

**INTER-INSTITUTIONAL AGREEMENT REGARDING MANAGEMENT OF INTELLECTUAL
PROPERTY**

AGR#: 11339 (PNNL #529793)

This Inter-Institutional Agreement Regarding Management of Intellectual Property ("**Agreement**") is between Washington State University ("**WSU**"), an institution of higher education and an agency of the state of Washington through its Office of Commercialization, having an office at the Lighty Student Services Building, 280/286, Pullman, Washington 99164 USA and Battelle Memorial Institute, Pacific Northwest Division, as operator of the Pacific Northwest National Laboratory under Contract No. DE-AC05-76RL01830 with the United States Department of Energy ("**PNNL**"), a component of the Battelle Memorial Institute, a charitable trust organized as a non-profit corporation under the laws of the state of Ohio, having an address at 902 Battelle Boulevard, Richland, Washington 99354 USA. WSU and PNNL may hereinafter be referred to individually as "**Party**" or collectively in any combination as "**Parties**". This Agreement shall be effective as of January 1, 2013 ("**Effective Date**").

Recitals

Whereas, PNNL manages and operates the Pacific Northwest National Laboratory on behalf of the United States Department of Energy ("**DOE**") under Contract No. DE-AC05-76RL01830;

Whereas, PNNL and WSU have Inter-Institutional Collaborative Activities among employees of each institution;

Whereas, PNNL and WSU desire to allow PNNL scientists and WSU employees, including faculty members to conduct collaborative research and other professional endeavors directly related to the function and mission of the facilities, equipment, and resources that are owned, operated, leased, or managed by PNNL or WSU;

Whereas, PNNL and WSU pursuant to the terms of the respective funding agreements under which work is performed may acquire certain rights in Intellectual Property from their respective employees as a result of collaborative activities;

Whereas, PNNL and WSU want the Intellectual Property to be commercialized to the fullest extent so that commercial products and other benefits from licensing can be enjoyed by the general public;

Whereas, PNNL and WSU believe that the commercialization of the Intellectual Property can best be achieved by the offering of licenses through a Lead Party;

Whereas, PNNL and WSU intend that the Lead Party will assume exclusive responsibility for managing the Intellectual Property including the prosecution and maintenance of patents and patent applications arising directly from collaborations that the Lead Party will market and license the Patent Rights as defined below, and that WSU or PNNL will not license its undivided interests in the Patent Rights during the term of this Agreement without the consent of the other Party.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties covenant and agree as follows:

1. DEFINITIONS

The terms used in this Agreement shall have the following meaning:

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1.1 **“Administrative Fee”** shall mean the fee retained by Lead Party as consideration for acting as lead under this Agreement. The Administrative Fee is equivalent to 15% of Income, as identified in Section 4.6 below.

1.2 **“Background Intellectual Property”** shall mean any intellectual property owned or controlled by any of the Parties which is not subject to this Agreement but which is needed to practice the invention covered by the Patent Rights or Copyright Rights.

1.3 **“Computer Software”** shall mean the following items which properly identify employees of both WSU and PNNL as authors : (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. Such items shall be identified as Computer Software in a completed “Lead Party and Royalty Sharing Form” as set forth in Exhibit A (**“Lead Party Form”**). The term does not include computer databases.

1.4 **“Confidential Information”** shall mean unpublished information that may properly be withheld from public disclosure, including: invention reports, Lead Party Forms, unpublished patent applications corresponding to Patent Rights, Computer Software object or source code, and active, fully-executed License Agreement(s) and Option Agreement(s) for the commercial development of Licensed Products.

1.5 **“Copyright Rights”** shall mean the copyrights in the Computer Software, whether or not registered, for example, with the United States Library of Congress or with an appropriate authority of any other country.

1.6 **“Expenses”** shall mean: (a) the expenses incurred by the Lead Party for preparing, filing, prosecuting and maintaining patent applications and issued patents that constitute the Patent Rights or are incurred for the copyright protection of Computer Software; and (b) Lead Party funds expended to mature technology covered by Patent Rights or Copyright Rights for commercial purposes.

1.7 **“Income”** shall mean monetary payments or other forms of compensation and consideration (including but not limited to fixed fees, license fees, maintenance fees, milestone payments, unearned portions of any minimum royalty payments, equity, joint marketing fees, intellectual property cross-licenses, or thing of value given, or exchanged) that are received by the Lead Party from any activity asserting or defending the Patent Rights or Copyright Rights or from License Agreement(s). The Lead Party shall not receive compensation other than in the form of cash or equity without the approval of the other Party. Income shall not include payments received for reimbursement of patent prosecution expenses, reimbursement of other legal expenses incurred as part of negotiating License Agreement(s) and/or Option Agreement(s), copyright protection expenses, or funds received, which are directly related to research support or technology maturation, specific to the Patent Rights specified in such agreements relating thereto.

1.8 **“Intellectual Property”** shall mean all Patent Rights, Copyright Rights, Rights in Data, Technical Information, Laboratory Biological Materials, and Laboratory Tangible Research Products.

1.9 **“Inter-Institutional Collaborative Activities”** shall mean all PNNL-WSU collaborative projects or activities, after the Effective Date of this Agreement, unless otherwise specified, undertaken by: (a) employees of either PNNL or WSU; and (b) that have mutually collaborated on projects or activities; and (c) have access to PNNL and WSU facilities, equipment, and resources to conduct research and other professional endeavors that are directly related to the function and mission of said facilities, equipment, and resources.

1.10 **“Laboratory Biological Materials”** shall mean biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made by PNNL employees under the Operating Contract through the use of PNNL research facilities.

1.11 **“Laboratory Tangible Research Products”** shall mean tangible material results of research which: (i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility; (ii) are not materials generally commercially available; and (iii) were made by PNNL employees under the Operating Contract through the use of PNNL research facilities.

1.12 **“Lead Party”** shall mean the Party mutually selected by WSU and PNNL that shall lead patenting and commercialization activities for Patent Rights or Copyright Rights.

1.13 **“Licensee(s)”** shall mean any party that enters into a License Agreement(s) with the Lead Party.

1.14 **“License Agreement(s)”** shall mean any agreement(s) entered into by the Lead Party that grants Licensee(s) the right to make, have made, use, offer for sale, sell, import, reproduce, author derivative works of, license, or distribute Licensed Products. No transfer of established Intellectual Property rights will occur outside of a License Agreement.

1.15 **“Licensed Products”** shall mean any product or part thereof which: (i) is covered in whole or in part by a claim or claims within any pending patent application or issued patent included in the Patent Rights in any country in which any such product is made, used, offered for sale, sold, or imported; or (ii) is used in providing a service or item of manufacture by using a process that is covered in whole or in part by a claim or claims within any pending patent application or issued patent included in the Patent Rights in any country in which any such process is used or in which such product is used or sold; or (iii) utilizes the Copyright Rights.

1.16 **“Licensee(s)”** shall mean any party that enters into a License Agreement(s) with the Lead Party.

