a) Licensee provides Licensor with reasonably detailed information on the apportionment and justification no later than 60 days prior to the due date for amounts due and (b) Licensee and Licensor agree on the apportionment. If Licensee and Licensor cannot agree on the apportionment, the parties shall use Standard Dispute Resolution.

## Method of Payment. All payments under this Agreement should be made payable to “[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]” and [insert applicable payment instructions, e.g., wire or mail]

## Payments in U.S. Dollars. All payments due under this Agreement shall be payable in United States dollars. Conversion of foreign currency to U.S. dollars shall be made at the conversion rate existing in the United States (as reported in the Wall Street Journal) on the last working day of the calendar quarter of the applicable calendar quarter. Such payments shall be without deduction of exchange, collection, or other charges, and, specifically, without deduction of withholding or similar taxes or other government-imposed fees or taxes, except as permitted in the definition of Net Sales.

## Late Payments. Any payments by Licensee that are not paid on or before the date such payments are due under this Agreement shall bear interest, to the extent permitted by law, at X percentage points above the Prime Rate of interest as reported in the Wall Street Journal on the date payment is due.

# REPORTS AND RECORDS

## Frequency of Reports

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### Prior to First Commercial Sale: Within 60 days after the end of each CY prior to First Commercial Sale, Licensee shall furnish Licensor with a written report on the progress of its efforts during the immediately preceding CY to develop and commercialize Licensed Products. The report shall also contain a discussion of intended efforts for the calendar year in which the report is submitted.

### Upon First Commercial Sale: Licensee shall report to Licensor the date of First Commercial Sale of a Licensed Product within X days of occurrence in each country.

### After First Commercial Sale: After the First Commercial Sale of a Licensed Product, Licensee shall deliver reports with the following information to Licensor within X days of the end of each calendar quarter during the Royalty Term, containing information concerning the immediately preceding calendar quarter:

#### [the number of Licensed Products sold by the Selling Parties to Third Parties in each country;

#### the gross price charged by the Selling Parties for each Licensed Product in each country;

#### calculation of Net Sales for the applicable calendar quarter in each country, including, without limitation, a listing of applicable deductions; and

#### total royalty payable on Net Sales in U.S. dollars, together with the exchange rates used for conversion][[41]](#footnote-41).

If no amounts are due to Licensor for any calendar quarter, the report shall so state.

## Records; Audit

. Licensee shall maintain, and shall cause its Selling Party to maintain, complete and accurate records relating to amounts payable to Licensor in relation to this Agreement. Licensee shall, and shall cause its Selling Party to retain, such records for at least X years following the end of the CY to which they pertain. No more than once per CY, Licensor may appoint a qualified audit firm to audit Licensee’s books and records relating to Licensee’s payments under this Agreement. Such audit shall be conducted during normal business hours without unreasonable disruption to Licensee’s business, upon 30 days’ advance written notice to Licensee. In the event that the audit discloses an underpayment greater than [5-10%] of the amount due, Licensee shall bear the costs of the audit.

## Confidentiality

. The reports and records provided by Licensee hereunder shall be regarded as Licensee’s confidential information, and Licensor hereby covenants that it shall not use or disclose any information included in such reports for any purpose other than determining whether Licensee, its Affiliates and Sublicensees have complied with their obligations under this Agreement. Licensor further agrees that, until such time as such information is no longer confidential through no fault of Licensor, it shall maintain such reports and any information included therein in strict confidence and treat such information in a manner at least as restrictive as its manner of treating its own confidential information of similar nature and in any event with not less than a reasonable degree of care. This provision shall survive for a period of [7] years following termination of this Agreement.

# PATENT PROSECUTION

## Patent Prosecution

.

### Licensor will have the right to control the preparation, filing, prosecution and maintenance of the Patent Rights, in a patent office (“**Patent Actions**”), using outside counsel reasonably satisfactory to Licensee. Licensor will (a) instruct Licensor’s patent counsel to furnish to Licensee copies of material documents relevant to such Patent Actions before any deadlines; (b) allow Licensee a reasonable opportunity to comment on material documents to be filed with respect to such Patent Actions, prior to any such filings being made; and (c) take into reasonable consideration such comments from Licensee. Licensee will, to the fullest extent permitted by law, apply for and prosecute, or support in any reasonable way Licensor’s application for, any reasonable patent term extension for patents included in the Patent Rights.

