

# CORNELL UNIVERSITY

## FastTrack Startup License Agreement

### PART I - DEAL PROVISIONS AND SIGNATURES

**Item A. Company Name:**

**Item B. Company Contact Person (including email):**

Notices:  
IP (if different from above):  
Accounts Payable (if different from above):

**Item C. Company Notice Address:**

Notices:  
Billing (if different from above):

**Item D. Cornell Contact Person:**

**Item E. Cornell Notice and Payment Address:**

Notice:  
Center for Technology Licensing at Cornell University (CTL)  
395 Pine Tree Road, Suite 310  
Ithaca, NY 14850  
Attention: Executive Director  
Tel: 607-254-4698; Fax: 607-254-5454  
Email: [ctl-contracts@cornell.edu](mailto:ctl-contracts@cornell.edu)  
Payment (if sent by mail):  
Center for Technology Licensing at Cornell University  
PO Box 6899, Ithaca, NY 14851-6899

**Item F. Electronic Transfers:**

Tompkins Trust Co.	ABA #021302648
Account Number: 0111000065	SWIFT code: TMPKUS33

**Item G. Cornell Docket Number(s) and Agreement Number:**

Docket Number(s):  
Agreement Number:

**Item H. Field of Use:**

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**Item I. Diligence:**

DILIGENCE EVENTS	COMPLETION DATE
1.	
2.	
3.	

**Item J. Effective Date:**

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**Item K. Equity** (no license initiation fee due):

<u>Select only one box:</u>	
<input type="checkbox"/> 4% non-dilutable through Subsequent Equity Financings aggregating \$4 Million	<input type="checkbox"/> 1% non-dilutable until Change of Control

**Item L. Royalty:**

<u>Select only one box:</u>	
<input type="checkbox"/> 2.5% of Net Sales without Anti-Stacking or Combination Product	<input type="checkbox"/> 4.0% of Net Sales with Anti-Stacking and Combination Product

**Item M. Annual Fee** (payable semi-annually and creditable against royalties earned in that year):

CALENDAR YEAR (following Effective Date)	PAYMENT
Year 1-4	\$0
Year 5-6	\$15,000
Every Year Thereafter	\$60,000

**Item N. Sublicensing:**

Pass through royalty, plus 25% of other Sublicense Income that Company receives until the earlier of (a) Regulatory Approval or (b) first sale of the first Licensed Product that is the subject of the Sublicense, plus 15% of other Sublicense Income thereafter. Pass through royalty means that, when computing the royalty due to Cornell, the same royalty rate selected in Item L will also apply to all Net Sales for which a Sublicensee of Company is the seller.
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**Item O. Milestone Payments:**

\$75,000 upon Regulatory Approval, if applicable, for the first Licensed Product; and \$150,000 upon lifetime cumulative Net Sales of \$30 Million for all Licensed Products in the aggregate.

**Item P. Patent Expense Reimbursement:**

Patent Expenses incurred by Cornell prior to the Effective Date are approximately \$\_\_\_\_\_. If the Patent Expenses incurred prior to the Effective Date are \$50,000 or less, reimbursement by the Company of Cornell for such Patent Expenses will be deferred until the earlier of (a) the closing of Subsequent Equity Financings aggregating \$2 Million or (b) the following payment schedule: 25% of the Patent Expense at the first anniversary of the Effective Date, 35% at the second anniversary, and the remainder at the third anniversary. If the Patent Expenses incurred prior to the Effective Date are more than \$50,000, an alternative schedule will be provided by Cornell. With respect to any Patent Expenses incurred on or after the Effective Date, Company will reimburse Cornell for such Patent Expenses as incurred, except that Cornell may require prepayment prior to the incurrence of certain Patent Expenses. Cornell will give Company written notice prior to requiring any prepayment. For any startup company that elects to locate its principal operations in Tompkins County, NY, Cornell will defer the first \$10,000 of Patent Expenses incurred on or after the Effective Date as if it were Patent Expenses incurred prior to the Effective Date. All payments (including prepayments) will be due within 30 days following the date an itemized invoice is sent from Cornell to Company.

**Item Q. Patent Rights:**

CORNELL REFERENCE	TITLE	COUNTRY	APPLICATION NUMBER	PATENT NUMBER	STATUS

**Item R. Copyrights** (includes and the following applications and/or registrations, if any, and any unregistered copyrights in the Works):

CORNELL REFERENCE	NAME	COUNTRY	APPLICATION NUMBER	REGISTRATION NUMBER	STATUS

**Item S. Technical Information** (if applicable, and may be described further in an appendix):

1. _____.
2. _____.
3. _____.

**Item T. Materials** (if applicable, and may be described further in an appendix):

1. _____.
2. _____.
3. _____.

**Item U. Works** (includes software and other copyrightable works, if applicable, and may be described further in an appendix):

1. _____.
2. _____.
3. _____.

**Item V. Third Party Software** (if applicable):

1. _____.
2. _____.
3. _____.

**Item W. Other Terms** (if applicable):

1. _____.
2. _____.
3. _____.

**Item X. Signatures:**

This Agreement includes: these Deal Provisions and Signatures; the attached FastTrack Terms and Conditions; and the attached Glossary. By signing below, Company and Cornell, intending to be legally bound, agree to all of the provisions of this Agreement as of the Effective Date.	
	<b>Cornell University</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## FastTrack Startup License Agreement

### PART II - FASTTRACK TERMS AND CONDITIONS

#### 1. **Glossary and Interpretation.**

1.1 Glossary. All capitalized terms used in these Terms and Conditions or the Deal Provisions will have the meaning ascribed to them in the Glossary.

1.2 Interpretation. Any reference to an “*Item*” in these Terms and Conditions or the Glossary refers to the applicable Item set forth in the Deal Provisions. Any reference to “*Article*” or “*Section*” in these Terms and Conditions or the Glossary refers to the applicable Article or Section in these Terms and Conditions.

