

LICENSE AGREEMENT

This License Agreement (the "Agreement") made and effective as of the ___ day of _____, 20__ (the "Effective Date"), by and between The University of Toledo, a public institution of higher education of the State of Ohio, with a principal place of business at 2801 West Bancroft Street, Toledo, Ohio 43606 (hereinafter, "Licensor"), and _____, a corporation organized and existing under the laws of the State of _____, with a principal place of business at _____ (hereinafter, "Licensee"). Licensor and Licensee may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Licensor is the owner of the Patent Rights (as defined below) and as indicated in Appendix A, which were developed by Drs. _____, _____ and _____;

WHEREAS, Licensor desires that the Patent Rights be developed, utilized and commercially exploited to the fullest extent and is willing to grant a license to Licensee in accordance with the terms and conditions hereinafter specified; and

WHEREAS, Licensee desires to obtain such license upon the terms and conditions hereinafter set forth.

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

1. BACKGROUND

- 1.1. Licensor acknowledges it has certain rights by assignment to the Patent Rights.
- 1.2. Licensee wishes to receive and Licensor is willing to grant certain licenses and rights with respect to the Patent Rights and subject to the provisions set forth herein, in order that Licensee may develop and sublicense certain commercial rights to commercialize said Patent Rights.

2. DEFINITIONS

- 2.1. "Confidential" is defined as confidential or proprietary information relating to this Agreement, the Patent Rights, Licensed Products, or Licensed Process(es), including but not limited to patent applications, invention disclosures, trade secrets, scientific knowledge, know-how, processes, inventions, techniques, formulae, products, business operations, royalty rates, licensing terms, business plans, marketing plans, customer requirements, designs, sketches, photographs, drawings, specifications, reports, studies, findings, data, plans or other records, specimens, biological materials, and/or software of either Party.
- 2.2. "Effective Date" is the date of the last Party to sign below.

- 2.3. “Licensed Process” means any process, which is related to pending applications, listed in Appendix A or is covered, in whole or in part, by an issued, unexpired claim or a pending claim contained in the Patent Rights.
- 2.4. “Licensed Product” means any product or part thereof which: (a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Patent Rights in the country, which any such product is made, used, or sold, or (b) is manufactured by using a process, which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Patent Rights in the country in which any such process is used or in which such product or part thereof is used or sold.
- 2.5. “Licensee” means _____ and its related companies. A related company is: (a) a company of which at least fifty percent (50%) of the voting stock is directly or indirectly owned or controlled by Licensee; (b) an organization which directly or indirectly controls more than fifty percent (50%) of the voting stock of Licensee; or (c) an organization which has a majority ownership that is directly or indirectly common to the ownership of Licensee.
- 2.6. “Net Sales” means the total aggregate amount of gross revenue or other compensation actually received from the sale, use, application or other disposition of all Licensed Products and/or Licensed Processes, less:
- (a) credits issued for returns of Licensed Products or Licensed Process(es) recalled or not accepted by the customer,
 - (b) taxes actually incurred, paid, or collected and remitted to the relevant tax authority in connection with the sale or delivery to the customer, and
 - (c) shipping charges (including freight and insurance) actually paid by the Licensor or sublicensee.
- 2.7. “Otherwise Disposed Of” means: (1) Licensed Product(s) or Licensed Process(es) not sold but delivered by Licensee to others (including deliveries for export), regardless of the basis of compensation, if any; (2) Licensed Product(s) or Licensed Process(es) put into use by Licensee for any purpose other than routine testing of such Licensed Product(s) or Licensed Process(es); and (3) Licensed Product(s) or Licensed Process(es) not sold individually, but sold by Licensee as components or constituents of other products or processes.
- 2.8. “Party” means either Licensor and/or Licensee and, when used in the plural, means both.
- 2.9. “Patent Rights” means (i) any United States or foreign patent applications or patents issuing thereon, which are listed in Appendix A attached hereto, and (ii) all patent applications and patents, which are divisions, continuations, reissues, renewals, re-

examinations, substitutions, or extensions of or to any patent applications or patents listed in Appendix A.