### So long as Licensee reimburses Licensor for Patent Costs, Licensor will continue to prosecute and maintain the Patent Rights in the countries selected by Licensee.

## Patent Expense Reimbursement

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### Licensee will bear all out-of-pocket costs incurred by Licensor for Patent Actions (“**Patent Costs**”). Licensee will reimburse Licensor [within 30 days after Licensee’s receipt of an invoice from Licensor] for Patent Costs incurred by Licensor before the Effective Date and during the Term of this Agreement. Alternatively, if Licensor requests, Licensee will pay ongoing Patent Costs in advance or under a reasonable direct billing arrangement with Licensor’s patent counsel.[[42]](#footnote-42) Licensor will provide Licensee with documentation of the Patent Costs.

### Subject to the terms of Section 6.1, with the consent of Licensor (such consent not to be unreasonably withheld), Licensee has the right, on a country-by-country basis, to elect to not reimburse Licensor for Patent Costs related to a particular Patent Action. If Licensee makes such an election, Licensee will provide reasonable advance notice to Licensor in writing, such notice to be at least 90 days prior to any such Patent Action.[[43]](#footnote-43)  Upon the expiration of such notice period, such patent application(s) and patent(s) thereafter are and will be excluded from the definition of Patent Rights without further notice. Under such circumstances, Licensor may elect to abandon or continue the prosecution and/or maintenance of such application(s) or patent(s) at its sole or subsequent partner’s expense. If Licensee fails to provide such notice and Licensor incurs Patent Costs in respect of such Patent Action, then Licensee shall be responsible for such Patent Costs.

# THIRD PARTY CLAIM; PATENT ENFORCEMENT; AWARD SHARING

## Third Party Claim

. In the event of a Third Party challenge (including re-examinations, interferences, oppositions, *ex parte* and *inter partes* reviews and declaratory judgments) to any of the Licensed Technology, the Party receiving notice of such challenge will promptly inform the other Party, and Licensor will have the first right to assume and control the defense of the claim at Licensor’s expense. If Licensor fails to assume such defense within 60 days of becoming aware of such challenge, Licensee may assume and control such defense at Licensee’s expense. The Party controlling the defense may join the other Party in any such action if a court of competent jurisdiction determines the other Party is an indispensable party to such proceeding and the controlling Party shall pay the expenses of the joined Party. The Party controlling the defense of such legal action will keep the other Party reasonably informed of the proceedings and will not settle such action without the prior written consent of the other Party, such consent not to be unreasonably withheld.

## Patent Enforcement

. In the event that either Party believes that a Third Party is infringing or misappropriating any of the Licensed Technology, it will promptly inform the other Party, and [Licensee/Licensor] will have the first right to enforce the claim at [Licensee’s/Licensor’s] expense. If [Licensee/Licensor] fails to initiate such action within 90 days of becoming aware of such infringement or misappropriation, the other Party may assume and control such action at the other Party’s expense.[[44]](#footnote-44) The Party controlling the action may require the other Party to join in any such action if a court of competent jurisdiction determines the other Party is an indispensable party to such proceeding and the controlling Party will pay the expenses of the joined Party.[[45]](#footnote-45) The Party controlling such legal action will keep the other Party reasonably informed of the proceedings and will not settle such action without the prior written consent of the other Party, such consent not to be unreasonably withheld.

## Award Sharing

. Any recovery, whether by way of settlement or judgment, from a Third Party pursuant to a legal proceeding shall first be used to reimburse the initiating Party and the non-initiating Party for their actual fees, costs and expenses incurred in connection with such proceeding. The initiating Party shall divide any remaining amounts from any such settlement or judgment as follows: (a) any recovery reflecting lost profits damages and/or reasonable royalty damages, Licensee retains or receives such recovery, and Licensor retains or receives the amount of royalties due to Licensor had those activities been performed by Licensee, and (b) all other remaining amounts (including any punitive or exemplary damages) are divided [75%] to the Party who initiated or carried on the proceedings and [25%] to the other Party.