#### 2. **License Grant and Reservation of Rights.**

2.1 Grant. Cornell hereby grants to Company a license under the Patent Rights, the Copyrights, the Technical Information and the Materials: (a) to make, have made, use, offer for sale, sell and import Licensed Products; (b) to practice Licensed Methods; (c) to reproduce, distribute, display and prepare Derivative Works based upon the Works in connection with the Licensed Products; (d) to use Technical Information in connection with the Licensed Products; and (e) to use the Materials in connection with the Licensed Products, all in the Field of Use in the Territory during the Term. The License will be exclusive with respect to the Patent Rights and the Copyrights and non-exclusive with respect to the Technical Information and Materials. The License includes the right to sublicense to the extent permitted by Article 3 for so long as the License remains exclusive. No other rights or licenses are granted by Cornell.

2.2 Academic Reservation. Cornell reserves the right to use, and to permit other non-commercial academic and/or research entities to use, the Patent Rights and the Copyrights for educational and research purposes.

2.3 Government Reservation. The parties acknowledge that if the United States government has provided funding for the intellectual property in the Patent Rights and the Copyrights under any grant or similar contract with a Federal agency, then the United States retains certain rights in such intellectual property. In such event, the License is expressly subject to all applicable United States government rights, including, but not limited to, any applicable requirement that products, which result from such intellectual property and are sold in the United States, must be substantially manufactured in the United States.

2.4 Third Party Software. Although the Works may be used or useful in connection with Third Party Software, the License does not grant Company any license or sublicense to any Third Party Software or the copyrights therein, and Company remains solely responsible for obtaining any license rights necessary for Company or its Affiliates, Sublicensees or End Users to use any Third Party Software.

2.5 Use of Materials. Except as otherwise expressly permitted in Item W, the following restrictions apply to use by Company of the Materials:

(a) Cornell may elect to provide Materials to Company for purpose of developing, producing or delivering Licensed Products in the Field. All Materials and all

intellectual property rights, title and interests therein or relating to the Materials shall at all times remain the property of Cornell. Except to the extent approved in advance in writing by Cornell in its sole discretion, Company shall not (i) make any modifications to the Materials (including, without limitation, any complements, derivatives, analogs, antibodies obtained from the use of, conjugates, and modifications of, with or from the Materials), (ii) reverse engineer the Materials or seek to determine the chemical structure, amino acid sequence or nucleic acid sequence of the Materials (as applicable), or (iii) otherwise use the Materials in violation of the confidentiality and use restrictions of this Agreement.

(b) All Materials provided by Cornell to Company shall be used solely by Company for the purpose identified in Section 2.5(a) and not for any other purpose without the prior written consent of Cornell in its sole discretion. The Materials shall not be made available to any person or entity other than employees, agents and independent contractors working under the immediate control and supervision of Company. The Materials may not be transferred or taken by the Company to another institution or company without the prior written consent of Cornell. The Materials shall not be used for research, testing or treatment involving human subjects or for making any decisions relating to human diagnosis or care.

(c) All Materials delivered by Cornell to Company are experimental in nature, are to be used in a safe manner and in accordance with all applicable governmental rules and regulations and are provided by Cornell "AS IS." CORNELL MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATERIALS AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE OR USE. CORNELL DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO ANY THIRD PARTY RIGHTS AND TITLE, INCLUDING PATENT RIGHTS, IN ANY MATERIALS.

(d) Except as specified in Section 10.3, at the termination of this Agreement, Company shall discontinue use of all Materials and will arrange for their return to Cornell or for the lawful disposal of all unused Materials (and shall provide written certification of same), as elected by Cornell.

### 3. **Sublicense Conditions.**

3.1 **Compliance.** In each Sublicense Agreement, Company will prohibit the Sublicensee from further sublicensing (other than issuing End-User Licenses) and require the Sublicensee and any End User to comply with all applicable terms and conditions of this Agreement, including, but not limited to, Sections 3.3, 6.1, 7.3, 8.1, 8.4 and 10.1. Each Sublicense requires the prior written consent of Cornell if: (a) Company receives or agreed to receive anything of value in lieu of cash as consideration from a third party under the Sublicense; or (b) the economic and other terms of the Sublicense are not on an arm's-length basis. Such required written consent by Cornell will not be unreasonably withheld or delayed. Company and each Sublicensee will not provide any source code, if applicable, to any End User without the prior written consent of Cornell.

3.2 **Copy.** Within 30 days after Company enters into a Sublicense, Company will deliver to Cornell a complete and accurate copy of the entire Sublicense Agreement written in the English language. Cornell's receipt of the Sublicense Agreement, however, will constitute

neither an approval of the Sublicense nor a waiver of any right of Cornell or obligation of Company under this Agreement.

3.3 Company Trigger Event. In the event that Company causes or experiences a Trigger Event, all payments due to Company from its Affiliates or Sublicensees under each Sublicense Agreement will, upon Notice from Cornell to such Affiliate or Sublicensee, become payable directly to Cornell for the account of Company. Upon receipt of any such funds, Cornell will remit to Company the amount, if any, by which such payments exceed the amounts owed by Company to Cornell.

3.4 Sublicense Survival. Unless Company receives written consent from Cornell prior to the issuance of the Sublicense by Company to the Sublicensee, upon termination of this Agreement for any reason, Cornell, at its sole discretion, shall determine whether Company shall cancel or assign to Cornell the Sublicense.

#### 4. Diligence.

4.1 Business Plan. Prior to the Effective Date, Company will deliver to Cornell a copy of Company's initial business plan. Thereafter, Company will deliver to Cornell an updated business plan whenever there are significant changes to Company's business during the Term.

4.2 Efforts. Company will use commercially reasonable efforts to: (a) develop, commercialize, market and sell Licensed Products in a manner consistent with the current business plan of Company; and (b) achieve each of the Diligence Events by the applicable completion date for the first Licensed Product. Company will provide Cornell with periodic updates on Company's progress pursuant to Section 6.1.