2.10. "Sublicense(s)" means an agreement between Licensee and any third party granting a license to the Patent Rights so the sublicensee may make, use or sell Licensed Products and/or Licensed Process(es), in whole or in part, for any term.

2.11. "Territory" means _____, as permitted by law.

3. LICENSE GRANT

3.1. Licensors hereby grants to Licensee an exclusive, royalty bearing, license in the Territory to make, have made for its own use and sale, or to use and sell the Licensed Product or Licensed Process to the end of the term for which the Patent Rights are granted, unless sooner terminated according to the terms hereof. Nothing in this Agreement will preclude Licensors from meeting its obligations to grant certain rights to the U.S. Government, as applicable.

3.2. Licensors retains the nontransferable right to make and use the Patent Rights for its own internal, non-commercial research and educational purposes. Licensors will have the right to grant the same limited rights to other non-profit research institutions for research purposes only.

3.3. The license granted hereunder will not be construed to confer any rights upon Licensee, by implication, estoppel, or otherwise, as to any Patent Rights not specifically set forth in Appendix A, hereof.

3.4. Licensee agrees not to assert 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 third party.

4. SUBLICENSE

4.1. Licensee will have the right to enter into sublicensing agreements for the rights, privileges and licenses granted hereunder only during the lifetime of this Agreement and renewals thereof. Such Sublicense(s) may not extend past the expiration or termination of this Agreement. Any sublicensee of Licensee will not have the right to further sublicense the Patent Rights without prior notice in writing to Licensors.

4.2. Licensee hereby agrees that every sublicensing agreement to which it will be a party and which will relate to the rights, privileges and license granted hereunder will contain a statement that such sublicense will terminate upon the expiration or termination of Licensee's license rights granted herein. Any such sublicensing agreement will contain terms no less favorable to Licensors than those herein.

4.3. Licensee agrees that by granting or entering into any Sublicense, it will not be relieved of any obligation owed to UT under this Agreement. Licensee agrees to provide any

Sublicense to Licensor for its written approval prior to entering into such Sublicense. Licensor agrees not to unreasonably withhold its approval of such Sublicense.

- 4.4. Licensee agrees to forward to Licensor an unredacted copy of any and all fully executed Sublicense, and further agrees to forward to Licensor, annually, within forty-five (45) days after the end of each calendar year for which a Sublicense is in effect, an unredacted copy of each and every report received by Licensee from its sublicensee(s) during the preceding twelve (12) month period under the Sublicense(s).
- 4.5. Licensee will not receive from sublicensee(s) anything of value in lieu of cash, certified funds, or legal tender payments, in consideration for any sublicense under this Agreement, without the express prior written permission of Licensor.

5. UNITED STATES LAWS

It is understood that Licensor is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that the Parties' obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by Licensee that Licensee will not export data or commodities to certain foreign countries without prior approval of such agency. Licensor neither represents that a license will be required nor that, if required, it will be issued.

6. DUE DILIGENCE

- 6.1. Licensee will use its best efforts, or will cause its sublicensees to use best efforts, to bring one or more Licensed Products or Licensed Processes to market through a thorough, vigorous and diligent program for exploitation of the Patent Rights.
- 6.2. In addition, Licensee will adhere to the following milestones:
 - (a) Licensee will submit a written summary on the past years business activity. Additionally, Licensee will submit a revised business plan whenever there is a material change in Licensee's financial, marketing or technical plans or forecasts, milestone dates, or capitalization.
 - (b) Licensee or any sublicensee will utilize due diligence and its best efforts to seek approval by the appropriate agencies of the United States Government for the use of Licensed Products and Licensed Processes in humans.
 - (c) Licensee or any sublicensee will, by proper manufacture and distribution, utilize due diligence and its best efforts to promote the sale of Licensed Products and Licensed Processes, through sublicensees or otherwise.