# INDEMNIFICATION AND INSURANCE

## Indemnification

.[[46]](#footnote-46)

## Insurance

.[[47]](#footnote-47)

# REPRESENTATIONS AND WARRANTIES

## Licensor Representations and Warranties.[[48]](#footnote-48) Licensor represents and warrants that as of the Effective Date: (a) [it [exclusively owns][[49]](#footnote-49) the patents and applications included within the Patent Rights] or [all of the named [Institution] inventors on the Patent Rights filed with any patent office have assigned all of their right, title and interest in and to such inventions claimed in the Patents to [Institution]]; (b) it has the power and authority to grant the licenses and rights provided for herein to Licensee, and that it has not earlier granted, or assumed any obligation to grant, any rights in the Patent Rights to any Third Party that would conflict with the rights granted to Licensee herein; and (c) this Agreement constitutes the legal, valid and binding obligation of Licensor, enforceable against Licensor in accordance with its terms.[[50]](#footnote-50)

## Licensee Representations and Warranties. [[51]](#footnote-51) Licensee represents and warrants that as of the Effective Date this Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms.[[52]](#footnote-52)

## Disclaimer of Warranties

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### EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, LICENSED TECHNOLOGY IS PROVIDED BY LICENSOR WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.  LICENSOR MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT USE OR COMMERCIALIZATION OF THE LICENSED TECHNOLOGY OR LICENSED PRODUCTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER RIGHTS.

### EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THIS AGREEMENT DOES NOT IMPLY (A) A WARRANTY OR REPRESENTATION AS TO THE VALIDITY, ENFORCEABILITY, OR SCOPE OF ANY PATENT RIGHTS; (B) BY IMPLICATION, ESTOPPEL OR OTHERWISE, ANY GRANT OF ANY LICENSE UNDER ANY PATENTS OTHER THAN THE PATENT RIGHTS OR UNDER ANY OTHER RIGHTS OTHER THAN THE LICENSED KNOW-HOW OF LICENSOR, REGARDLESS OF WHETHER SUCH PATENTS OR OTHER RIGHTS ARE DOMINANT OR SUBORDINATE TO PATENT RIGHTS.

## Limitation of Liabilities

. IN NO EVENT WILL EITHER PARTY BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS OR OTHER ECONOMIC LOSS OR DAMAGE REGARDLESS OF LEGAL OR EQUITABLE THEORY. THE ABOVE LIMITATIONS ON LIABILITY APPLY EVEN IF THE OTHER PARTY MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.[[53]](#footnote-53)

# GENERAL COMPLIANCE WITH LAW

## Compliance with Laws

. Licensee shall use Commercially Reasonable Efforts to comply with all material local, state, federal, and international laws and regulations relating to its development, manufacture, use, and sale of Licensed Products.

## Export Control

. Licensee and its Affiliates and Sublicensees shall comply with all United States laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all Export Administration Regulations of the United States Department of Commerce in performing its obligations under this Agreement. Among other things, these laws and regulations prohibit or require a license for the export of certain types of commodities and technical data to specified countries.[[54]](#footnote-54)

## Non-Use of Names

## . Licensee and its Affiliates and Sublicensees shall not use the name of “[Licensor]” or any variation, adaptation, or abbreviation thereof, or of any of its trustees, officers, faculty, students, employees, or agents, or any trademark owned by Licensor, or any terms of this Agreement in any promotional material or other public announcement or disclosure without the prior written consent of Licensor. The foregoing notwithstanding, without the consent of Licensor, Licensee may indicate that it is licensed by Licensor under the Patent Rights and identify the inventors, their affiliation with Licensor, and their relationship to Licensee, and further, Licensee may comply with disclosure requirements of all applicable laws relating to its business, including, without limitation, United States and state securities laws. Licensor shall not use the name of Licensee or its Affiliates or Sublicensees in any promotional material or other public announcement or disclosure without the prior written consent of Licensee or its Affiliates or Sublicensees (as applicable).

## Marking of Licensed Products

. To the extent commercially feasible and consistent with prevailing business practices, Licensee shall mark, and shall cause its Affiliates and Sublicensees to mark, all Licensed Products that are manufactured or sold under this Agreement with the number of each issued patent under the Patent Rights that applies to such Licensed Product.

# TERM AND TERMINATION

## Term. The term of this Agreement will begin on the Effective Date and will expire upon expiration of the last remaining Royalty Term, unless earlier terminated in accordance with the termination provisions (the “**Term**”). On a Licensed Product-by-Licensed Product and country-by-country basis, upon expiration of the applicable Royalty Term, Licensee will have a fully paid-up perpetual license to Licensed Know-How for such Licensed Product in such country (“country” shall also be deemed to refer to territories).

## Voluntary Termination by Licensee

. Licensee shall have the right to terminate this Agreement, for any reason, upon at least 90 days prior written notice to Licensor, such notice to state the date at least 90 days in the future upon which termination is to be effective.

