**Research Agreement**

This Research Agreement (“Agreement”) effective as of [date] (“Effective Date”) is between Carnegie Mellon University, a nonprofit Pennsylvania corporation with offices located at 5000 Forbes Avenue, Pittsburgh, PA 15213 (“CMU”) and [company name], a [jurisdiction of incorporation/organization and type of entity] with a principal place of business located at [address of company] (“Sponsor”).

Sponsor would like CMU’s National Robotics Engineering Center (“NREC”) to conduct the research project described in this Agreement. CMU is interested in conducting the project in support of its nonprofit research and educational objectives.

As used in this Agreement, an“Affiliate” of a party shall mean any company or legal entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party (but for only so long as such control exists). For this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of an entity, whether through the ownership of voting securities, by contract, or otherwise.

Intending to be legally bound, CMU and Sponsor agree as follows:

# 1. Project. Subject to the terms of this Agreement, CMU agrees to perform the research project described in the statement of work (“SOW”) in Appendix A to this Agreement (the “Project”). CMU intends to perform the Project at one of its campus locations in the United States, or via remote means, unless otherwise indicated in the SOW. Sponsor may not perform any Project work on CMU’s premises unless it has obtained prior written permission from CMU’s Office of Sponsored Programs.

# 2. Principal Investigator. [principal investigator’s name] will serve as the Project’s “Principal Investigator” while employed by CMU. However, should [principal investigator’s name] no longer be able to serve as Principal Investigator, CMU will provide notice to the Sponsor of the replacement Principal Investigator.

# 3. Term. The term of this Agreement (“Term”) begins as of the Effective Date and ends on [ending date], unless it is terminated sooner or unless both parties agree in writing to extend it (the “End Date”).

# 4. Payment. CMU will invoice sponsor, and Sponsor agrees to pay CMU, as set forth in Appendix B.

# 5. Purchased or Loaned Property/Equipment. CMU will retain ownership of any and all property, equipment and/or supplies purchased for the Project, unless otherwise stated in Appendix A. If Sponsor is providing any Sponsor equipment or other property to CMU for use in the Project, it will list the loaned items in Appendix A (the “Loaned Property”). CMU will not maintain insurance for the Loaned Property unless agreed otherwise in Appendix A. If Sponsor wants CMU to return the Loaned Property after the Project is over, Sponsor will notify CMU in writing within ninety (90) days after the end of the Term. CMU will then return the Loaned Property at Sponsor’s expense in an “AS-IS” condition. If Sponsor does not provide CMU with instructions for the return or disposition of the Loaned Property within ninety (90) days after the end of the Term, Sponsor agrees that CMU may dispose of it as CMU desires without compensation or liability to Sponsor. CMU agrees that it will use the Loaned Property only for the Project unless otherwise specified in Appendix A or unless CMU is entitled dispose of it as described above.

# 6. Intellectual Property Ownership.

## a. *Intellectual Property*. “Intellectual Property” means any and all art, method, process, procedure, invention (regardless of patentability), idea, design, concept, technique, discovery, improvement, software code, algorithm, work of authorship, work product or moral right, as well as any patents, patent applications, copyrights, copyright registrations, trademarks, service marks, trademark or service mark registrations, trade names, trade secrets, know-how or other intellectual property rights or industrial property rights recognized in any country or jurisdiction in the world.

## b. *Sponsor Intellectual Property*. Sponsor will solely own all right, title and interest in Intellectual Property conceived, developed, created or discovered solely by its personnel or contractors in the performance of this Agreement (“Sponsor Intellectual Property”).

## c. *CMU Intellectual Property*. CMU will solely own all right, title and interest in Intellectual Property conceived, developed, created or discovered solely by its personnel (including students) or contractors in the performance of this Agreement (“CMU Intellectual Property”).

## d. *Joint Intellectual Property*. Sponsor and CMU will jointly own any and all Intellectual Property jointly conceived, developed, created or discovered (e.g., to the extent the parties would be considered joint inventors and/or joint copyright holders, as applicable, under relevant U.S. intellectual property laws) in the performance of this Agreement (“Joint Intellectual Property”).