1.17 **“Net Revenues”** shall generally mean Income less Expenses and an Administrative Fee to the Lead Party. If Lead Party is fully reimbursed for patent prosecution expenses or copyright protection under a License Agreement or Option Agreement, then “Net Revenues” shall mean Income less the Administrative Fee.

1.18 **“Operating Contract”** shall mean the management and operations contract for PNNL currently embodied in DOE Contract No. DE-AC05-76RL01830.

1.19 **“Option Agreement(s)”** shall mean any agreement(s) entered into by the Lead Party that grants Optionee(s) the right to negotiate and enter into a License Agreement.

1.20 **“Optionee(s)”** shall mean any party that enters into an Option Agreement(s) with the Lead Party.

1.21 **“Patent Rights”** shall mean those rights which: (a) are claimed in all patent applications and issued patents, whether U.S. or foreign, which contain one or more claims covering the information and invention reports describing an invention that was jointly conceived or jointly first reduced to practice by a PNNL or WSU employee in the course of Inter-Institutional Collaborative Activities; (b) are identified in a completed Lead Party Form; and (c) properly identify an inter-institutional collaborator as an inventor. Patent Rights include any provisionals and/or utility, continuations, divisionals, reexaminations, substitutions, confirmations, registrations, revalidations, reissues, extensions and foreign counterparts of any such patent application or patents.

1.22 **“Project”** shall mean a specific technical activity with a defined work scope conducted under a designated appropriation from a third party directly correlated to that work scope and to which obligations to the third party exist.

1.23 **“Rights in Data”** shall mean all recorded information regardless of form or the media on which it may be recorded. The term includes Technical Information and Computer Software.

1.24 **“Technical Information”** shall mean information first produced as a result of research and development activities.

2. DISPOSITION OF INTELLECUTAL PROPERTY RIGHTS

2.1 Subject to the terms of any applicable US Government funding agreement under which the work arose, ownership of Intellectual Property created under this arrangement will be determined under the principles of United States Intellectual Property law wherein, for example, inventorship determines ownership.

2.2 In the event that Intellectual Property arises under a Project wherein specific rights in Intellectual Property are obligated to a third party, WSU and PNNL agree to work together to allow the contractually obligated party to provide that third party with any required rights in that Intellectual Property.

3. INVENTION REPORTING AND LEAD PARTY SELECTION

3.1 When a Party determines that it has received an invention report describing an invention that is conceived or first reduced to practice in the course of Inter-Institutional Collaborative Activities, that Party shall disclose the invention report to the other Party within two months after such determination.

3.2 Designated representatives for the Parties shall complete a Lead Party Form within two (2) months after the receiving Party actually receives an invention report from the disclosing Party. When completing the Lead Party Form, the designated representatives shall:

3.2.1 Specifically identify the invention report(s) that is subject to the Lead Party Form by docket or reporting number, title, inventor names, and dates the invention reports were submitted to the Parties by their respective employees;

3.2.2 Determine an equitable and mutually agreed to ratio expressed as a percentage to define how Net Revenues will be distributed to the Parties;

3.2.3 Negotiate and select a Lead Party for the invention(s) identified in the Lead Party Form. At a minimum, negotiations to select the Lead Party shall consider factors such as: the relative contribution of each Party's employees to the invention; the Party employing the principal investigator for the work giving rise to the invention; the relevant Background Intellectual Property of each Party; any preexisting relationships that the Parties may have with potential licensees; the comparative interest of the Parties in commercializing the invention; and the available budget and resources the Parties have to devote to commercializing the invention; and

3.2.4 Sign two copies of the Lead Party Form and retain one copy for each Party's records.

3.3 If the designated representatives are not able to select a mutually agreeable Lead Party or the percentage of Net Revenues that will be distributed to PNNL and WSU as described in this Section, the personnel responsible for managing technology transfer operations for PNNL and WSU shall negotiate and

select the Lead Party and the percentage of Net Revenues that will be distributed to PNNL and WSU as described in this Section.

3.4 If the Lead Party does not own the Patent Rights, then the Party that owns the Patent Rights shall work in good faith to license the Patent Rights to the Lead Party. Said license is dependent on the availability of the Intellectual Property and the resolution of any contractual or legal requirements of either institution or their sponsoring entities.

4. LICENSING

4.1 For five (5) years from the date a Lead Party Form is executed, Lead Party shall have the exclusive right to negotiate, execute, and administer License Agreement(s) for the Patent Rights subject to the Lead Party Form. The other Party will not separately license its undivided interest in the Patent Rights unless: (a) this Agreement is terminated in accordance with the Section in this Agreement entitled "Termination"; or (b) the period for exclusive licensing by the Lead Party expires without executed License Agreement(s). The period for exclusive licensing of Patent Rights by the Lead Party as described in this Section may be extended by mutual written agreement by the Parties.

4.2 For any Patent Rights that are specifically identified on a properly completed Lead Party Form and are subject to an active License Agreement(s) at the time the period for exclusive licensing of the Patent Rights by the Lead Party automatically expires as required in this Paragraph, the exclusive period for licensing those Patent Rights by Lead Party shall extend automatically consistent with the term of the active License Agreement(s).

4.3 Lead Party shall exert reasonable efforts to seek Licensee(s) for the commercial development of the Patent Rights. Lead Party will administer the corresponding License Agreement(s) negotiated for the mutual benefit of the Parties to this Agreement and in the public interest.

4.4 Lead Party will have the final authority to enter into negotiations and execute License Agreement(s) for the Patent Rights. Lead Party will provide the other Party with copies of all License Agreement(s) issued. The Parties will keep these documents and related documentation confidential in accordance with the Article in this Agreement entitled "Confidentiality".

4.5 If at any time during the term hereof Lead Party decides not to pursue further licensing efforts as contemplated by this Agreement, Lead Party shall give written notice of such decision to the other Party. Thereafter, other Party may assume on behalf of itself and Lead Party the licensing efforts contemplated herein. If the other Party assumes these licensing efforts, then Lead Party will cooperate with the other Party; and the other Party will assume the duties of the Lead Party as described in this Agreement.

4.6 Lead Party's unreimbursed Expenses and an Administrative Fee equivalent to 15% of Income will be deducted from Income to arrive at the Net Revenues.

4.7 During the life of this Agreement, each Party will be solely responsible for calculating and distributing its share of Net Revenues to its employee-inventors and other key contributors in accordance with its own policies and procedures in effect at the time.

4.8 Lead Party shall apply any required licensing terms and conditions specified by the other Party in any License Agreement(s). For example, if PNNL is the Lead Party then PNNL shall apply any required licensing terms and conditions specified by WSU. Likewise, if WSU is the Lead Party then WSU shall apply any required

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licensing terms and conditions specified by PNNL. With the exception of the required terms and conditions specified by the other Party, nothing in this Paragraph shall in any way restrict Lead Party's right to enter into such terms and provisions as Lead Party deems necessary and/or advisable for the licensing of the Patent Rights in the exercise of its independent prudent business judgment.

4.9 Licensing terms and conditions required by PNNL are provided in Exhibit B, which is incorporated by reference herein and may be updated from time to time as needed;

4.10 Licensing terms and conditions required by WSU are provided in Exhibit C, which is incorporated by reference herein and may be updated from time to time as needed.