6.3. Licensee's or any sublicensee's failure to perform in accordance with Paragraphs 6.1 and 6.2, above, will be grounds for Licensor to terminate this Agreement, pursuant to Article 22 herein.

7. INTELLECTUAL PROPERTY OWNERSHIP

Licensee agrees that Licensor will own all rights to and interests in discoveries, inventions, patents, information and data conceived and/or developed from research or investigation conducted in any Licensor facility or by employees of Licensor acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through Licensor.

8. COMPENSATION

8.1. For the rights, privileges and license granted hereunder, Licensee will pay the following compensation to Licensor in the manner hereinafter provided to the end of the term of the Patent Rights or until this Agreement will be terminated as hereinafter provided:

(a) Initial License Fee. _____ Dollars and Zero Cents (\$_____.00) upon the execution of this Agreement.

8.2. Any consideration, excluding royalties, obtained by Licensee as a result of any sublicense agreement or other arrangements, which transfer rights to the Patent Rights, will be paid _____ percent (___%) to Licensor and _____ percent (___%) to Licensee. Licensor's share of such consideration will be paid to Licensor by Licensee with the report, as described in Article 11 hereof, for the time period when Licensee obtained such consideration.

8.3. Royalties in an amount equal to _____ percent (___%) of the Net Sales of the Licensed Product(s) or Licensed Process(es) used, sold, or Otherwise Disposed Of by Licensee and/or any sublicensees will be paid to Licensor. Licensee and/or any sublicensee will pay Licensor quarterly for such royalty payments beginning with the initial sale and continuing for the life of the patent(s) covering Licensed Process or Licensed Products.

8.4. Minimum Annual Payments: Licensee will pay Licensor the following minimum annual payments:

<u>Year Ending December 31</u>	<u>Minimum Annual Payments</u>
2020	
2021	
2022	
2023	
2024	
2025 and thereafter	

In the event that the annual payments to Licensor under this Agreement for any Calendar Year do not equal or exceed the amounts specified above, Licensor will have the right upon sixty (60) days notice, to terminate this Agreement, unless Licensee pays Licensor a sum equal to the difference between the minimum annual payment specified above and the amount actually paid for such year before the expiration of the sixty (60) day notice period. Failure of Licensor to give the notice as provided in this article in reference to any given year or years is not a waiver of the right to enforce this provision in any subsequent year.

- 8.5. In order to assure Licensor the full royalty payments contemplated in this Agreement, Licensee agrees that in the event any Licensed Product(s) or Licensed Process(es) will be sold for purpose of resale, either (1) to a corporation, firm, or association which, or individual who, owns a controlling interest in Licensee by stock ownership or otherwise, or (2) to a corporation, firm, or association in which the Licensee or its stockholders own a controlling interest by stock ownership or otherwise, the royalties to be paid in respect to such Licensed Product(s) or Licensed Process(es) will be computed upon the gross selling price at which the purchaser for resale sells such Licensed Product(s) or License Process(es) rather than the Net Sales of the Licensee.
- 8.6. Where Licensed Product(s) or Licensed Process(es) are not sold, but are Otherwise Disposed Of, the Net Sales of such Licensed Product(s) or Licensed Process (es), for the purpose of computing royalties, will be the gross selling price at which products or processes of similar kind and quality, sold in similar quantities, are currently being offered for sale by Licensee. Where similar products or processes are not currently being offered for sale by Licensee, the Net Sales of Licensed Product(s) or Licensed Process (es) Otherwise Disposed Of, for the purpose of computing royalties, will be the average gross selling price at which products of similar kind and quality, sold in similar quantities, are then currently being offered for sale by other manufacturers. Where similar products or processes are not currently sold or offered for sale by Licensee or others, then the Net Sales, for the purpose of computing royalties, will be Licensee's cost of manufacture, determined by Licensee's customary accounting procedure, plus one hundred percent (100%).
- 8.7. All payments from Licensee due under this Agreement will be paid to "The University of Toledo" at Toledo, Ohio or at such other place as Licensor may reasonably designate. If any currency conversion will be required in connection with the payment of royalties hereunder, such conversion will be made by using the exchange rate published in the *Wall Street Journal*, on the last business day of the calendar quarterly reporting period to which such royalty payments relate. All payments will be made hereunder in U.S. dollars and are non-refundable.