4.3 Failure. If Company fails to perform any of its diligence obligations under Section 4.2, then Cornell shall have the right and option on written Notice to Company to either terminate this Agreement or convert the License from exclusive to nonexclusive. This conversion right, if exercised by Cornell, supersedes the exclusivity rights granted in Article 2.

4.4 Additional Products. If, at any time after the fifth anniversary of the Effective Date, Company has not established or begun a product or business development program for a specific Licensed Product in any country or any sector of the Field of Use and Cornell receives one or more bona fide written offers to license exclusively the Patent Rights for commercialization of such Licensed Product in such country or with respect to such sector of the Field of Use, then Cornell shall refer such offers to Company. If, within a reasonable time, Company fails (a) to initiate a program in such country to commercialize the specific Licensed Product or (b) to grant one or more Sublicenses to commercialize the specific Licensed Product in such country, on commercially reasonable terms and conditions, then Cornell, upon written Notice to Company, may then exclude such country from the Territory and license such rights in such country to one or more third parties. Additionally, if, within a reasonable time, Company fails (i) to initiate a program with respect to such sector of the Field of Use to commercialize the specific Licensed Product or (ii) to grant one or more Sublicenses to commercialize the specific Licensed Product with respect to such sector of the Field of Use, on commercially reasonable terms and conditions, then Cornell, upon written Notice to Company, may exclude such sector

of the Field of Use from the Field of Use and license such rights in such sector of the Field of Use to one or more third parties.

5. **Equity, Fees and Royalties.** In consideration of the License, Company will deliver or pay to Cornell the following consideration:

5.1 **Equity.** On the Effective Date, Company will issue to Cornell such number of shares of common stock of Company as will cause Cornell to own the Minimum Equity Percentage of the capital stock of Company on a fully diluted basis on the Effective Date, assuming the exercise, conversion and exchange of all outstanding securities of Company for or into shares of common stock of Company. The issuance of equity to Cornell will be pursuant to the Equity Documents. The Equity Documents will require, among other things, the issuance by Company to Cornell of: (a) additional shares of Common Stock to fulfill the dilution protection obligation selected by Company in Item K; and (b) a stock certificate or certificates with respect to each share of common stock issued to Cornell.

5.2 **Annual Fee.** Company will pay to Cornell an Annual Fee as specified in Item M, commencing on the first anniversary of the Effective Date. The Annual Fee is payable on a semi-annual basis, with payments due on February 28 and August 31 of each year. Each semi-annual payment will be one-half of the amount of the Annual Fee specified in Item M. All payments of Annual Fees pursuant to this Section 5.2 will be fully creditable against royalties earned in the same calendar year owed to Cornell pursuant to Section 5.3.

5.3 **Royalty.** Company will pay to Cornell a royalty equal to the applicable Royalty Rate multiplied by the Net Sales generated each calendar half year by Company, its Affiliates, and its Sublicensees, payable semi-annually in accordance with Section 6.2.

5.4 **Sublicense Fees.** With respect to each Sublicense, Company will pay to Cornell a fee equal to the Sublicense Rate multiplied by the Sublicense Income earned in each calendar half year, payable semi-annually in accordance with Section 6.2.

5.5 **Milestone Payment.** With respect to Licensed Products, Company will pay Cornell milestone payments as specified in Item O, payable semi-annually in accordance with Section 6.2.

5.6 **Administrative Fee.** In the event Company requests Cornell to use a third-party payment portal (e.g. Ariba), an annual Administrative Fee of \$USD500.00 shall be charged to the Company for the processing and uploading of Cornell's invoices to Company's designated third-party payment portal or vendor management system.

## 6. **Reports and Payments.**

6.1 **Reports.** (i) Beginning 6 months after Effective Date and ending on the date of first Sale of a Licensed Product, Company will deliver to Cornell development reports covering activities and efforts of the preceding 6 months in the development of rights granted to Company under this Agreement, which reports are due on or before February 28 and August 31 of each year and will be substantially in the form of the sample report available at <https://ctl.cornell.edu/wp-content/uploads/CTL-Development-Report-for-Start-Ups-Fillable-Feb-2022.pdf>. (ii) Beginning after the first Sale of a Licensed Product, on or before each February 28

and August 31 of each year, Company will deliver to Cornell: (a) a commercialization report, certified by an officer of Company, detailing the calculation of all royalties, fees and other payments due to Cornell and any applicable currency conversions, and relevant business and corporate development efforts relating to the rights granted in this Agreement; and (b) all royalties, fees and other payments due to Cornell under Article 5. Each commercialization report shall cover the 2 most recently completed Quarters and will be substantially in the form of the sample report available at <https://ctl.cornell.edu/wp-content/uploads/CTL-Commercialization-Report-for-Start-Ups-Fillable-Feb-2022.pdf>.

6.2 **Payments.** All payments by Company are payable to “Cornell University” and will be made to the Payment Address. All amounts that are not paid by Company when due will accrue interest from the date due until paid at a rate equal to 1% per month (or the maximum allowed by law, if less). All dollar amounts referred to in this Agreement are expressed, and all payments will be made, in United States dollars. If Company receives payment from a third party in a currency other than United States dollars for which a royalty or fee is owed under this Agreement, then such payment will be converted into United States dollars at the conversion rate for the foreign currency as published in the eastern edition of the Wall Street Journal as of the last business day of the semi-annual period in which the payment was received by Company.

## 7. **Records, Audits and Information Rights.**

7.1 **Records.** For at least 5 years after submission of the applicable report required under Section 6.1, Company will maintain, and will cause its Affiliates and sublicensees to maintain, complete and accurate books, records and related background information to verify Sales, Net Sales, Sublicense Income, and all of the royalties, fees, milestones and other payments due or paid under this Agreement, as well as the various deductions and computations reported under Article 6.