## Termination for Default

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### In the event Licensee fails to pay any amounts due and payable to Licensor hereunder, and has neither t paid such amount nor commenced dispute resolution procedures in accordance with Article 12 within 30 days after receiving written notice of such failure, Licensor may terminate this Agreement 31 days after Licensee has received such written notice.

### In the event Licensee commits a material breach of its obligations under this Agreement ( other than a breach as described in Section 11.3(a) above), and has neither cured such breach nor commenced dispute resolution procedures in accordance with Article 12 within 90 days after receiving written notice thereof, Licensor may terminate this Agreement 91 days after Licensee has received such written notice.

## Patent Challenges

. Licensee will provide written notice to Licensor at least 90 days before Licensee, its Affiliate or Sublicensee initiates or participates directly or indirectly in a Patent Challenge. Licensee, its Affiliate or such Sublicensee will identify all prior art and other evidence material to the Patent Challenge in such written notice. If Licensee, its Affiliate or a Sublicensee participates directly or indirectly in a Patent Challenge, the following applies:

### [Licensor has the right to terminate this Agreement at any time (including after the termination of such Patent Challenge) upon written notice delivered to Licensee, and this Agreement’s cure provisions for non-monetary breach will not apply; provided that if a Patent Challenge is initiated by a Sublicensee, Licensor will only be permitted to terminate this Agreement if, within 30 days following receipt of notice that Sublicensee has initiated a Patent Challenge, Licensee has failed to terminate the Sublicense or Sublicensee has not vacated the Patent Challenge.][[55]](#footnote-55)

OR

### (a) [Licensor will meet with Licensee and any designee of Licensee within three months after such notice from Licensee and at least semi-annually at the request of Licensee, in a good faith effort to resolve any Patent Challenge;

### during the pendency of such action or proceeding (including any appeals), the applicable royalty rate(s) will increase to double the applicable royalty rate(s);

### should the outcome of such action or proceeding determine that any such claim challenged by Licensee or a Sublicensee is valid, enforceable, and/or infringed by a Licensed Product, the royalty rate(s) will increase to triple the applicable royalty rate(s);

### Licensee and any Sublicensee(s) will have no right to recoup any royalties paid before such action or proceeding or during the period in which such action or proceeding is pending (including on appeal), no matter the outcome of such action or proceeding; and

### Licensee shall pay all reasonable costs and expenses incurred by Licensor (including, but not limited to, Licensor’s actual attorneys’ fees) in connection with such action or proceeding. Licensor may bill Licensee as frequently as monthly concerning such costs and expenses, and Licensee shall make payment no later than 30 days after receiving an invoice from Licensor. Notwithstanding any other provision of the Agreement, with respect to any such Patent Challenge, Licensor will have full control and authority to defend the Patent Rights in the action or proceeding and will not be required to share any work product concerning such action or proceeding with Licensee or the Sublicensee(s).

## Effect of Expiration or Termination

.

### Upon the early termination of this Agreement, Licensee and its Affiliates and Sublicensees may complete and sell any work-in-progress and inventory of Licensed Products that exist as of the effective date of termination, provided that (i) Licensee pays Licensor the applicable running royalty or other amounts due on such sales of Licensed Products in accordance with the terms and conditions of this Agreement, and (ii) Licensee and its Affiliates and Sublicensees shall complete and sell all work-in-progress and inventory of Licensed Products within six (6) months after the effective date of termination.

### Expiration or termination of this Agreement for any reason shall not relieve either Party of any liability or obligation which accrued hereunder prior to the effective date of such termination or expiration.

### The following provisions shall survive the expiration or termination of this Agreement: Article 1(to the extent definitions are incorporated in any surviving provisions), Article 12, Sections 2.3(c), 5.3, 8.1, 9.4, 11.5, 13.1, 13.3, 13.6, 13.7, 13.8 and 13.9.