All payments should be mailed to:

The University of Toledo
Technology Transfer, MS 218
2801 West Bancroft Street

9. PATENT PROSECUTION

- 9.1. Licensor will apply for, seek prompt issuance of, and maintain during the term of this Agreement the Patent Rights in name of Licensor in the United States and in the foreign countries. The prosecution, filing, and maintenance of all Patent Rights, patents and applications will be the primary responsibility of Licensor; provided, however, Licensor will communicate to and provide information to Licensee on a regular basis as to the status of the applications.
- 9.2. Payment of all fees and costs relating to the filing, prosecution, and maintenance of the Patent Rights in the United States of America and other countries will be the responsibility of Licensee whether such fees and costs were incurred before or after the date of this Agreement. Licensee acknowledges and agrees that the pre-Effective Date patent costs, which now total _____ dollars and _____ cents (\$_____), will be due and payable upon the Effective Date of this Agreement. Licensee will reimburse Licensor for the post-Effective Date patent costs within thirty (30) days of being invoiced for such costs by Licensor.
- 9.3. Licensee will cooperate fully in the preparation, filing, prosecution and maintenance of Patent Rights and of all patents and patent applications licensed to Licensee hereunder, executing all papers and instruments or requiring members of Licensee to execute such papers and instruments so as to enable Licensor to apply for, to prosecute and to maintain patent applications and patents in Licensor's name in any country. Each Party will provide to the other prompt notice as to all matters which come to its attention and which may affect the preparation, filing, prosecution or maintenance of any such patent applications or patents. In particular, Licensee must immediately notify Licensor if Licensee or any affiliate or sublicensee does not qualify as a "small entity" as provided by the United States Patent and Trademark Office.
- 9.4. In the event that Licensee determines that it will not support, for any reason, the filing, prosecution and/or maintenance of any foreign or domestic patent application or patent on any invention relating to the Patent Rights licensed hereunder, it will notify Licensor of its decision no later than sixty (60) days prior to the due date of any pending patent office actions. Such notice will not relieve Licensee from the responsibility to reimburse Licensor for patent-related expenses incurred prior to the expiration of the (60) day notice period (or such longer period specified in Licensee's notice). Licensor will thereafter have the sole and exclusive right to file, prosecute and/or maintain any such patent application or patent, either foreign or domestic, at its own expense; and any patent issuing therefrom will not be included among Patent Rights and Licensee will forfeit any right to the Patent Rights covered by such patent application or patent unless this Agreement will be amended, in writing, to include such patent application or patent. Licensee agrees to cooperate in filing patent applications in Licensor's name on any such invention and/or improvement where Licensee declines to proceed at its own expense.

9.5. Licensee agrees to fully cooperate in any effort to recapture any regulatory approval period to extend the lifetime of any patents covered under Patent Rights. The extent of Licensee's cooperation includes, but is not limited to, the sharing of any Licensee information required for the Licensor to pursue the extension of the lifetime of patent covered under Patent Rights.