7.2 **Audits.** During the Term and for a period of 5 years thereafter, upon reasonable prior written Notice to Company, Company and its Affiliates and sublicensees will provide Cornell and its accountants with access to all of such books, records and information to conduct a review or audit of Sales, Net Sales, Sublicense Income and all of the royalties, fees, milestones and other payments payable and deductions and computations applicable under this Agreement. Company will promptly pay to Cornell the amount of any underpayment determined by the review or audit, plus accrued interest calculated from the date payment was due until the date payment was received. If the review or audit determines that Company has underpaid any payment by 5% or more, then Company will also promptly pay the costs and expenses of Cornell and its accountants in connection with the review or audit. Any overpayment by Company will be treated as a credit against future amounts payable to Cornell under this Agreement.

7.3 **Information Rights.** Until the closing of Company’s initial public offering, Company will provide to Cornell, at least as frequently as the following reports are distributed to the Board of Directors or management of Company, copies of: (a) all Board and managerial reports that relate to the Patent Rights, the Copyrights, the Works, the Materials, the Technical Information or the Licensed Products; and (b) all business plans, projections and financial statements for Company.

## 8. **Confidentiality and Use of Cornell's Name.**

8.1 **Company Confidentiality.** The Confidentiality Agreement will continue to govern the protection of confidential information of Cornell under this Agreement, and each Affiliate and Sublicensee of Company will be bound to Company's obligations under the Confidentiality Agreement. The source code of any software included in the Works will be treated as the Confidential Information of Cornell.

8.2 **Cornell Confidentiality.** Cornell, acting through its Center for Technology Licensing and finance offices, will use reasonable efforts not to disclose to any third party outside of Cornell any confidential information of Company contained in the reports and records required to be delivered or made available to Cornell under Sections 4.1, 6.1, 7.2 and 7.3, for so long as such information remains confidential. Cornell bears no institutional responsibility for maintaining the confidentiality of any other information of Company.

8.3 **Investigator Confidentiality.** Company may elect to enter into confidentiality agreements with individual investigators at Cornell provided that the agreement complies with Cornell's internal policies.

8.4 **Use of Name.** Company and its Affiliates, Sublicensees, employees, and agents may not use the name, logo, seal, trademark, or service mark (including any adaptation of them) of Cornell or any Cornell school, organization, employee, student or representative, without the prior written consent of Cornell in its sole discretion.

## 9. **Early Termination.**

9.1 **Term.** This Agreement will be effective during the Term and expire upon completion of the Term.

9.2 **Company Termination.** Company may terminate this Agreement at any time during the Term, effective upon completion of each of the following conditions: (a) providing at least 60 days prior written Notice to Cornell of such intention to terminate; (b) ceasing to make, have made, use, import, offer for sale and sell all Licensed Products; (c) (i) terminating all Sublicenses and causing all Affiliates and Sublicensees to cease making, having made, using, importing, offering for sale and selling all Licensed Products or (ii) to the extent permitted by Section 3.4, assigning all Sublicenses to Cornell; and (d) paying all amounts owed to Cornell under this Agreement through the effective date of termination.

9.3 **Cornell Termination.** Cornell may terminate this Agreement during the Term if: (a) Company is late in paying to Cornell any amounts owed under this Agreement and does not pay Cornell in full, including accrued interest, within 30 days after written Notice of the breach; (b) Company or its Affiliate or Sublicensee breaches this Agreement and does not cure the breach within 45 days after written Notice of the breach; (c) Company or its Affiliate experiences a Trigger Event; or (d) Company or its Affiliate challenges, directly or indirectly, whether as a claim, cross-claim, counterclaim or defense, the validity or enforceability of any of the Patent Rights before any court, arbitrator or other tribunal or administrative agency in any jurisdiction.

10. **Effect of Termination.**

10.1 **Effect.** Upon the termination of this Agreement for any reason: (a) the License terminates; (b) Company and all its Affiliates and Sublicensees will cease all making, having made, using, importing, offering for sale and selling all Licensed Products, except to the extent the Sublicense is assigned to Cornell pursuant to Section 3.4; (c) Company will pay to Cornell all amounts, including accrued interest, owed to Cornell under this Agreement through the date of termination; and (d) Company will, at Cornell's request, return to Cornell all confidential information of Cornell and provide to Cornell one complete copy of all data with respect to Licensed Products generated by Company during the Term that will facilitate the further development of the technology licensed under this Agreement. In the case of termination by Cornell, this Agreement will immediately terminate without any further action required by either Cornell or Company. Company's obligation to pay all amounts, including accrued interest, owed to Cornell under this Agreement will survive the termination of this Agreement for any reason.

10.2 **Survival.** Articles 6, 8, 10, and 13 – 16 and Sections 7.1 and 7.2 will survive the termination of this Agreement for any reason in accordance with their respective terms.

10.3 **Surviving License.** Effective upon (a) the expiration of the Term pursuant to Section 9.1 (but not the termination of this Agreement for any other reason), (b) Company's payment in full of all obligations of Company arising prior to such date, and (c) Company's compliance with all of Company's obligations, both prior to and surviving such date, under this Agreement, Cornell hereby grants to Company a perpetual, fully paid-up, non-exclusive license to use the Works, the Technical Information and, if applicable, the Materials with respect to Licensed Products in the Field of Use in the Territory.

11. **Patent and Copyright Maintenance and Reimbursement.**

11.1 **Control.** Cornell controls the preparation, prosecution and maintenance of the Patent Rights and the Copyrights and the selection of patent counsel. Cornell will provide Company with all relevant documentation relating to such prosecution, and Company will keep such documentation confidential. Cornell will seek and consider Company's advice and input on all material Patent and Copyright prosecution matters.