5. PATENT PROSECUTION AND PROTECTION

5.1 For the period of time that the Lead Party may exclusively license or option any Patent Rights or Copyright Rights specifically identified on a Lead Party Form as described in Section 4, "Licensing", Lead Party shall have the exclusive right to file, prosecute and maintain the Patent Rights and Copyright Rights subject to the Lead Party Form. During this period, neither Party will assign its undivided interest in the Patent Rights or Copyright Rights without the written consent of the other Party. It is understood by the Parties that if Patent Rights were conceived or first reduced to practice under the Operating Contract, or if Computer Software was developed under the Operating Contract, then PNNL shall be able to assign its rights in Patent Rights or Computer Software to a third party for the management of the Patent Rights or Computer Software.

5.2 Lead Party shall provide to the other Party all serial numbers and filing dates, together with copies of all such applications, including copies of all patent office actions, responses, and all other patent office communications. If at any time during the term hereof Lead Party desires to suspend filing and prosecution of a patent application and/or a patent included within Patent Rights, or not make a maintenance fee payment for a patent included within Patent Rights, and in any event no later than thirty (30) days before the date on which such patent application or patent would become abandoned, Lead Party shall give written notice of such intention to the other Party. Upon receipt of such notice, the other Party may assume on behalf of itself and Lead Party the filing, prosecution and maintenance of the patent application or patent which Lead Party indicated its intent to abandon or suspend, as the case may be. In the event the other Party assumes responsibility for a patent application or patent included within the Patent Rights under the provisions set forth herein, the other Party shall bear all future Expenses as of the date upon which the other Party assumes responsibility for the filing, prosecution and maintenance for such patent application or patent unless otherwise agreed to between the Parties. The Parties shall mutually agree upon the date upon which assumption occurs.

5.3 If any foreign patent applications are filed, Lead Party shall promptly provide to other Party all serial numbers and filing dates. Lead Party shall also provide to the other Party copies of foreign patent applications and Patent Office Actions. The Parties will use reasonable efforts to cooperate with each other with respect to the filing, prosecuting, maintaining, and enforcing of the Patent Rights, and with respect to the optioning, licensing and execution of assignments of the Patent Rights contemplated under this Agreement.

5.4 Unless otherwise altered by the individual Lead Party Agreement, Lead Party shall be responsible for initially paying any costs and charges required for (i) filing, prosecuting, maintaining, and enforcing the Patent Rights in the United States and in any foreign country, or (ii) registration of the copyright in Computer Software. Lead Party shall attempt to obtain reimbursement for these costs from the respective Licensee or Optionee. However, in the event that such costs or charges are not reimbursed, or if there is no Licensee or Optionee for the Patent Rights or the Computer Software, as the case may be, then, Lead Party may obtain reimbursement of such costs and charges as Expenses from the Income prior to distribution of Net Revenues.

5.5 In the event other Party assumes responsibility for a patent or patent application under this Section entitled "Patent Prosecution and Protection", other Party shall bear all costs with respect to the filing, prosecution and maintenance costs for such patent or patent application made by other Party.

5.6 The Parties will use all reasonable efforts to cooperate with each other with respect to the filing, prosecuting, maintaining, and enforcing of the Patent Rights, and with respect to the licensing and execution of assignments of the Patent Rights contemplated under this Agreement.

5.7 If Lead Party incurs any costs and charges that are not reimbursed by a Licensee(s) in filing, prosecuting, maintaining, and enforcing the Patent Rights in the United States and in any foreign country, or if there is no Licensee for the Patent Rights, then, at its sole discretion, Lead Party may pay these costs and charges from Income received by Lead Party and deduct the other Party's share of such payments of costs and charges from the Net Revenues that are otherwise payable to the other Party.

6. PROTECTION OF COMPUTER SOFTWARE

6.1 If the Parties wish to register the Copyright Rights, the Party that is not the Lead Party shall provide to the Lead Party all information necessary to register the copyright in the Computer Software, including a print-out of the computer code. Lead Party shall take such steps as are necessary to ensure the proper registration of the Copyright Rights, including paying all necessary fees.

7. RESERVATION OF PATENT RIGHTS AND COMPUTER SOFTWARE

7.1 During the term of this Agreement, the Parties will retain a royalty-free, nonexclusive right to make, have made, use, reproduce, author derivative works, and distribute the Patent Rights and Copyright Rights for research, development, demonstration, clinical and educational purposes for themselves and on behalf of others; and the Parties may license the same to domestic non-profit institutions for their internal academic non-commercial research purposes, and any License Agreement will contain a similar clause reserving such rights for the Parties.

8. RECORDS AND REPORTS

8.1 Lead Party will keep accurate accounts of all costs and charges of all Income received by it from each Licensee(s) and will permit the other Party to employ a certified public accounting firm, acceptable to the Parties, to examine its books and records at reasonable times, but not more than once a year, in order to verify the payments due or owing under this Agreement. The books and records of a given fiscal year may be examined only once per year. The fees and expenses of the certified public accounting firm will be borne by the Party initiating the examination.

8.2 Lead Party will pay other Party its share of Net Revenues due under this Agreement every six (6) months by January 30 and July 30 for the preceding six (6) month period.

8.3 Lead Party shall provide to other Party annual written reports, due with the January 30 Net Revenues payment for the annual period ended the last day of the preceding December, setting forth the nature and amount of all Expenses incurred on behalf of other Party and Lead Party and of all Income received by Lead Party pursuant to any License Agreement(s) entered into pursuant to this Agreement. Each such report shall set forth the source and nature of Income, Expenses, and Net Revenues.

9. LEGAL ACTIONS

9.1 The Parties shall by mutual agreement determine whether or not the Parties hereto shall engage in and prosecute any legal actions involving the Intellectual Property, at Parties sole judgement, that such action may be reasonably necessary, proper, and justified. Such action can include without limitation interferences, oppositions, reissues, reexaminations, or infringement or validity actions, including appeal proceedings. PNNL or WSU, as the case may be, may join in an action and shall otherwise provide the other Party with such assistance and information as may be useful to the other Party in connection with taking such action. WSU and PNNL shall have the right to assign its respective rights under this Section entitled "Legal Actions" to any of Lead Party's Licensee(s).

9.2 Any monetary recoveries actually received and retained by WSU or PNNL from actions referred to in this Section entitled "Legal Actions" shall be treated as Income and any costs associated with the action shall be treated as Expenses.

9.3 Each Party shall inform the other of any suspected infringement of any Intellectual Property contemplated by this Agreement. Lead Party shall also notify any Licensee(s) of any suspected infringement of the Intellectual Property. Lead Party, in cooperation with other Party, shall use its best efforts to terminate such infringement action without litigation.