10. CONFIDENTIALITY

The Parties agree to hold in confidence all information received from the disclosing Party and marked as "Confidential" and not to disclose it to any third party or use it for any purpose except as provided herein. The foregoing restrictions on use and disclosure will continue for a period of three (3) years following termination or expiration of this Agreement, but will not apply to:

- (a) information already available to the public at the time of disclosure;
- (b) information which hereafter becomes generally available to the public through no fault of receiving Party;
- (c) information which the receiving Party acquires from a third party legally entitled to disclose the information;
- (d) information to the receiving Party, as evidenced by its written records, prior to receipt of the information by the receiving Party from the disclosing Party;
- (e) information which is required to be disclosed by law, rule or regulation, including Ohio Public Record laws; and,
- (f) information that is independently developed by employees or agents of either Party without access to the information from the other Party.

11. BOOKS, RECORDS, AUDITS

11.1. Licensee will keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts due and payable to Licensor hereunder. Said books of account will be kept at Licensee's principal place of business or the principal place of business of the appropriate division of Licensee to which this Agreement relates. Said books and the supporting data will be open at all reasonable times for five (5) years following the end of the calendar year to which such books pertain, for inspection and audit by Licensor or its agents for the purpose of verifying Licensee's royalty statements or compliance in other respects with this Agreement. Should such inspection and audit lead to the discovery of a discrepancy in reporting, which is greater than five percent (5%), Licensee agrees to pay the full costs of such inspection and audit.

- 11.2. Licensee, within sixty (60) days after March 31, June 30, September 30 and December 31, of each year, will deliver to Licensor true and accurate reports signed by an officer of Licensee, giving such particulars of the business conducted by Licensee and its sublicensees during the preceding three (3) month period under this Agreement as will be pertinent to a royalty accounting and accounting for other compensation hereunder. These reports will include at least the following:
- (a) number of Licensed Products manufactured, sold or Otherwise Disposed Of.
 - (b) total invoice price for Licensed Products sold or Otherwise Disposed Of.
 - (c) accounting for all Licensed Processes used, sold or Otherwise Disposed Of.
 - (d) deductions applicable as provided in Article 2.6.
 - (e) total royalties due.
 - (f) names and addresses of all sublicensees of Licensee.
 - (g) other compensation received by Licensee during the reporting period.
- 11.3. With each such report submitted, Licensee will pay to Licensor the royalties and/or any other payments due and payable under this Agreement. If no royalties and/or other payments will be due, Licensee will so report.
- 11.4. On or before the ninetieth (90th) day following the close of Licensee's fiscal year, Licensee will provide Licensor with Licensee's certified financial statements for the preceding fiscal year, including, at a minimum, a Balance Sheet and an Operating Statement.
- 11.5. The royalty payments and/or other payments set forth in this Agreement, if overdue, will bear interest at a per annum rate one percent (1%) above the prime interest rate, published in the *Wall Street Journal*, on the due date until full payment is made. The payment of such interest will not foreclose Licensor from exercising any other rights it may have as a consequence of the lateness of any payment.
- 11.6. Beginning in 2020, on and before January 31 of each year, Licensee will make a written annual report to Licensor covering the preceding year ending December 31 regarding the progress of Licensee toward commercial use(s) of Licensed Product(s) and Licensed Process(es). Such report will include, as a minimum, information sufficient to enable Licensor to satisfy reporting requirements of the U.S. Government and for Licensor to ascertain progress by Licensee toward meeting the diligence requirements of Article 6.

12. INDEMNIFICATION

- 12.1. Licensee agrees to release, indemnify and hold harmless the State of Ohio, Licensor, its Trustees, officers, faculty, employees and students against any and all losses, expenses, claims, actions, lawsuits and judgments thereon (including attorney's fees) which may be brought against the State of Ohio, Licensor, its Trustees, officers, faculty, employees or students as a result of or arising out of any act or omission of Licensee, its agents, or employees under this Agreement, including but not limited to arising out of the production, manufacture, sale, lease, consumption or advertisement by Licensee or any third party of any Licensed Product(s), Licensed Processes(es), or Patent Right licensed under this Agreement.
- 12.2. This agreement to indemnify and hold harmless set forth above will continue after the termination of this Agreement.