11.2 **Reimbursement.** Company will reimburse Cornell for Patent Expenses after Company's receipt of invoices for such fees, expenses and charges, all in accordance with Item P and any applicable payment schedules or prepayment requirements.

11.3 **Termination of Patent Rights.** Company may elect to terminate its reimbursement obligations with respect to any patent application or patent in the Patent Rights upon thirty (30) [sixty (60)] days written notice to Cornell. Cornell shall use reasonable efforts to curtail further Patent Expenses for such application or patent once such notice of termination has been received from Company. Cornell, in its sole discretion and at its sole expense, may continue prosecution and maintenance of such application or patent, and Company shall have no further license with respect thereto. Non-payment by Company of any portion of Patent Expenses with respect to any application or patent may be deemed by Cornell as an election by Company to terminate its reimbursement obligations with respect to such application or patent, and

Company's rights under the said application or patent shall terminate accordingly. Cornell is not obligated to file, prosecute, or maintain the Patent Rights outside of the Territory at any time or to file, prosecute, or maintain the Patent Rights to which Company has terminated its License hereunder.

12. **Offensive Infringement.**

12.1 **Communication.** Company and Cornell will provide each other with prompt Notice of any infringement of the Patent Rights or the Copyrights, which may come to their attention, and will consult each other in a timely manner concerning any appropriate response to the infringement.

12.2 **Prosecution.** Company may prosecute any infringement of the Patent Rights or the Copyrights at Company's expense. Company must not settle or compromise any such litigation in a manner that imposes any obligations or restrictions on Cornell or grants any rights to the Patent Rights or the Copyrights (other than permitted sublicenses) and, if applicable, Technical Information and/or Materials without Cornell's prior written permission. Financial recoveries from any such litigation will be: (a) first, applied to reimburse each party for their respective litigation expenditures; and (b) second, as to any remainder, retained by Company but treated as Sublicense Income for the purpose of determining the sublicense fees due to Cornell under Section 5.4. Cornell reserves the right to intervene at Cornell's expense and join Company in any litigation under this Article 12. If Company does not prosecute any infringement of the Patent Rights or the Copyrights, then Cornell may elect to prosecute such infringement at Cornell's expense, and any financial recoveries will be retained by Cornell in their entirety.

12.3 **Cooperation.** In any litigation under this Article 12, either party, at the request and expense of the other party, will cooperate to the fullest extent reasonably possible. This Article 12 will not be construed to require either party to undertake any activities, including legal discovery, at the request of any third party, except as may be required by lawful process of a court of competent jurisdiction.

13. **Disclaimer of Warranties.** THE PATENT RIGHTS, COPYRIGHTS, WORKS, TECHNICAL INFORMATION, MATERIALS, LICENSED PRODUCTS AND ANY OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. CORNELL MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMMERCIAL UTILITY, NON-INFRINGEMENT OR TITLE.

14. **Limitation of Liability.** CORNELL WILL NOT BE LIABLE TO COMPANY, ITS AFFILIATES, SUBLICENSEES, SUCCESSORS OR ASSIGNS, OR ANY THIRD PARTY WITH RESPECT TO ANY CLAIM: (a) ARISING FROM COMPANY'S USE OF THE PATENT RIGHTS, COPYRIGHTS, WORKS, TECHNICAL INFORMATION, MATERIALS, LICENSED PRODUCTS OR ANY OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT; (b) ARISING FROM THE DEVELOPMENT, TESTING, MANUFACTURE, USE OR SALE OF LICENSED PRODUCTS; OR (c) FOR LOST PROFITS, BUSINESS INTERRUPTION, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

15. **Indemnification and Insurance.**

15.1 **Indemnity by Company.** Company will defend, indemnify, and hold harmless each Indemnified Party from and against any and all Liabilities with respect to an Indemnification Event.

15.2 **Procedure.** Cornell shall notify Company in writing of any Claim brought against Cornell, in respect of which Cornell intends to invoke the provisions of this Article 15. Within 30 days after Company's receipt of invoices, Company will pay directly all Liabilities incurred for defense or negotiation of any Claim or will reimburse Cornell for all documented Liabilities incident to the defense or negotiation of any Claim. Company controls any litigation or potential litigation involving the defense of any Claim, including the selection of counsel, with input from Cornell. Company shall keep Cornell informed on a current basis of its defense of any Claims by Cornell under this Article 15. In the event that a conflict of interest arises between Company's interest and Cornell's interest, Cornell reserves the right to protect its interest in defending against any Claim by selecting its own counsel, with any attorneys' fees and litigation expenses paid for by Company, pursuant to this Article 15. Company will not settle or compromise any Claim giving rise to Liabilities in any manner that imposes any restrictions or obligations on Cornell or grants any rights to the Patent Rights (other than permitted sublicenses) without Cornell's prior written consent. If Company fails or declines to assume the defense of any Claim or fails to reimburse an Indemnified Party for any Liabilities within the 30 day Notice period, then Cornell may assume the defense of such Claim for the account and at the risk of Company, and any Liabilities related to such Claim will be conclusively deemed a liability of Company. The indemnification rights of the Indemnified Parties under this Article 15 are in addition to all other rights that an Indemnified Party may have at law, in equity or otherwise.

15.3 **Insurance.** During the Term and for a reasonable period of time thereafter, Company will procure and maintain insurance policies for the Required Minimum Coverages. The Required Minimum Coverages do not constitute a limitation on Company's liability or indemnification obligations to Cornell under this Agreement.

15.4 **Insurance Certificates.** Within 90 days after the Effective Date and the commencement of each policy period and any renewal periods, Company will provide Cornell with insurance certificates evidencing the Required Minimum Coverages. Such certificates shall: (a) provide for 30 day advance written notice to Cornell of any modification; (b) indicate that Cornell has been endorsed as an additionally insured party under the coverage referred to above; and (c) include a provision that the coverage shall be primary and shall not participate with, nor shall be excess over, any valid and collectable insurance or program of self-insurance carried or maintained by Cornell.