9.4 If Lead Party and other Party cannot reach mutual agreement as to whether to bring or how to pursue an infringement action, Lead Party will have first option to bring the action at Lead Party's sole expense, and if Lead Party decides not to do so, other Party will then have the option to bring the action at other Party's sole expense. To the extent that damages are awarded to the Parties for infringement or monies are paid by way of settlement of any claim for infringement, such damages and/or monies shall be paid to Lead Party and other Party in proportion to their respective contributions to all costs, fees and/or expenses incurred in the infringement action after taking into consideration any Expenses incurred under the Section entitled "Patent Prosecution and Protection" which have not been deducted as required by the Section entitled "Licensing".

9.5 Lead Party may permit its Licensees to bring suit on their own account, but only if Lead Party and other Party elect not to commence separately or join each other in any suit, other than as nominal party plaintiff.

9.6 If this Agreement is terminated, each Party shall be free to initiate and maintain any patent infringement action in its own name, retaining for itself all damages and/or monies recovered thereby.

10. TERMINATION

10.1 Either Party may terminate this Agreement for any reason upon at least sixty (60) days written notice ("**Notice of Termination**") to the other Party.

10.2 If PNNL or WSU in its sole and independent judgment determines that the terms and conditions of this Agreement conflict with other obligations or any other requirements then: (a) Parties will provide notice of the conflict as appropriate; (b) the Parties will determine if a negotiated amendment to this Agreement is needed to resolve the conflict; (c) the Parties will enter into negotiations for the purposes of amending this Agreement to resolve the conflict if a negotiated amendment is needed; and (d) either Party may terminate this Agreement if the Parties fail to negotiate an amendment which satisfactorily resolves the identified conflict.

10.3 Termination of this Agreement shall not affect any License Agreement(s) then in existence or technologies already disclosed to WSU or PNNL or technologies developed under this Agreement while it is

still in effect, and Net Revenues received from such License Agreement(s) shall be distributed as set forth in this Agreement. Unless otherwise prohibited by any License Agreement(s) in effect at the time this Agreement is terminated, WSU and PNNL agree that, upon termination, both WSU and PNNL will be permitted to grant nonexclusive licenses to the Patent Rights, without paying compensation to the other Party to this Agreement. All such license agreement(s) granted after termination of this Agreement shall not contain terms that would create a breach by WSU or PNNL of the provisions of any License Agreement(s) granted prior to termination. Each Party will be solely responsible for distributing any monies received from its own licensing of the Patent Rights according to its own policy, unless the Parties otherwise agree in writing.

10.4 Termination of this Agreement will not relieve either Party of any obligation or liability accrued under this Agreement before termination or rescind any payments made or due before termination.

11. CONFIDENTIALITY

11.1 Each Party shall safeguard Confidential Information against non-confidential disclosure to third parties with the same degree of care as it exercises with its own Confidential Information of a similar nature. The receiving Party shall not disclose Confidential Information to others (except to its respective employees, agents or consultants who are bound to such receiving Party by a like obligation of confidentiality), without the express written permission of the disclosing Party; provided, however, that the receiving Party shall not be prevented from disclosing any Confidential Information which:

- (i) is now, or becomes in the future, public knowledge other than through acts or omissions of the receiving Party; or
- (ii) is lawfully obtained by the receiving Party from a source independent of the disclosing Party; or
- (iii) the receiving Party can demonstrate was independently developed by employees of the receiving Party having no knowledge of the Confidential Information; or
- (iv) is subject to disclosure under proper governmental or judicial process, provided that notice of such process is promptly provided to the disclosing Party in order that the disclosing Party may have reasonable opportunity to intervene in such process to contest such disclosure.

11.2 Lead Party shall disclose Confidential Information to potential Licensee(s) only under the cover of a confidentiality agreement for the purposes of evaluation of the Patent Rights for commercial development.

11.3 Upon termination of this Agreement, the Parties shall safeguard Confidential Information for three (3) years from the effective date of termination pursuant to the Section entitled "Termination".

11.4 It is understood that as an educational institution of the state of Washington, WSU is subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.56 et seq. (<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56>). If a Public Disclosure Act request is made to view Confidential Information, and the WSU's Public Records Officer either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, WSU will notify PNNL of the request and the date that such records will be released to the requester unless Company obtains a court order enjoining that disclosure by or before that date. If PNNL fails to obtain a court order enjoining disclosure,

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WSU will release the requested Confidential Information on the date specified. WSU's Public Records Officer (PRO) reserves the right to change the date of such release as the PRO deems necessary and in the public interest.

12. USE OF PATENT RIGHTS

12.1 During the term of this Agreement, each Party reserves the right to use the Patent Rights and Copyright Rights for its research, clinical, outreach, and educational purposes.

13. LIFE OF THE AGREEMENT

13.1 Unless otherwise terminated by operation of law or by acts of the Parties in accordance with the terms of this Agreement, this Agreement is effective from the Effective Date and will remain in effect for the longer of: (a) the life of the Patent Rights; or (b) the period of time that at least one Inter-Institutional Collaborative Activity is active.

13.2 Any termination of this Agreement will not affect the rights and obligations set forth in Sections entitled: "Patent Prosecution and Protection", "Legal Action", "Termination", "Confidentiality", "Life of the Agreement", "Warranties and Representations", "Use of Names", and "Miscellaneous".

13.3 PNNL understands and agrees that WSU's rights and obligations under this Agreement may be assigned to a designee of WSU without further notice to PNNL, provided that such assignment does not conflict with any existing regulation or requirement placed upon PNNL in its position as an operator of a Federally Funded Research and Development Center or as a 501c(3) tax exempt entity. Such assignment or license shall be binding upon the undersigned parties and inure to the benefit of such assignee.

13.4 PNNL shall be able to assign its rights in Patent Rights to a subsequent contractor for the management and operation of PNNL as specified in the Operating Contract.

13.5 WSU shall be able to assign its rights in Patent Rights and Computer Software to a third party for the management of Intellectual Property.

14. NOTICES AND DESIGNATED REPRESENTATIVES

14.1 Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given at the earlier of the time when actually received as a consequence of any effective method of delivery, including but not limited to hand delivery, transmission by telecopier, and electronic mail, addressed to the Party for whom intended at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

Washington State University

Attn: Assistant Vice President, Commercialization
Lighty Student Services, 280
PO Box 641060
Pullman, WA 99164

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Battelle Memorial Institute, Pacific Northwest Division

Attn: IP Compliance Office, Mailstop K1-71
P.O. Box 999, 902 Battelle Blvd.
Richland, WA 99352

14.2 PNNL and WSU shall each designate an employee who will act as their designated representative in matters covered by this Agreement and for completing the Lead Party Form. Each Party shall promptly indicate in writing to the other Party any change in designation of its representative. Each Party's representative shall be responsible to the other for responding to any and all reasonable inquiries relating to the Patent Rights and/or patenting and licensing of the Patent Rights, but shall not have authority to modify or amend this Agreement, unless specifically stated by that Party in writing. Party employees holding the following positions shall be the designated representatives of the Parties:

WSU: commercialization manager assigned to serve WSU faculty and staff engaged in Inter-Institutional Collaborative Activities with PNNL.

PNNL: commercialization manager assigned to serve PNNL staff engaged in Inter-Institutional Collaborative Activities with WSU.