13. ADVERSE EFFECTS

Licensor and Licensee agree to report to any regulatory body within the statutory term and to the other, within forty-eight (48) hours from receipt of information, any serious adverse effect that is reported to occur because of the use of products or processes associated with the Patent Rights.

14. PATENT INFRINGEMENT

- 14.1. Licensee will have the sole and exclusive right to enforce Licensor's Patent Rights and to file suit to enforce such Patent Rights, using counsel of Licensee's choice. Licensee will also have the sole and exclusive right to defend all charges of infringements, using counsel of Licensee's choice, arising from the development, manufacture, use or sale of Licensed Product(s) or Licensed Processes. Any infringement prosecution or defense will be at Licensee's expense. Licensee will further have the sole and exclusive right to settle and compromise any such controversy with third parties on terms that it, in its sole discretion, deems right and proper; provided only, that Licensee will not grant to any third party a sublicense which is less favorable to Licensor in terms of royalty payments payable to Licensor than the terms provided for herein, unless and until Licensee obtains Licensor's written approval of such less favorable terms. Any recovery obtained by Licensee as the result of any such proceedings, by settlement or otherwise, will be applied first to pay Licensee's cost and expenses of the proceeding, including attorney's fees and any remaining recovery should be equally distributed between Licensor and Licensee.
- 14.2. In the event that Licensee will determine, for any reason, that it does not choose to enforce Licensor's Patent Rights, then Licensee agrees to promptly notify Licensor of such decision; and thereafter, Licensor will have the sole and exclusive right to enforce Licensor's Patent Rights solely at its expense and any and all such recoveries will be awarded solely and exclusively to Licensor.

- 14.3. In the event that one Party elects to prosecute and defend an infringement action, pursuant to Paragraphs 14.1 or 14.2, the other Party will cooperate and supply technical assistance reasonably requested by the other Party for the conduct of the proceeding.
- 14.4. Licensee will, at all times during the term of this Agreement and thereafter, indemnify, defend and hold the State of Ohio, Licensor, its Trustees, officers, employees and agents, harmless against all claims and expenses, including legal expenses and attorneys' fees arising from any claims based on patent, trademark, or copyright infringement. The provisions of this Paragraph 14.4 will survive the expiration or termination of this Agreement.

15. PRODUCT LIABILITY/WARRANTIES/INSURANCE

- 15.1. Licensee will, at all times during the term of this Agreement and thereafter, indemnify, defend and hold the State of Ohio, Licensor, its Trustees, officers, employees and affiliates, harmless against all claims and expenses, including legal expenses and attorneys' fees arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the Licensed Product(s) and/or Licensed Process(es) or arising from any obligation of Licensee hereunder. Licensee agrees that this language will be included in any sublicense agreement.
- 15.2. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING. Licensee agrees that this language will be included in any sublicense agreement.
- 15.3. Upon initiation of human clinical trials, Licensee agrees to maintain, during the term of this Agreement, Comprehensive General Liability Insurance, including Products Liability Insurance, with reputable and financially secure insurance carrier(s) to cover the activities of Licensee. The insurance policy will name Licensor, its trustees, directors, officers, employees, students and agents as additional insured. The insurance must provide minimum limits of liability of One Million United States Dollars (\$1,000,000.00), which will increase to normal industry standards, with a minimum of One Million United States Dollars, upon the first sale by Licensee. The insurance must cover claims incurred, discovered, manifested, or made during or after the expiration or termination of this Agreement. Licensee must furnish Licensor with a Certificate of Insurance evidencing coverage two (2) months prior to the initiation of human clinical trials, must notify Licensor at least fifteen (15) days prior to termination of such insurance, and must provide Licensor with a Certificate of Insurance evidencing coverage upon request. Any Sublicense will require Licensee and Licensor approval of the sublicensee's insurance coverage. Licensee and Licensor will remain as an

additional insured on sublicensee's policy to cover the possibility of suit/litigation brought in any foreign country. Any Sublicense will require that the Sublicense names Licensee and Licensor as additional named insureds under any required insurance policy.