16. **Miscellaneous.**

16.1 **Compliance.** Company will comply with all prevailing laws, rules and regulations that apply to its activities or obligations under this Agreement.

16.2 **Export.** The transfer of certain technical data and commodities may require a license from the applicable agency of the United States government and/or written assurances by Company that Company will not export data or commodities to certain foreign

countries without prior approval of the agency. Cornell does not represent that no license is required, or that, if a license is required, the license will issue.

16.3 Amendments. This Agreement may only be modified by a written amendment that is executed by an authorized representative of each party.

16.4 Waivers. Any waiver must be express and in writing. No waiver by either party of a breach by the other party will constitute a waiver of any different or succeeding breach.

16.5 Notice. Any Notice must be in writing, addressed to the party's respective Notice Address, and delivered: personally; by certified mail, postage prepaid, return receipt requested; or by recognized overnight courier service, charges prepaid. A Notice will be deemed received: if delivered personally, on the date of delivery; if mailed, five days after deposit in the United States mail; or if sent via courier, one business day after deposit with the courier service.

16.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of law principles of any jurisdiction.

16.7 Dispute Resolution. The parties will use reasonable efforts to resolve amicably any disputes that may relate to or arise under this Agreement. If the parties are unable to resolve the dispute amicably, then the parties will submit to the exclusive jurisdiction of, and venue in, the state and Federal courts located in the Southern District of New York.

16.8 Successors. This Agreement is binding upon the parties and their respective successors and assigns.

16.9 Assignment. This Agreement may be assigned by Cornell. Company may not assign this Agreement or any part of it, either directly or by merger or operation of law, without the prior written consent of Cornell, which will not be unreasonably withhold or delayed. Company will not grant a security interest in the License or this Agreement during the Term. Any prohibited assignment or security interest will be null and void. Notwithstanding any terms and provisions of this Section 16.9 to the contrary, upon a Change of Control, then the Company may assign this Agreement to the entity purchasing the Company, without the prior written consent of Cornell, provided that: (i) the assignee has sufficient resources to diligently honor all the terms and provisions of this Agreement; (ii) the assignee is considered to be a business that seeks to generally make technology available to the public in commerce on a commercially reasonable basis and is not primarily engaged in "patent troll" activities; and (iii) the Change of Control transaction does not violate any laws and regulations of the United States, including but not limited to the requirement that the purchasing company does not reside in or is controlled by any country with which the US government prohibits trading for any US citizens or commercial entity.

16.10 Integration. This Agreement, together with the Equity Documents and the Confidentiality Agreement (as may be applicable), contain the entire agreement between the parties with respect to the Patent Rights, the Copyrights, the License and, as may be applicable, the Technical Information and/or Materials and supersede all other oral or written representations, statements, or agreements, including, but not limited to, any FastTrack Option Agreement between the parties, with respect to such subject matter.

## PART III - GLOSSARY

“**Affiliate**” means a legal entity that is controlling, controlled by or under common control with Company and that has executed either this Agreement or a written joinder or Sublicense Agreement agreeing to be bound by all of the terms and conditions of this Agreement. For purposes of this definition, the word “*control*” means (a) the direct or indirect ownership of more than 50% of the outstanding voting securities of a legal entity, (b) the right to receive 50% or more of the profits or earnings of a legal entity, or (c) the right to determine the policy decisions of a legal entity.

“**Anti-Stacking**” means that if (a) Company becomes obligated to pay royalties to third parties for technology necessary to develop or manufacture a Licensed Product and (b) the aggregate royalty rate owed by Company to all parties (including Cornell) to develop and manufacture the Licensed Product exceeds 150% of the Royalty Rate, then the Royalty Rate applicable to Cornell under this Agreement for such Licensed Product will be reduced *pro rata* if, and only if, all third party royalty rates are also reduced (during the time period when such third party royalties are due) *pro rata*, based on the respective applicable royalty rates for each such license, subject to the royalty floor specified in the definition of Royalty Rate in this Glossary.

“**Change of Control**” means in an arm’s-length transaction: (a) any consolidation or merger of Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the outstanding shares of capital stock of Company immediately prior to such consolidation, merger or reorganization, represent less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; and (b) a sale, lease, exclusive license or like disposition of all or substantially all of the assets of Company.

“**Claim**” means any charges, complaints, actions, suits, proceedings, hearings, investigations, claims or demands.

“**Combination Product**” means that if (a) Company sells a Licensed Product that contains two or more medical devices, diagnostic tests, and/or active pharmaceutical ingredients, (b) each such medical device, diagnostic test, and/or active pharmaceutical ingredient is sold separately by Company or a third party as an individual product, and (c) such Licensed Product is sold by Company as a single unit, then the Sales of such Licensed Product shall be reduced *pro rata* based on the respective contribution of each medical device, diagnostic test or pharmaceutical ingredient to the Sale of such Licensed Product, measured by their respective average selling prices as separate, individual products; subject to the royalty floor specified in the definition of Royalty Rate in this Glossary. For example, if Company sells a Combination Product containing the Company’s medical device and an active pharmaceutical ingredient otherwise sold separately by a third party, then the Sales attributable to the Combination Product would be the gross sales with respect to the Combination Product multiplied by the fraction  $A/(A+B)$ , where “A” is the separate average sale price for the Company’s medical device and “B” is the separate average sale price for the third party’s pharmaceutical ingredient.

“**Confidentiality Agreement**” means all Confidential Disclosure Agreements between the parties that remain in effect after the Effective Date.

“**Copyrights**” means the copyrights in the Works, whether or not registered, that are owned by Cornell on the Effective Date, including, but not limited to, those copyrights listed in Item R.

“**Deal Provisions**” means Part I (Deal Provisions and Signatures) of this Agreement to which this Glossary and the Terms and Conditions are attached.