15. WARRANTIES AND REPRESENTATIONS

15.1 WSU and PNNL warrant that, except as otherwise provided under the Section of this Agreement entitled "United States Government Interests" with respect to U.S. Government interests, they are the owners of the Patent Rights or otherwise have the right to enter into this Agreement. However, nothing in this Agreement shall be construed as:

- (i) a warranty or representation by WSU or PNNL as to the validity or scope of any right included in the Patent Rights;
- (ii) a warranty or representation that anything made, used, sold or otherwise disposed of under any License Agreement granted pursuant to this Agreement will or will not infringe patents of third parties;
- (iii) an obligation to bring or prosecute actions or suits against third parties for infringement of the Patent Rights;
- (iv) an obligation to furnish any know-how not provided in the Patent Rights or any services other than those specified in this Agreement; or
- (v) a warranty or representation by WSU or PNNL that they will not grant licenses to others to make, use or sell products not covered by the claims of the Patent Rights which may be similar and/or compete with products made or sold by any Licensee(s) or any sublicensee(s) of Licensee(s).

15.2 NEITHER WSU NOR PNNL MAKE ANY REPRESENTATIONS, EXTEND ANY WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EITHER EXPRESS OR IMPLIED, AND ASSUME ANY RESPONSIBILITIES WHATSOEVER WITH RESPECT TO USE, SALE, OR OTHER DISPOSITION BY ANY LICENSEE(S), ITS

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SUBLICENSEE(S) OR THEIR VENDEES OR OTHER TRANSFEREES OF PRODUCT INCORPORATING OR MADE BY USE OF INVENTIONS LICENSED PURSUANT TO THIS AGREEMENT.

16. USE OF NAMES

16.1 Neither WSU nor PNNL shall use the name of the other Party, DOE, PNNL, the name of any inventor of the Patent Rights governed by this Agreement and not employed by or a former employee of the Party intending to use the inventor's name, Battelle, DOE, PNNL or the name of WSU in any sales promotion, advertising, or any other form of publicity without the prior written approval of the other Party.

17. MISCELLANEOUS

17.1 If any provisions of this Agreement are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the Parties or this Agreement, those provisions shall be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement shall remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the Parties agree to substitute new terms as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws and regulations. The Parties hereto are independent contractors and not joint ventures or partners.

17.2 This Agreement constitutes the full understanding between the Parties with reference to the subject matter hereof, and no statements or agreements by or between the Parties, whether orally or in writing, except as provided for elsewhere in this Section entitled "Miscellaneous", made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement. Neither Party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other Party, and specifically states that it is an amendment to this Agreement.

17.3 Except as required by Federal or State law, neither WSU nor PNNL will issue any news releases or make any public statements regarding this Agreement without the prior written consent of the other Party, provided that WSU or PNNL may, if considered necessary by its legal counsel to fulfill its legal, accounting and reporting obligations, respond to inquiries and make such releases as it considers appropriate if it notifies the other Party in advance of the substance of any such response or release and gives the other Party reasonable opportunity for prior comment.

17.4 Each Party shall comply with the U.S. Export Regulations applicable to export of the Patent Rights (including the direct product thereof).

17.5 This Agreement shall be construed in accordance with the laws of the state of Washington of the United States of America and in the English language, and any action brought to enforce any provision or obligation hereunder shall be brought in accordance with the terms of the Section entitled "Notices and Designated Representatives".

17.6 The waiver of a breach hereunder may be effected only by a writing signed by the waiving Party and shall not constitute a waiver of any other breach.

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17.7 The Parties acknowledge that because some of the inventions described hereunder may be developed in part using federal funding, certain statutory provisions apply to exploitation of any rights in patents and data arising hereunder. Accordingly, both Parties agree to abide by, and agree to require any Licensee(s) to abide by the federal funding statutory and contractual provisions in effect at that time.

17.8 The Parties acknowledge that BATTELLE operates PNNL for DOE under the Operating Contract. Accordingly, the Parties agree that BATTELLE must comply with the terms of the Operating Contract and that this Agreement shall be construed in a manner that will enable BATTELLE to comply with the Operating Contract.

18. UNITED STATES GOVERNMENT INTERESTS

18.1 It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Patent Rights were conceived or made the United States Government is entitled, as a right, under the provisions of 35 U.S.C. 202-212 and applicable regulations of Title 37 of the Code of Federal Regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such Patent Rights for governmental purposes. Any License(s) granted to any Licensee(s) pursuant to this Agreement shall be subject to such right.

19. CONTRACT FORMATION AND AUTHORITY

19.1 No agreement between the Parties shall exist unless the duly authorized representative of PNNL and WSU have signed this Agreement.

19.2 WSU and BATTELLE hereby warrant and represent that the persons signing this Agreement have authority to execute this Agreement on behalf of the Party for whom they have signed.

20. NO IMPLIED LICENSE

20.1 EXCEPT AS EXPRESSLY PROVIDED NOTHING IN THIS AGREEMENT CONFERS BY IMPLICATION, ESTOPPEL, OR OTHERWISE ANY LICENSE OR RIGHTS UNDER ANY PATENTS OF EITHER PARTY OTHER THAN THE PATENT RIGHTS, REGARDLESS OF WHETHER THESE PATENTS ARE DOMINANT OR SUBORDINATE TO THE PATENT RIGHTS.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the dates indicated below.

WASHINGTON STATE UNIVERSITY

Signature: Sita S. Pappu

Name: Sita S. Pappu

Title: Assistant Vice President, Office of Commercialization

Date: 03/03/2020

**BATTELLE MEMORIAL INSTITUTE,
PACIFIC NORTHWEST DIVISION**

Signature: Peter C. Christensen

Name: Peter C. Christensen

Title: Deputy Director for Licensing

Date: 3/2/20

EXHIBIT A
LEAD PARTY AND ROYALTY SHARING FORM

Patent Rights: Identify invention to be considered "Patent Rights" as that term is defined in the Inter-Institutional Agreement ("IIA"). Include the specified identifying information for the same invention as recorded in each Party's invention reporting system or docket.

INVENTION #1			
WSU		BATTELLE	
Docket No.:	Date Reported:	Docket No.:	Date Reported:
Title:		Title:	
Inventors:		Inventors:	

Net Revenues: The following percentages will be used to calculate the "Net Revenues" that will be distributed to the Parties as described in the IIA: *(sum must total 100%)*

_____ %: Washington State University Research Foundation ("WSU")

_____ %: Battelle Memorial Institute, Pacific Northwest Division ("BATTELLE")

Lead Party: The Party that will assume the duties and obligations of "Lead Party" as that term is defined in the IIA will be: *(check one)*

☐ WSU

☐ BATTELLE

Technology Transfer Program: BATTELLE has chosen to commercialize its rights in Patent Rights under the following technology transfer program: *(check one)*

☐ Government Funded Technology Transfer ("GFTT")

☐ Privately Funded Technology Transfer ("PFTT")

Acknowledged by Designated Representatives:

WASHINGTON STATE UNIVERSITY

**BATTELLE MEMORIAL INSTITUTE,
PACIFIC NORTHWEST DIVISION**

By: _____
Commercialization Manager

By: _____
Commercialization Manager

Date: _____

Date: _____

EXHIBIT B

Licensing Terms and Conditions Required by BATTELLE

When WSU is identified as the Lead Party, License Agreements shall include standard licensing terms and conditions that are prudent to include in intellectual property license agreements, e.g., license grants and sublicense grants if appropriate, execution fees, royalty rates, annual minimum payments, diligence provisions, record keeping and reporting and audit requirements, litigation terms, waivers, representations and warranties, expiration and early termination requirements, etc. Additionally, WSU shall include terms and conditions that are at least as extensive in scope and effect as the clauses specified in this Exhibit. The technology transfer program specified in the applicable Lead Party Form by BATTELLE's authorized representative shall indicate which of the clauses specified in this Exhibit apply to the Patent Rights that are subject to a License Agreement.