- 15.4. Licensee acknowledges that failure on its part to fully comply with Paragraph 15.3 above will result in the immediate revocation of this License Agreement. Licensee will provide Licensor copies of said policies of insurance immediately upon receipt thereof. Licensee will provide Licensor with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change in said policies of insurance; if Licensee does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, Licensor will have the right to terminate this Agreement effective at the end of such fifteen (15) day period without notice or any additional waiting period.

16. MARKING AND STANDARDS

- 16.1. Licensee agrees to mark the Licensed Products sold or Otherwise Disposed Of in the United States with all applicable United States patent numbers. All Licensed Products shipped to or sold in other countries will be marked in such a manner as to conform to the patent laws and practice of the country of manufacture or sale.
- 16.2. Licensee further agrees to maintain satisfactory standards in respect to the nature of the Licensed Product manufactured and/or sold by Licensee. Licensee agrees that all Licensed Products manufactured and/or sold by it will be of the quality, which is appropriate to products of the type here involved. Licensee agrees that similar provisions will be included in any Sublicense(s).

17. ASSIGNMENT

- 17.1. This Agreement may not be assigned, sold, transferred or otherwise disposed of by Licensee without the express written consent of an authorized official of Licensor.
- 17.2. This Agreement will extend to and be binding upon the successors and legal representatives and permitted assigns of Licensor and Licensee.

18. NOTICE

- 18.1. Any notice, report or other correspondence (hereinafter collectively referred to as "correspondence") required or permitted to be given hereunder will be mailed by certified mail or delivered by hand to the Party to whom such correspondence is required or permitted to be given hereunder. If mailed, any such notice will be deemed to have been given when mailed as evidenced by the postmark at point of mailing. If delivered by hand, any such correspondence will be deemed to have been given when received by the Party to whom such correspondence is given, as evidenced by written and dated receipt of the receiving party.

All correspondence to Licensee will be addressed as follows:

[INSERT ADDRESS]

All correspondence to Licensor will be addressed as follows:

Technology Transfer
MS 218
The University of Toledo
2801 West Bancroft Street
Toledo, OH 43606-3390

Either Party may change the address to which correspondence to it is to be addressed by notification as provided herein.

19. USE OF NAME

Neither Party may use the name of the other Party, nor its employees, in publicity or promotional materials without the express written consent of the authorized representative of the named party. However, neither Party will be restricted from disclosing the existence of this Agreement or the identity of the Parties. Additionally, Licensee agrees that Licensor may include a brief summary of the company's mission and logo on the Licensor's website. The Parties agree to issue a mutually acceptable press release upon the execution of this Agreement.

20. INDEPENDENT CONTRACTORS

The Parties hereby acknowledge and agree that each is an independent contractor and that neither Party will be considered to be the agent, representative, master or servant of the other Party for any purpose whatsoever, and that neither Party has any authority to enter into a contract, to assume any obligation or to give warranties or representations on behalf of the other Party. Nothing in this relationship will be construed to create a relationship of joint venture, partnership, fiduciary or other similar relationship between the Parties.

21. GOVERNING LAW

This Agreement will be governed by and interpreted in accordance with the laws of the State of Ohio, except that questions affecting the construction and effect of any patent will be determined by the law of the country in which the patent was granted.