## e. *Background Intellectual Property*. “Background Intellectual Property” means any Intellectual Property conceived, developed, created or discovered prior to or outside the scope of this Agreement. Except as explicitly stated in Appendix C, neither party is granting any options and/or licenses, express or implied, to its Background Intellectual Property under this Agreement. Prior to executing this Agreement, CMU will list in Appendix A any CMU Background Intellectual Property that the Principal Investigator has indicated that he/she intends to incorporate into any Deliverables and/or to use as the basis for modifications and/or improvements to be created under the Project. CMU will notify its Principal Investigator that he/she must provide a written update regarding any changes to such list during the period of performance of the Project. CMU will provide written notice to Sponsor of any and all such updates after they are received and reviewed by CMU. Upon Sponsor’s receipt of the update from CMU, the CMU Background Intellectual Property described in the update notice shall be automatically added to the list in Appendix A without the need for a mutually executed amendment.

## f. *Infrastructure Intellectual Property*. “CMU Infrastructure Intellectual Property” means any CMU Intellectual Property that: (i) is sufficiently generic to be useable generally in mobile robotic applications; and/or (ii) includes, or is based in whole or in part on, the CMU Background Intellectual Property (if any) listed in Appendix Ato this Agreement. CMU Infrastructure Intellectual Property includes, but is not limited to, translations of such CMU Background Intellectual Property to other foreign or computer languages, adaptation of the CMU Background Intellectual Property to other hardware platforms, abridgments, condensations, revisions, and software incorporating all or any part of such CMU Background Intellectual Property. CMU shall retain the entire right, title and interest in and to CMU Infrastructure Intellectual Property created under this Agreement.

# 7. Notification of Disclosures. CMU agrees to provide written notice to Sponsor (a “Disclosure Notice”) of any and all CMU Intellectual Property and/or Joint Intellectual Property disclosures that are received by CMU’s Center for Technology Transfer and Enterprise Creation (“CTTEC”) as soon as reasonably practicable. CTTEC will specify in the Disclosure Notice whether any of the Intellectual Property listed in the Disclosure Notice are CMU Infrastructure Intellectual Property. In addition, to the extent a disclosure to CTTEC indicated that any of the Intellectual Property listed in the disclosure includes or is based upon Intellectual Property subject to an open source license or similar copyright license, such as a Creative Commons license (collectively, an “Open License”), CTTEC shall include such information in the applicable Disclosure Notice. Sponsor agrees to notify CMU (at the contract issues address listed on the signature page) of any and all Sponsor Intellectual Property and/or Joint Intellectual Property disclosures it receives.

# 8. Protecting Intellectual Property.

## a. *Definition*. “Intellectual Property Protections” means the registration, application and/or filing for registration, prosecution or maintenance of, a patent, copyright, trademark or other protective measure for Intellectual Property.

## b. *CMU Intellectual Property*. Upon Sponsor’s request, CMU will pursue Intellectual Property Protections for CMU Intellectual Property in a particular country(ies) at the Sponsor's sole expense, to the extent such Intellectual Property Protections are reasonably obtainable. CMU may, at its option and at its own initial expense, pursue Intellectual Property Protections for CMU Intellectual Property for which coverage has not been requested by Sponsor pursuant to the prior sentence.

## c. *Joint Intellectual Property*. Either party may file for and maintain Intellectual Property Protections for Joint Intellectual Property, and the other party agrees to execute any documentation that is reasonably requested for such protections. Any such Intellectual Property Protections shall be in the names of both parties. The party desiring to file or maintain such Intellectual Property Protections shall provide reasonable advance written notice to the other party. The filing party (or its counsel) shall provide the other party with copies of all material correspondence related to such filing, prosecution and maintenance and shall use their best efforts to incorporate any reasonable suggestions of the other party. Subject to the licenses and licensing opportunities granted to Sponsor under this Agreement, and subject to the limitations described in Section 8(d) below, either party has the right to license such Joint Intellectual Property to third parties (with the right to sublicense) without accounting to the other party and without the consent of the other party.