Tech Transfer Program		License Clause
GFTT	PFTT	
✓	✓	RECITALS WHEREAS, WSU obtained certain rights in PATENTS from the Battelle Memorial Institute (BATTELLE) having a place of business in Richland, Washington; WHEREAS, BATTELLE is an incorporated charitable trust exempt from federal income taxes under Section 501(c)(3) of the United States Internal Revenue Code;
✓	✓	PATENT LICENSE <i>(Note: This paragraph should be used only when inventions for which a patent application has not been filed or a patent application has not yet issued at the time of licensing.)</i> If BATTELLE does not file a patent application by the drop dead patent filing date as noted in Paragraph XX on any government-funded INVENTION, or if a patent application is abandoned on any government-funded INVENTION, then the PATENT License of Paragraph YY shall terminate as to such INVENTION or patent application, and any information of BATTELLE's related to such INVENTION or patent application shall become public information.
✓	✓	PATENT LICENSE The license granted pursuant to Paragraph XX hereof shall be subject to any rights the Government of the United States of America may presently have or may assert in the future for any reason including, but not limited to, those rights set forth in 35 USC §202 and §203 and 37 C.F.R. 401 et seq.
✓	✓	PATENT LICENSE BATTELLE reserves the right to (i) practice the PATENTS for research, development and demonstration purposes for itself and others, (ii) nonexclusively license the PATENTS to nonprofit institutions that collaborate with BATTELLE for research, development, and demonstration purposes only, and (iii) license the PATENTS in fields and territories not exclusively licensed herein.
✓	✓	TECHNICAL INFORMATION

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Tech Transfer Program		License Clause
GFTT	PFTT	
		<i>(Note: Battelle cannot grant a license to Technical Information relating to inventions conceived or first reduced to practice under the Operating Contract.)</i>
✓	✓	ROYALTIES No royalty shall be paid to BATTELLE for the practice of any PATENT on behalf of the U.S. Government for which the U.S. Government has a royalty-free right to use such PATENT.
✓	✓	U.S. MANUFACTURING <i>(Note: This must be included in a License Agreement or a sublicense therefrom that grants exclusive rights in Patent Rights to a Licensee or sublicensee.)</i> In order to enhance U.S. industrial competitiveness, LICENSEE shall ensure that products embodying the PATENTS which are manufactured for use or sale in the United States under the exclusive license granted hereunder shall be substantially manufactured in the United States.
✓	✓	REPRESENTATIONS, HOLD HARMLESS, AND LIMITATIONS OF BATTELLE'S LIABILITY A. This Agreement is entered into by BATTELLE in its private capacity. It is understood and agreed that the U.S. Government is not a party to this Agreement and in no manner, whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this Agreement or the subject matter licensed. B. (i) Nothing in this Agreement shall be deemed to be a representation or warranty, except as set forth in Paragraph C below, by BATTELLE, or the U.S. Government, of the validity of any of the PATENTS or the accuracy, safety or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by BATTELLE. (ii) Neither the U.S. Government nor BATTELLE nor any affiliated company of BATTELLE shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage, of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from (1) the production, use or sale of any apparatus or product, or the practice of the PATENTS by LICENSEE; (2) the use by LICENSEE of any TECHNICAL INFORMATION, techniques, or practices disclosed by BATTELLE; or (3) any advertising or other promotional activities by LICENSEE with respect to any of the foregoing; and (iii) LICENSEE shall hold the U.S. Government, BATTELLE, and any affiliated company of BATTELLE, harmless in the event the U.S. Government, BATTELLE, or any affiliated company of BATTELLE, is held liable as a result

Tech Transfer Program		License Clause
GFTT	PFTT	
		<p>of actions by LICENSEE as set forth in Paragraphs B(ii)(1), B(ii)(2), and B(ii)(3) above.</p> <p>(iv) Further, LICENSEE agrees to assume the defense of (1) any suit brought against BATTELLE or any affiliated company of BATTELLE resulting from any action of LICENSEE undertaken under this License Agreement, and (2) any action brought against LICENSEE or BATTELLE resulting from any action of LICENSEE relating to the licensed PATENTS.</p> <p>C. BATTELLE represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert.</p>
✓	✓	<p>ASSIGNABILITY</p> <p>LICENSEE shall not assign any rights under this Agreement not specifically transferable by its terms without the written consent of BATTELLE. BATTELLE may assign its rights hereunder.</p>
✓	✓	<p>PUBLICITY</p> <p>Any use by LICENSEE of the name BATTELLE or of any organization related to BATTELLE, including materials designed for the news media, is prohibited without the express written approval of BATTELLE. Any reference to the U.S. Government, the U.S. Department of Energy, or the Pacific Northwest National Laboratory other than to acknowledge the fact that PATENTS were conceived or first reduced to practice at the Pacific Northwest National Laboratory are prohibited without the express written approval of the U.S. Department of Energy.</p>
	✓	<p>WAIVER AND ALTERATION</p> <p>(i) To amend this Agreement in a manner that alters any of BATTELLE's rights or LICENSEE's duties under this Agreement, LICENSEE shall provide BATTELLE with a written request to amend this Agreement at least thirty (30) calendar days before BATTELLE's rights or LICENSEE's duties accrue. LICENSEE's request shall: (1) specifically identify the clauses to be amended; (2) identify the requested amendments; and (3) provide BATTELLE with documentary evidence that the requested amendments are in BATTELLE's and LICENSEE's best interests.</p> <p>(ii) If BATTELLE determines that any or all of LICENSEE's requested amendments are in the Parties' best interests, then the Parties shall initiate good faith negotiations to address the amendments consistent with BATTELLE's determination. Such negotiations shall conclude within ninety (90) days after the date BATTELLE actually receives LICENSEE's request to amend the Agreement as set forth above in Paragraph XX(i) (the "Renegotiation Period"). The Parties shall enter into these negotiations with the understanding that they may not reach mutually acceptable terms within the Renegotiation Period. BATTELLE's rights shall continue to accrue and LICENSEE's obligations shall remain in force during the Renegotiation Period.</p>