22. TERMINATION

- 22.1. This Agreement is effective when signed by both Parties and will extend to the expiration of the last to expire of the licensed Patent Rights unless sooner terminated as provided in this Article 22.
- 22.2. If Licensee will cease to carry on its business, this Agreement will terminate immediately.
- 22.3. Nonpayment for more than sixty (60) days of any payment due to Licensor will be considered a breach of this Agreement and will be cause for termination of this Agreement. Should Licensee fail to pay Licensor royalties and/or license maintenance fees due and payable hereunder, Licensor will have the right to terminate this Agreement on thirty (30) days' notice, unless Licensee will pay Licensor, within the thirty (30) day period, all such royalties and interest due and payable. Upon the expiration of the thirty (30) day period, if Licensee will not have paid all such royalties and interest due and payable, the rights, privileges and license granted hereunder may be terminated by Licensor.
- 22.4. Licensor and Licensee will have the right to terminate this Agreement if the other Party commits a material breach of an obligation under this Agreement and continues in default for more than sixty (60) days after receiving written notice of such default. Such termination will be effective upon further written notice to the breaching Party after failure by the breaching Party to cure such default.
- 22.5. Licensee will have the right to terminate this Agreement at any time on six (6) months notice to Licensor, and upon payment of all amounts due Licensor through the effective date of the termination. Upon termination, a final report signed by an officer of the Licensee will be submitted and all amounts due, including any royalty payments and unreimbursed patent expenses due, to Licensor become immediately payable. Upon request by Licensor, all Licensed Products and Confidential Information will be returned to Licensor.
- 22.6. Upon termination of this Agreement for any reason, nothing herein will be construed to release either Party from any obligation that matured prior to the effective date of such termination. Licensee and any sublicensee will, upon the effective date of such termination, immediately suspend its use and sale of the Patent Rights. Additionally, Licensee will provide Licensor with all data and know-how developed by Licensee and/or sublicensee.
- 22.7. Articles 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 21, 22 and any other provisions that by their nature are intended to survive, of this Agreement will survive termination.
- 22.8. Any termination of this Agreement will be without prejudice to Licensor's right to recover all amounts accruing to Licensor prior to such termination and cancellation.

22.9. In the event that Licensee will become insolvent, will make an assignment for the benefit of creditors, or will have a petition in bankruptcy filed for or against it, this Agreement will terminate immediately.

23. OTHER RELATIONSHIPS

Licensee acknowledges that Licensor may have ongoing relationships, sponsored research, or licensing agreements with other companies and organizations that may be in competition with Licensee.

24. CAPTIONS

The captions and paragraph headings of this Agreement are solely for the convenience of reference and will not affect its interpretation.

25. SEVERABILITY

Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in valid and enforceable manner, and the remainder of the Agreement will remain binding upon the Parties hereto.

26. AMENDMENT

No amendment or modification of the terms of this Agreement will be binding on either Party unless reduced to writing and signed by the authorized officers of the Parties to be bound.

27. WAIVER

No failure or delay on the part of a Party in exercising any right hereunder will operate as a waiver of or impair any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be deemed a waiver of any other right hereunder.

28. COUNTERPARTS

This Agreement may be executed in one or more counterparts including signing a facsimile or scanned electronic version. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.

29. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties hereto respecting the Patent Rights hereof, and supersedes and terminates all prior agreements, respecting the

subject matter hereof, whether written or oral, and may be amended only by an instrument in writing executed by both Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized to be effective as of the Effective Date.

THE UNIVERSITY OF TOLEDO

By: _____
Frank J. Calzonetti, PhD
Vice President for Research

By: _____

Date: _____

Date: _____

Drs. _____, _____, and _____ agree to forego and will refuse to accept any portion of income, royalty, fees, equity or other economic benefits received by Licensor. Drs. _____, _____, and _____ specifically waive their rights under rules, regulations, policies, and by-laws of The University of Toledo with respect to income, royalty, fees, or other economic benefits received by The University of Toledo resulting from the License Agreement with _____.

AGREED TO AND ACCEPTED:

AGREED TO AND ACCEPTED:

Date

Date

APPENDIX A

Know-how, Pending Patent Applications, and Patents

Invention Disclosure No.: _____ Patent Application Serial No.: _____ filed _____
and any continuations, divisional applications or any reissues, reexaminations, substitutions, or
extensions thereof, and any corresponding foreign patent applications.

DRAFT