# DISPUTE RESOLUTION

## Dispute Resolution[[56]](#footnote-56)

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### Any controversy or claim arising out of or relating to this Agreement or the breach thereof (“**Dispute**”) shall first be submitted to a senior representative of each Party, who shall engage in good faith efforts to resolve the Dispute, for a period of 30 days from the date that one Party notifies the other of its desire to commence Standard Dispute Resolution. If the Dispute is not resolved within such time period, the Parties shall submit the matter to arbitration under the AAA Commercial Arbitration Rules (with the option to use AAA Expedited Procedures by mutual agreement). The Parties must agree to a single arbitrator, and if they cannot agree, one shall be appointed by the President of the City Bar Association of the city in which one of the Parties is located (the choice of such city to be determined by a coin toss), provided that such sole arbitrator must be experienced in the structuring and negotiation of licenses and commercial agreements in the life sciences industry and be impartial and independent. The arbitration will be conducted over a mutually agreed upon video conferencing platform, unless the Parties agree to conduct it live in a mutually agreeable location. Except for the appointment of the arbitrator, which shall follow the timeline set forth in the AAA Road Map (www.adr.org/sites/default/files/document\_repository/AAA197\_Arbitration\_Road\_Map.pdf), all the other time periods specified therein shall be cut in half. The Parties waive any rights to punitive damages. The Parties shall evenly share all costs of such arbitration. This process is referred to as “**Standard Dispute Resolution**”.

### The Parties agree that any dispute arising out of or relating to this Agreement shall be resolved solely by means of the procedures set forth in this Article 12, and that such procedures constitute legally binding obligations that are an essential provision of this Agreement. If either Party fails to observe the procedures of this Article 12, as may be modified by their written agreement, the other Party may bring an action for specific performance of these procedures in any court of competent jurisdiction.

### Although the procedures specified in this Article 12 are the sole and exclusive procedures for the resolution of disputes arising out of or relating to this Agreement, either Party may seek a preliminary injunction or other provisional equitable relief if, in its reasonable judgment, such action is necessary to avoid irreparable harm to itself or to preserve its rights under this Agreement.

### Except as set forth below and as necessary to obtain or enforce a judgment upon any arbitration award, the Parties shall keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the Parties may disclose information about the arbitration to persons who have a need to know, such as directors, trustees, management employees, witnesses, experts, investors, attorneys, lenders, insurers, actual or potential collaborators or corporate partners of Licensee, actual or potential acquirors of Licensee, and others who may be directly affected provided that such persons are bound to keep such information confidential. Additionally, if a Party has stock which is publicly traded, the Party may make such disclosures as are required by applicable securities laws, but shall use commercially reasonably efforts to seek confidential treatment for such disclosure.

Notwithstanding the foregoing, any Excluded Claim may be submitted by either Party to any court of competent jurisdiction over such Excluded Claim. For purposes of the foregoing, “Excluded Claim” means any dispute, controversy or claim that primarily concerns (a) the validity, enforceability or infringement of any patent, trademark or copyright, or (b) any antitrust, anti-monopoly or competition law or regulation, whether or not statutory.

## Performance to Continue

. Each Party shall continue to perform its undisputed obligations under this Agreement pending final resolution of any Dispute.

## Statute of Limitations

. The Parties agree that all applicable statutes of limitation and time-based defenses (such as estoppel and laches) shall be tolled while the procedures set forth in Section 12.1 are pending. The Parties shall cooperate in taking any actions necessary to achieve this result.

# MISCELLANEOUS

## Assignment. Neither Party may assign this Agreement to a Third Party without the prior consent of the other Party; provided that Licensee may assign this Agreement without the prior consent of Licensor (i) to any Affiliate and (ii) in connection with a Change of Control.

## Notice

. Any notices required or permitted under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be sent by hand, recognized national overnight courier, confirmed electronic mail, or registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to Licensor:

Attention:
Email:

If to Licensee:

Attention:
Email:

All notices under this Agreement shall be deemed effective upon receipt. A Party may change its contact information immediately upon written notice to the other Party in the manner provided in this Section 13.2.

## Governing Law

. This Agreement and all disputes arising out of or related to this Agreement, or the performance, enforcement, breach or termination hereof, and any remedies relating thereto, shall be construed, governed, interpreted and applied in accordance with the laws of [\_\_\_\_\_\_\_\_\_\_], without regard to conflict of laws principles[, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted].[[57]](#footnote-57)

## Force Majeure

. Neither Party shall be responsible for delays resulting from causes beyond the reasonable control of such Party, including, without limitation fire, explosion, flood, war, strike, or riot, provided that the nonperforming Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

## Amendment and Waiver

. This Agreement may be amended, supplemented, or otherwise modified only by means of a written instrument signed by both Parties. Any waiver of any rights or failure to act in a specific instance shall relate only to such instance and shall not be construed as an agreement to waive any rights or fail to act in any other instance, whether or not similar.