Tech Transfer Program		License Clause
GFTT	PFTT	
		<p>(iii) If BATTELLE and LICENSEE agree to mutually acceptable terms during the Renegotiation Period, then such renegotiated terms shall be reflected in a formal amendment of this Agreement executed by both BATTELLE and LICENSEE and shall apply to any of BATTELLE's rights or LICENSEE's obligations that accrue during the Renegotiation Period or at any time thereafter during the remaining term of this Agreement.</p> <p>(iv) If BATTELLE and LICENSEE do not agree to mutually acceptable terms during the Renegotiation Period then BATTELLE may enforce the original terms and conditions of this Agreement or rely upon other remedies as permitted by the terms of this Agreement.</p> <p>LICENSEE acknowledges that BATTELLE, by virtue of its status as an incorporated charitable trust exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, cannot renegotiate any terms of this Agreement in a manner which may create an impermissible private benefit or private inurement.</p>
✓	✓	<p>MARKING</p> <p>LICENSEE shall place in a conspicuous location on any product made or sold under any PATENT coming with this Agreement, a patent notice in accordance with the laws concerning the marking of patented articles.</p> <p>LICENSEE shall include a marking provision similar to Paragraph XX above in every sublicense granted pursuant to Article YY, above.</p>
✓	✓	<p>CONSTRUCTION</p> <p>This Agreement shall be construed in accordance with the laws of the State of Washington of The United States of America and in the English language, and any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in the State of Washington.</p>
✓	✓	<p>EXPORTATION OF TECHNICAL INFORMATION</p> <p>LICENSEE represents and warrants that it shall not export from The United States of America directly or indirectly, any Technical Information (or the direct product thereof) furnished to LICENSEE either directly or indirectly by BATTELLE, without first complying with all requirements of the Export Administration Regulations, including the requirement for obtaining any export license, if applicable. LICENSEE agrees to indemnify, defend and hold harmless BATTELLE, its officers, agents and employees from all liability involving the violation of such export regulations, either directly or indirectly, by LICENSEE.</p>
✓	✓	<p>CERTIFICATION</p> <p><i>(Note: This paragraph should be used when granting exclusive License Agreements in Patent Rights.)</i></p> <p>LICENSEE hereby certifies that no principal of LICENSEE has been an employee of BATTELLE or any of its affiliated companies in the two (2) years prior to the date of</p>

Tech Transfer Program		License Clause
GFTT	PFTT	
		execution of this Agreement.

EXHIBIT C

Licensing terms and conditions required by WSU

The License Agreement shall contain terms similar to the following.

License to WSU

To the extent permitted by applicable law, Licensee hereby grants and shall require its Sublicensee(s) to grant WSU an option to obtain on behalf of itself and WSU a nonexclusive, royalty-free, irrevocable, paid-up license, for research purposes, under any and all inventions hereafter made or acquired by Licensee (or its Sublicensee(s)) to the extent any such inventions are Improvements. "Improvements" shall mean any modification of an invention described in Licensed Patents that, if unlicensed, would infringe one or more claims of the Licensed Patents. Licensee shall provide WSU with a written, enabling disclosure of each such invention (such as a U.S. patent application), unambiguously identifying it as an invention governed by this paragraph, within six (6) months of filing a patent application thereon. If WSU does not exercise its option to receive a license thereunder within sixty days of the date of the disclosure, its option under this paragraph shall be deemed terminated, but only with respect to the invention so disclosed.

Development

Licensee agrees to and warrants that: it has, or will obtain, the expertise necessary to independently evaluate the inventions of the Licensed Patents; it will establish and actively and diligently pursue the Development Plan to the end that the inventions of the Licensed Patents will be utilized to provide Licensed Products and/or Licensed Processes for sale in the retail market within the Licensed Field; and within one month following the end of each quarter ending on March 31, June 30, September 30, and December 31, and until the date of first commercial sale of Licensed Products, it will supply WSU with a written Development Report. All development activities and strategies and all aspects of product design and decisions to market and the like are entirely at the discretion of Licensee, and Licensee shall rely entirely on its own expertise with respect thereto. WSU's review of Licensee's Development Plan is solely to verify the existence of Licensee's commitment to development activity and to ensure compliance with Licensee's obligations to commercialize the inventions of the Licensed Patents, as set forth above.

"Development Plan" shall mean a written report summarizing the development activities that are to be undertaken by the Licensee to bring Licensed Products to the market. "Development Report" shall mean a written account of Licensee's progress under the Development Plan.

License Financials

The License Agreement shall have provisions for the payment of License signing fee; royalty payments on sales of the licensed product/process; equity; minimum royalty payments and milestone payments as appropriate to the technology being licensed.

Tax Exemption

WSU is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement shall be made without deduction for taxes, assessments, or other charges of any kind that may be imposed on WSU by any government outside of the United States or any political subdivision

of such government with respect to any amounts payable to WSU pursuant to this Agreement. All such taxes, assessments, or other charges shall be assumed by Licensee.

Certain Warranties of WSU

WSU warrants that, except as otherwise provided under Section 15 of this Agreement with respect to U.S. Government interests, it is the owner of the Licensed Patents or otherwise has the right to grant the licenses granted to Licensee in this Agreement. However, nothing in this Agreement shall be construed as:

a warranty or representation by WSU as to the validity or scope of any right included in the Licensed Patents;

a warranty or representation that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe patents of third parties;

an obligation to bring or prosecute actions or suits against third parties for infringement of Licensed Patents;

an obligation to furnish any know-how not provided in Licensed Patents or any services other than those specified in this Agreement; or

a warranty or representation by WSU that it will not grant licenses to others to make, use or sell products not covered by the claims of the Licensed Patents that may be similar and/or compete with products made or sold by Licensee or its Sublicensee(s).

WSU MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO USE, SALE, OR OTHER DISPOSITION BY LICENSEE, ITS SUBLICENSEE(S) OR THEIR VENDEES OR OTHER TRANSFEREES OF PRODUCT INCORPORATING OR MADE BY USE OF INVENTIONS LICENSED UNDER THIS AGREEMENT.

Record Keeping

Licensee and its Sublicensee(s) shall keep books and records sufficient to verify the accuracy and completeness of Licensee's and its Sublicensee(s)'s accounting referred to above, including without limitation inventory, purchase and invoice records, manufacturing records, sales analysis, general ledgers, financial statements, and tax returns relating to the Licensed Products and/or Licensed Processes. Such books and records shall be preserved for a period not less than six years after they are created, both during and after the term of this Agreement.

Licensee and its Sublicensee(s) shall take all steps necessary so that WSU may, within thirty (30) days of its request, review and copy all of the books and records at a single U.S. location to verify the accuracy of Licensee's and its Sublicensee(s)'s accounting. Such review may be performed by any authorized employee of WSU as well as by any attorney or registered CPA designated by WSU, upon reasonable notice and during regular business hours.

If a royalty payment deficiency is determined, Licensee and its Sublicensee(s) shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts. The balance of any amounts that remain unpaid more than thirty (30) days after they are due to WSU shall accrue interest until paid at the rate of the lesser of one and one-half percent

(1.5%) per month or the maximum amount allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delays.