“**Derivative Works**” shall have the meaning given to such term the United States Copyright Law and any rules, regulations or interpretations promulgated thereunder, including, without limitation, any translations of, modifications of, or works based on a copyrightable work provided hereunder.

“**Diligence Event**” means each of the events listed in the table in Item I.

“**Effective Date**” means the date specified in Item J.

“**End User**” means a third party that receives a limited sublicense of the License from Company, an Affiliate or a Sublicensee of the right to reproduce and display (for internal use only), but not to distribute, prepare Derivative Works or otherwise make commercially available (including, without limitation, via software-as-a-service or a similar platform) one or more Licensed Products pursuant to a Sale.

“**End-User License**” means an agreement with an End User that provides a limited sublicense of the License.

“**Equity Documents**” mean a FastTrack Stock Purchase Agreement between Company and Cornell, in the form available at <https://ctl.cornell.edu/wp-content/uploads/FastTrack-Stock-Purchase-Agreement.pdf>, and, if applicable, a Stockholders Agreement among Company and some or all of its stockholders.

“**Field of Use**” means the field specified in Item H.

“**Glossary**” means this Part III (Glossary), which together with the Deal Provisions and the Terms and Conditions comprise this Agreement.

“**Indemnification Event**” means any Claim against one or more Indemnified Parties arising out of or resulting from: (a) the development, testing, use, manufacture, promotion, sale or other disposition of any of the Patent Rights, Copyrights, Works, Technical Information, Materials, Licensed Products or Licensed Methods by Company, its Affiliates, sublicensees, assignees or vendors or third parties, including, but not limited to, (i) any product liability or other Claim of any kind related to use by a third party of a Licensed Product or Licensed Methods and (ii) any Claim by a third party that the practice of any of the Patent Rights or Copyrights, use of the Works, Technical Information, Materials, or Licensed Methods or the design, composition, manufacture, use, sale or other disposition of any Licensed Product infringes or violates any patent, copyright, trade secret, trademark or other intellectual property right of such third party; (b) any material breach of this Agreement by Company or its Affiliates or Sublicensees; and (c) the enforcement of Article 15 by any Indemnified Party.

**“Indemnified Party”** means each of: (a) Cornell; (b) its trustees, officers, faculty, agents, contractors, employees and students; and (c) any other inventors or authors of, or third party sponsors of the research that lead to, the patents and patent applications in the Patent Rights, the Copyrights or the Works.

**“Investigator”** means the lead investigator(s) of Cornell with respect to some or all of the Patent Rights or the Copyrights.

**“Liabilities”** means all damages, awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties, costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including, but not limited to, court costs, interest and reasonable fees of attorneys, accountants and other experts) that are incurred by an Indemnified Party or awarded or otherwise required to be paid to third parties by an Indemnified Party.

**“License”** means the license granted by Cornell to Company pursuant to Section 2.1.

**“Licensed Method”** means any method that uses Technical Information, Works or Materials, or is claimed in the Patent Rights, the use of which would constitute, but for the License, an infringement, an inducement to infringe or contributory infringement of the Patent Rights.

**“Licensed Products”** means any product, composition or service that: (a) is claimed in the Patent Rights; (b) is produced or enabled by a Licensed Method; (c) uses, is enabled by or is otherwise derived from use of the Works, Technical Information or Materials; or (d) the manufacture, use, sale, offer for sale, importation, reproduction, distribution, display or preparation of Derivative Works of which would constitute, but for the License, an infringement, an inducement to infringe or contributory infringement of the Patent Rights or the Copyrights.

**“Materials”** means any biological, chemical or other tangible materials provided by Cornell to Company pursuant to this Agreement (together with any progeny, mutants or derivatives thereof created, conceived or developed by Company or its Affiliates or Sublicensees).

**“Minimum Equity Percentage”** means the percentage that has been selected by Company in Item K.

**“Net Sales”** means the consideration received or expected from, or the fair market value attributable to, each Sale, less qualifying costs that are directly attributable to a Sale, specifically identified on an invoice or other documentation and actually borne by the seller. For purposes of this definition, the words *“fair market value”* mean the consideration that Company or its Affiliates or sublicensees would realize from an unrelated buyer in an arm’s-length sale of an identical item sold in the same quantity and at the time and place of the transaction. For purposes of this definition, the words *“qualifying costs”* mean: (a) customary discounts in the trade for quantity purchased, for prompt payment or for wholesalers and distributors; (b) credits or refunds for claims or returns that do not exceed the original invoice amount; (c) prepaid outbound transportation expenses and transportation insurance premiums; and (d) sales and use taxes and other fees imposed by a governmental agency.

**“Notice”** means any notice or other required written communication under this Agreement.

**“Notice Address”** means the parties respective Notice addresses specified in Items C and E.

**“Payment Address”** means Cornell’s payment address or, in the case of a wire transfer, the electronic transfer information that is specified in Items E and F, respectively.

**“Patent Expenses”** means all attorneys’ fees, expenses, official fees and all other charges incident to the preparation, filing, prosecution, and maintenance of the Patent Rights and the Copyrights, including any negotiations or proceedings arising from US inter partes review, interference, foreign opposition or other dispute.

**“Patent Rights”** means all patent rights represented by or issuing from: (a) the United States patents and patent applications listed in Item Q; (b) any continuation, divisional and re-issue applications of (a); and (c) any foreign counterparts and extensions of (a) or (b).

**“Quarter”** means each three-month period beginning on January 1, April 1, July 1 and October 1.

**“Regulatory Approval”** means, with respect to a Licensed Product in any regulatory jurisdiction, approval from each applicable regulatory authority necessary for the commercial marketing, use and sale of the Licensed Product for a particular indication in such jurisdiction in accordance with applicable laws.