## Severability

. In the event that any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement, and the Parties shall negotiate in good faith to modify the Agreement to preserve (to the extent possible) their original intent. If the Parties fail to reach a modified agreement within 30 days after the relevant provision is held invalid or unenforceable, then the dispute shall be resolved in accordance with the procedures set forth in Article 12. While the dispute is pending resolution, this Agreement shall be construed as if such provision were deleted by agreement of the Parties.

## Binding Effect

. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

## Headings

. All headings are for convenience only and shall not affect the meaning of any provision of this Agreement.

## Entire Agreement

. This Agreement[, together with the Equity Agreements] constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements or understandings between the Parties relating to its subject matter[, including, without limitation, that certain [Sponsored Research Agreement], dated as of \_\_\_\_\_\_\_\_\_\_\_, by and between the Parties].

[*remainder of this page intentionally left blank*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

|  |  |
| --- | --- |
| [LICENSOR] | [LICENSEE] |
| By: Name: Title:  | By: Name: Title:  |

**EXHIBIT A

PATENT RIGHTS**

**EXHIBIT B

LICENSED KNOW-HOW**

1. If there is an Inter-Institutional Agreement or joint ownership of the licensed technology, include a description here. [↑](#footnote-ref-1)
2. Consider whether there are related companies that may meet the definition of Affiliates but should be explicitly excluded (e.g., LLC holding company structures, spin out companies). Conversely, consider whether there are other entities that should be named as Affiliates – e.g., affiliated hospitals in the case of Licensor. [↑](#footnote-ref-2)
3. Can be included if Equity Agreements are in place or will be put in place as of the execution of the Agreement. [↑](#footnote-ref-3)
4. Therapeutics should generally be licensed for all uses, to avoid the risk of another licensee’s using the Licensed Technology for something else and obtaining data that may jeopardize approval by the FDA of Licensee’s products. [↑](#footnote-ref-4)
5. In some cases, tangible know-how will be licensed, for which it is appropriate to have royalties extend longer, e.g., cell lines. This number should be linked to the diligence milestones, i.e. if there is a diligence milestone to nominate a development candidate within 5 years, the term for this definition should also be 5 years. This time limitation is based on the assumption that most of the value of know-how is transferred during the first five years post-License Agreement. [↑](#footnote-ref-5)
6. The deductions detailed here represent a tailored set of the typical deductions included in Big Pharma licenses, consistent with common commercial practices, in an effort to avoid future renegotiation. [↑](#footnote-ref-6)
7. “Weighted average” is used to take into account the volume of sales at different prices. For example, a product sold for $5 to one customer and $10 to another would have a flat average of $7.50, but if most products are sold at $10, the weighted average would capture that. [↑](#footnote-ref-7)
8. The square brackets have been inserted so that the parties can consider whether a good faith dispute by Licensee/Sublicensee regarding the scope of the Licensed Patents (for purposes of determining whether a product is a Patent Product for which payments are owed under this Agreement) falls within the ambit of a “Patent Challenge.” [↑](#footnote-ref-8)
9. The intention is to cover inventions that are disclosed in the original application, but where the original application did not include sufficient disclosure for enablement purposes. [↑](#footnote-ref-9)
10. In considering whether Regulatory Exclusivity will be included as a component of the Royalty Term, consider whether subsection (c) will in any case run longer than any Regulatory Exclusivity (in which case it may not be necessary). Further, consider whether Regulatory Exclusivity should be included in the Royalty Term if the Licensed Technology does not support Regulatory Exclusivity. [↑](#footnote-ref-10)
11. A Sublicense should clearly delineate what fees are received for R&D activities. Some universities limit R&D deductions to R&D on the Licensed Products. [↑](#footnote-ref-11)
12. This Agreement contemplates a license to patents and know-how. If Licensed Know-how is not part of the transaction, the provisions of the Agreement will need to be revised accordingly. [↑](#footnote-ref-12)
13. Where Licensee seeks to include improvements under the license, careful attention must be given to Licensor’s tax risks (e.g., Internal Revenue Procedure Ruling 97-14 or successor IRS guidance; also consider ramifications of state tax law and the Bayh Dole Act), potential conflict of interest issues, and policies on licensing future IP. Some Licensors will seek to include improvements by way of subsequent amendments rather than as a matter of initial right. [↑](#footnote-ref-13)
14. Use the full agreement name or define “SRA.” [↑](#footnote-ref-14)