If a royalty payment deficiency for a calendar year exceeds five percent (5%) of the royalties paid for that year, then Licensee and its Sublicensee(s) shall be responsible for paying WSU's out-of-pocket expenses incurred with respect to such review.

Patent Prosecution

Licensee shall be responsible for and pay all past and future costs and expenses incurred by WSU for the preparation, filing, prosecution, issuance, and maintenance of the Licensed Patents within thirty (30) days of receipt of an invoice from WSU. It shall be the responsibility of Licensee to keep WSU fully apprised of the "small entity" status of Licensee with respect to the U.S. patent laws and with respect to the patent laws of any other countries, if applicable, and to inform WSU of any changes in such status, within thirty days of any such change.

Termination Provisions

WSU may terminate this Agreement by giving Licensee at least ninety (90) days written notice if the date of first commercial sale does not occur on or before the date specified in the Agreement.

If Licensee at any time defaults in the timely payment of any monies due to WSU or the timely submission to WSU of any Development Report, fails to actively pursue the Development Plan, or commits any breach of any other covenant herein contained, and Licensee fails to remedy any such breach or default within ninety (90) days after written notice thereof by WSU, WSU may, at its option, terminate this Agreement by giving thirty (30) days' notice of termination to Licensee.

WSU may terminate this Agreement upon the occurrence of the third separate default by Licensee within any consecutive three-year period for failure to pay royalties when due.

Upon the termination of this Agreement, Licensee shall remain obligated to provide an accounting for and to pay royalties earned up to the date of the termination.

Upon the termination of this Agreement, excluding expiration, Licensee agrees to promptly return to the WSU all materials covered by the Licensed Patents and Licensed Biological Materials (as described in Appendix D and Appendix E) or to destroy all such materials and to deliver a notarized document certifying that all such materials have been destroyed and that any Licensed Know-How will no longer be used.

Termination of this Agreement shall not relieve LICENSEE of any obligation to pay WSU the fee set forth in this Agreement nor of any obligation with respect to the confidential information or materials covered by this Agreement.

Assignment

This Agreement may not be transferred or assigned by Licensee except with the prior written consent of WSU.

Legal Actions

The parties agree to cooperate in the conduct or defense of any claim or suit challenging any intellectual property rights which may arise from this agreement so long as (1) such intellectual property arises from the work as contemplated by this agreement, (2) WSU or its assignee determines that such intellectual property qualifies for legal protection, (3) WSU or its assignee desires to obtain or perfect its rights to such legal protection, and (4) WSU, its assignee or an authorized licensee does affirmatively attempt to obtain or perfect WSU's or its assignee's rights, title, and interest in such intellectual property. Except as set forth in above, WSU makes no warranty, express or implied, regarding any invention, writing or tangible rendition of research results, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.

Product Liability; Conduct of Business

Licensee, its Affiliates and its Sublicensee(s) shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WSU, Washington State University and its employees, and the inventors of the Licensed Patents harmless against all claims and expenses, including legal expenses and reasonable 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, including patent infringement claims, resulting from the production, manufacture, sale, use, lease, consumption or advertisement of Licensed Products arising from any right or obligation of Licensee or any Sublicensee hereunder. Notwithstanding the above, WSU at all times reserves the right to retain counsel of its own to defend WSU's, Washington State University's, and the inventor's interests.

Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing the products subject to this Agreement and that such insurance coverage lists WSU, Washington State University, and the inventors of the Licensed Patents as additional insureds. Within _____ () days after the execution of this Agreement and thereafter annually between January 1 and January 31 of each year, Licensee will present evidence to WSU, that the coverage is being maintained with WSU, Washington State University, and its inventors listed as additional insureds. In addition, Licensee shall provide WSU with at least thirty (30) days prior written notice of any change in or cancellation of the insurance coverage.

Use of Names

Licensee, its Affiliates and its Sublicensee(s) shall not use WSU's name, the name of any inventor of Licensed Patents governed by this Agreement, or the name of Washington State University in any sales promotion, advertising, or any other form of publicity without the prior written approval of WSU.

Miscellaneous

This Agreement is made in Pullman, Washington, and shall be construed and interpreted in accordance with the law of the State of Washington, United States of America, without regard to any presumption or rule requiring construction or interpretation against the Party drafting or causing any instrument to be drafted. By its execution and delivery of this Agreement, Licensee hereby accepts the jurisdiction of a court of competent jurisdiction sitting in the State of Washington in any legal action or proceeding relating to this Agreement. No right or remedy conferred upon or reserved to the Parties pursuant to this Agreement is exclusive of any other right or remedy provided or permitted at law or in equity. Each Party acknowledges that any violation or threatened violation of this Agreement would cause irreparable injury and that money alone would not be adequate to redress such injury. If any provisions of this Agreement are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the Parties or this Agreement, those provisions shall be

deemed automatically severed and deleted, if such severance and deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement shall remain in full force and effect. The Parties agree to substitute new terms as similar in effect to the severed or deleted terms as may be allowed under the applicable laws and regulations. The Parties hereto are independent contractors and not joint venturers or partners.

Licensee shall insure that it, its Affiliates and its Sublicensee(s) apply patent markings that meet all requirements of U.S. law, 35 U.S.C. §287, with respect to all Licensed Products subject to this Agreement. Licensee agrees to comply with the requirements of U.S. law 35 U.S.C. § 200-212 with respect to inventions funded by the U.S. government.

Except as otherwise expressly provided herein, this Agreement, with all of the attachments hereto, constitutes the full understanding between the Parties with reference to the subject matter hereof, and no statements or agreements by or between the Parties made prior to or at the signing hereof, whether orally or in writing, shall vary or modify the written terms of this Agreement. All attachments referred to in this Agreement shall be attached hereto and are incorporated herein by reference. The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar failure to perform any such term or condition by the other Party. Neither Party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other Party, and specifically states that it is an amendment to this Agreement. This Agreement may be executed in one or more counterparts and any Party hereto may execute any such counterparts each of which shall be deemed an original and all of which, taken together, shall constitute but one and the same document. It shall not be necessary in making proof of this document or any counterpart hereof to produce or account for any of the other counterparts.

In the event Licensee contests the validity of any Licensed Patent, Licensee shall continue to pay royalties with respect to that patent as if such contest were not underway until the patent is finally adjudicated invalid or unenforceable by a court of last resort; provided, however, notwithstanding any such final adjudication of invalidity or unenforceability, the full royalty payment due under this Agreement shall continue to be paid on any Licensed Technology incorporating or based on Licensed Data or on any Licensed Patent which has not been finally adjudicated invalid or unenforceable by a court of last resort; and further provided Licensee shall have no recourse against WSU for any royalties paid or due to be paid prior to such final adjudication.

Licensee shall not encumber or otherwise grant a security interest in any of the rights granted hereunder to any third party.

United States Government Interests

It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Licensed Patents were conceived or made. The United States Government is entitled, as a right, under the provisions of 35 U.S.C. §202-212 and applicable regulations of Title 37 of the Code of Federal Regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such Licensed Patents for governmental purposes. Any license granted to Licensee in this Agreement shall be subject to such right.

SS 3/2/20