**“Required Minimum Coverages”** means the following coverages with respect to personal injury, bodily injury and property damage arising out of Company’s performance under this Agreement: (a) during the Term, comprehensive general liability, including broad form and contractual liability, in a minimum amount of \$5,000,000 (\$2,000,000 for first two years after the Effective Date) combined single limit per occurrence and in the aggregate; and (b) prior to the Sale of the first Licensed Product, either (i) product liability coverage or (ii) errors and omissions coverage, each in a minimum amount of \$5,000,000 (\$2,000,000 for first two years after the Effective Date) combined single limit per occurrence and in the aggregate. The policies of insurance required will be issued by an insurance carrier with an A.M. Best rating of “A” or better and will name Cornell as an additional insured with respect to Company’s performance under this Agreement. Cornell may review periodically the adequacy of the Required Minimum Coverages, and Cornell reserves the right to require Company to adjust the limits accordingly.

**“Royalty Rate”** means the percentage selected in Item L; provided, however, that: (a) with respect to Net Sales of any Licensed Product that uses Technical Information, Works or Materials, the Royalty Rate may be reduced in half, on a country by country basis, in any country where no patent has issued or no patent application has been filed with respect to the Patent Rights; (b) if Anti-Stacking has been selected in Item L, then the Royalty Rate may be reduced, on a Licensed Product by Licensed Product basis, to the extent permitted under the definition of Anti-Stacking in this Glossary; and (c) if Combination Products has been selected in Item L, then the Royalty Rate may be reduced, on a Licensed Product by Licensed Product basis, to the extent

permitted under the definition of Combination Products in this Glossary. In no event, however, will the royalty rate applicable to Cornell under this Agreement for any Licensed Product in any country be reduced for any reason to less than half the Royalty Rate selected by Company in Item L. A reduction of the Royalty Rate for one Licensed Product will not affect the Royalty Rate for another Licensed Product.

**“Sale”** means any bona fide transaction for which consideration is received or expected by Company or its Affiliate or Sublicensee, for the sale, use, lease, transfer or other disposition of a Licensed Product to a third party. A Sale is deemed completed at the time that Company or its Affiliate, invoices, ships or receives payment for a Licensed Product, whichever occurs first.

**“Sublicense”** means an agreement or arrangement into which Company enters with a third party (other than an End User) for the purpose of: (a) granting to the third party certain rights under the License; (b) granting to the third party an option to obtain certain rights under the License; or (c) forbearing the exercise by Company of any rights under the License for the benefit of the third party (e.g., through a standstill or covenant not to sue).

**“Sublicense Agreement”** means an agreement that provides for a Sublicense of the License.

**“Sublicense Income”** means the sum of all payments plus the fair market value of all other consideration of any kind received by Company from Sublicensees of the License during each Quarter, other than: (a) royalties paid to Company by a Sublicensee based upon Sales or Net Sales by the Sublicensee; (b) equity investments in Company by a Sublicensee up to the amount of the fair market value of the equity purchased on the date of the investment; (c) loan proceeds paid to Company by a Sublicensee in an arm’s-length, full recourse debt financing to the extent that such loan is not forgiven; and (d) sponsored research funding paid to Company by a Sublicensee in a bona fide transaction for documented and budgeted future research on Licensed Products to be performed by Company. Sublicense Income will also include any remaining proceeds from infringement litigation pursuant to Section 12.2.

**“Sublicense Rate”** means the percentage selected in Item N.

**“Sublicensee”** means a third party (other than an End User) that receives a sublicense, in whole or in part, of the License directly from Company or its Affiliate.

**“Subsequent Equity Financing”** means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which Company sells shares of capital stock (whether common or preferred) of Company or any warrants or other convertible securities of Company.

**“Technical Information”** means research and development information, unpatented inventions, know-how and technical data, whether or not protectable as a trade secret, which are defined in Item S, that: (a) is in the possession of the Investigator on the Effective Date; and (b) is needed to produce or develop, or is used in, a Licensed Product.

“**Term**” means the period commencing on Effective Date and terminating upon the later of: (a) the expiration or abandonment of the last patent to expire or become abandoned of the Patent Rights; or (b) 12 years after the first Sale of the first Licensed Product if there are any Technical Information, Works or Materials rights granted in this Agreement.

“**Terms and Conditions**” means Part II (FastTrack Terms and Conditions) of this Agreement to which this Glossary and the Deal Provisions are attached.

“**Territory**” means: (a) with respect to the Patent Rights, each country in which (i) a patent application has been filed and remains pending or (ii) a patent has issued and remains valid; and (b) with respect to Technical Information, worldwide.

“**Third Party Software**” means any software owned by a third party, whether proprietary or available on an open source basis, including without limitation the software listed in Item V.

“**Trigger Event**” means any of the following: (a) if Company or its Affiliate (i) becomes insolvent, bankrupt or generally fails to pay its debts as such debts become due, (ii) is adjudicated insolvent or bankrupt, (iii) admits in writing its inability to pay its debts, (iv) suffers the appointment of a custodian, receiver or trustee for it or its property and, if appointed without its consent, not discharged within 30 days, (v) makes an assignment for the benefit of creditors, or (vi) suffers proceedings being instituted against it under any law related to bankruptcy, insolvency, liquidation or the reorganization, readjustment or release of debtors and, if contested by it, not dismissed or stayed within 30 days; (b) the institution or commencement by Company or its Affiliate of any proceeding under any law related to bankruptcy, insolvency, liquidation or the reorganization, readjustment or release of debtors; (c) the entering of any order for relief relating to any of the proceedings described in (a) or (b) above; (d) the calling by Company or its Affiliate of a meeting of its creditors with a view to arranging a composition or adjustment of its debts; or (e) the act or failure to act by Company or its Affiliate indicating its consent to, approval of or acquiescence in any of the proceedings described in (a) – (d) above.

“**Works**” means the software, documentation, databases, content, designs, and other copyrightable works that: (i) are owned by Cornell on the Effective Date; and (ii) are listed in Item U.