15. Use the name of the SRA’s principal investigator (or define separately) if Principal Investigator as defined is a different person. [↑](#footnote-ref-15)
16. In the event Sublicensing is permitted through only a specified number of tiers, then provide that (a) Licensor shall not unreasonably withhold consent to additional tiers of Sublicenses and (b) in any event, if any Sublicensee is a Significant Partner, the Significant Partner has the right to license through multiple tiers. “Significant Partner” means a company that has a market capitalization of at least $1 billion (or a comparable private company). [↑](#footnote-ref-16)
17. Some universities will require the right to be a third party beneficiary of the sublicense with the right to audit the sublicensee and enforce the terms of the sublicense. [↑](#footnote-ref-17)
18. This section is bracketed because many subcontractors will not agree to such a provision as a matter of policy. [↑](#footnote-ref-18)
19. Consider including that Licensor would reasonably cooperate with Licensee in seeking a waiver of the requirements to substantially manufacture in the United States, if reasonably requested by Licensee. [↑](#footnote-ref-19)
20. Some licensees will be reluctant to include this Section, depending on their business model but some may accept this term if it is only enforced after a period of time from the Effective Date and/or only applies to certain developing countries. [↑](#footnote-ref-20)
21. The number and type of diligence milestones vary in each deal and should be based upon the development plan provided by Licensee. If Big Pharma takes a sublicense, they will typically ask for a revision of the diligence milestone terms - e.g., they may agree to use Commercially Reasonable Efforts to develop a Licensed Product, but will ask to remove specific diligence milestones, and Licensors will typically approve. [↑](#footnote-ref-21)
22. Typically universities will be reasonable in extending milestones for a defined period if Licensee provides adequate explanation and is continuing to be diligent in its pursuits, and typically will be open to waiving the fee for the first failure to meet a Diligence Milestone for a valid reason. [↑](#footnote-ref-22)
23. The amount of the up-front fee may be impacted by the patent expenses to be reimbursed, particularly where they are significant. [↑](#footnote-ref-23)
24. Universities differ in their approaches: some may not ask for either equity or a success fee, some may ask for one or the other, and some may ask for both. Licensee and their venture capital investors may advocate for a success fee rather than equity (but not both), as an approach which is both simpler and avoids any issues under Licensor’s conflict of interest policies. Success fees can take the form of (a) a percentage of the [upfront] acquisition proceeds in the event Licensee is acquired; (b) a percentage of Licensee’s market capitalization for x days trailing post-IPO lockup; (c) a fixed dollar amount upon either of those events; or (d) a fixed dollar amount upon Licensee achieving and maintaining a valuation above a certain threshold in the public markets. Later-stage companies will not view equity and anti-dilution, or success fees, in the same way that start-ups do. [↑](#footnote-ref-24)
25. Some universities may have a separate entity that holds equity in startups on behalf of the university, in which case such entity should be named here instead of the Licensor. [↑](#footnote-ref-25)
26. The Parties will discuss whether a minimum financing size should be stipulated and the mechanics for a multi-tranche financing round (e.g., an allocable portion of the university’s equity is metered in at each tranche). [↑](#footnote-ref-26)
27. Some universities will delay issuance of all equity shares until the Dilution Cap has been met. [↑](#footnote-ref-27)
28. Few universities have the financial flexibility to participate in these investments within the time frame required. In participating in an equity financing, they will be subject to terms that may be unattractive to them, e.g., pay-to-play (see NVCA Model Documents for details on Preferred Stock financing terms.) Accordingly, many universities have entered into agreements to transfer any such preemptive rights to Osage University Partners. Venture Capital investors may find this request difficult to accommodate in their standard syndicated financing rounds. [↑](#footnote-ref-28)
29. Note that the tech transfer office of public universities may not be able to make this commitment on behalf of the investment arm of such university. [↑](#footnote-ref-29)
30. Tiered royalty rates may be negotiated. [↑](#footnote-ref-30)
31. The minimum annual royalty is intended to incent Licensee to diligently develop the technology. The number of years during which minimum annual royalty is due reflects the anticipated time to first commercial sale. [↑](#footnote-ref-31)
32. The parties may consider eliminating royalty stacking entirely in favor of a lower royalty rate. [↑](#footnote-ref-32)
33. A higher deduction may be negotiated if the total royalty burden is higher than 80% of the total royalties that Licensee would receive from sublicensees. Additionally, the royalty offset may include all payments, rather than just royalties. [↑](#footnote-ref-33)
34. It is quite common for licenses that have a sufficiently low royalty rate to not include anti-stacking provisions; thus, by way of example, if a Third Party licensor is receiving a low royalty, such royalty payable to such Third Party licensor would be included within the royalty stack, regardless of whether the agreement with such Third Party licensor includes an anti-stacking provision. This limitation only applies to exclusive licensors of intellectual property rights (not non-exclusive licensors). [↑](#footnote-ref-34)
35. Large milestone payments can be difficult for even well-funded Licensees if Licensee has not yet partnered with or been acquired by Big Pharma. Accordingly, Licensor may consider mechanisms to reduce the burden for Licensee before it has partnered or been acquired, e.g., (a) milestone payments start low but increase on partnering/acquisition or (b) x% of milestone payments can be deferred until Licensee is partnered/acquired. [↑](#footnote-ref-35)
36. For platform technologies, there will often be a cap on the number of products for which these milestones apply. [↑](#footnote-ref-36)
37. The number and type of milestones vary in each deal. [↑](#footnote-ref-37)
38. In selecting whether to use first, third or fifth subject, consider the modality of the product as well as the anticipated development timeline. The term “subject” is used instead of “patient” because all participants are subjects of a clinical trial but may not be patients. [↑](#footnote-ref-38)
39. The Parties may consider eliminating sublicensing consideration provisions entirely in favor of a higher royalty rate. [↑](#footnote-ref-39)
40. Alternatively, Licensor may negotiate a flat, but reduced, rate. The tiers are meant to reflect development stage of the Licensed Product, and will often match the diligence milestone tiers. [↑](#footnote-ref-40)
41. Consider what should be disclosed in this report; some items will be required, by regulation, for federally funded patent rights. [↑](#footnote-ref-41)
42. Payment terms will vary depending on the amount to be reimbursed and Licensee’s funding – e.g., if there were high IP costs pre-License, Licensee may work out a payment schedule. [↑](#footnote-ref-42)
43. Under the Bayh Dole Act, recipients of federal funding are required to provide notice prior to abandoning any U.S. patents or applications. [↑](#footnote-ref-43)
44. Factors to consider in granting licensor/licensee first right of enforcement: identity of licensee (e.g., big pharma vs. startup; financial stability; level of sophistication; potential infringers; public relations consequences; conflicts of interests for the university) [↑](#footnote-ref-44)
45. Note that the joined party may require a joint defense and representation agreement. [↑](#footnote-ref-45)
46. Each Licensor will be subject to the policies of its Office of General Counsel on these matters, and hence there are no “standard” terms. [↑](#footnote-ref-46)
47. Each Licensor will be subject to the policies of its Office of General Counsel on these matters, and hence there are no “standard” terms. [↑](#footnote-ref-47)
48. Licensors may seek to negotiate additional limitations such as knowledge qualifiers. Licensees may request additional reps and warranties, e.g., with respect to Licensed Know-How, if there are payment and other obligations tied to Know-How Products. [↑](#footnote-ref-48)
49. If there is an Inter-Institutional Agreement or joint ownership of the licensed technology, include a description here. [↑](#footnote-ref-49)
50. Consider whether to add any other representations and warranties. [↑](#footnote-ref-50)
51. Licenees may seek to negotiate additional limitations such as knowledge qualifiers. [↑](#footnote-ref-51)
52. Consider whether to add any other representations and warranties. [↑](#footnote-ref-52)
53. The Parties may negotiate additional exclusions, and Licensor will be required to follow the policy of its Office of General Counsel in these matters. [↑](#footnote-ref-53)
54. Each Licensor will be subject to the policies of its Office of General Counsel on these matters. [↑](#footnote-ref-54)
55. Termination may not be enforceable. Licensors may seek meaningful penalties, up to and including termination of this Agreement, for Licensee’s challenge to their patent position. [↑](#footnote-ref-55)
56. This is an effort to minimize the friction, time and cost of dispute resolution, without straying too far afield of market norms. Expedited AAA procedures are appropriate where no discovery is necessary; otherwise, that can be perceived as unfair to a party that has an information disadvantage. The standard AAA timelines result in a dispute being resolved no sooner than 258 days post-filing. We deem that unacceptably long, and believe the parties are not jeopardized by shorter timelines. Some university Offices of General Counsel will not agree to arbitration. [↑](#footnote-ref-56)
57. Certain institutions will be required by statute to use the laws of their state as governing law. Where the parties are not able to agree, they may elect to simply omit this clause. [↑](#footnote-ref-57)