## d. *Expenses for Intellectual Property Protections on Joint Intellectual Propert*y. Except as provided below, the parties agree to equally share all costs incurred in obtaining and maintaining Intellectual Property Protections on Joint Intellectual Property. A party may decide that it does not want to financially support Intellectual Property Protections for certain Joint Intellectual Property (a “Non-Supporting Party”) by notifying the other party. In that case, the other party may proceed with the Intellectual Property Protections at its own expense (the “Supporting Party”), but title to the Intellectual Property Protections shall still be jointly in the names of both parties. However, if the Non-Supporting Party then subsequently uses and/or licenses the Joint Intellectual Property in the production and/or provision of commercial products or services in a particular country(ies) covered by the Intellectual Property Protections obtained at the expense of the Supporting Party, then the Non-Supporting Party agrees to pay: (a) fifty percent (50%) of the fees and expenses incurred by the Supporting Party for such Intellectual Property Protections in the applicable country(ies) until the date of such commercial use or license, plus (b) interest on any such costs incurred accruing from the date upon which such costs were incurred at the rate per annum announced from time to time by the Wall Street Journal as the prime rate; plus (c) fifty percent (50%) of all subsequent fees and expenses incurred by the Supporting Party for the Intellectual Property Protections on the Joint Intellectual Property in the applicable country(ies).

## e. Unless the relevant Intellectual Property Protection costs have already been fully paid by Sponsor under this Section 8, any commercial licenses granted to Sponsor under this Agreement and/or in a separate written license agreement will require Sponsor to reimburse CMU for Intellectual Property Protection costs incurred for the licensed Intellectual Property (50% for any non-exclusive and 100% for any exclusive, subject to adjustment for additional licensees). If Sponsor does not reimburse CMU for such amounts within thirty (30) days after receipt of each notification or bill therefor, then Sponsor shall have no commercial license rights relating to such Intellectual Property Protections in the applicable country(ies) covered by such Intellectual Property Protections.

# 9. Intellectual Property Licensing. Licensing opportunities and terms are set forth in Appendix C to this Agreement.

# 10. Confidentiality.

## a. “Confidential Information” means all tangible and intangible information (including, but not limited to, business and technical information and data) provided by one party to the other party under this Agreement that is marked or identified as required below. Confidential Information disclosed visually, in writing, electronic media or by any other means, shall be marked “Confidential,” “Proprietary,” or the substantial equivalent when provided to Recipient. Confidential Information disclosed orally or visually must be identified as confidential at the time of disclosure and thereafter reduced to a written summary marked as “Confidential,” “Proprietary,” or the substantial equivalent and delivered to the Recipient within 15 days of the date of disclosure.

## b. Notwithstanding the foregoing, Confidential Information does not include any information that: (i) at the time of disclosure hereunder is publicly available; (ii) became publicly available after the time of its disclosure under this Agreement through means other than an unauthorized disclosure resulting from an act or omission by the receiving party; (iii) was known to the receiving party without confidentiality obligation prior to receipt from disclosing party, as shown by written records created prior to the date of disclosure to Recipient; (iv) is independently developed by the receiving party without use or access to the disclosing party’s Confidential Information, as shown by the receiving party’s written records; or (v) is or was disclosed to the receiving party at any time by a third party having no obligation of confidentiality with respect to such information.

## c. The receiving party shall use the disclosing party’s Confidential Information only as needed for the Project. During the Term and for a period of two (2) years following the End Date, the receiving party shall protect the disclosing party’s Confidential Information from unauthorized disclosure using the same degree of care, but no less than reasonable care, as the receiving party uses to protect its own similar information.

## d. Receiving party may provide the disclosing party’s Confidential Information to the receiving party’s employees, students, trustees, agents and independent contractors who have a need to know the information for the Project and who have been informed of the applicable confidentiality requirements. However, if such individuals are not employees of the receiving party, the receiving party may not share the Confidential Information with them unless and until they have agreed in writing to maintain the confidentiality of the information under terms at least as protective as those in this Agreement, or they are bound by a professional ethical duty to the receiving party to maintain the confidentiality of the information.

## e. Receiving party may also disclose the disclosing party’s Confidential Information in order to comply with applicable laws or regulations, or with a court or administrative order and/or other legal process (e.g., subpoena). However, the receiving party must provide reasonable advance notice to the disclosing party (unless such notification is prohibited by the terms of the relevant order) and disclose only as much Confidential Information as legally required.

# 11. Publication; Review and Comment.Subject to any applicable confidentiality obligations, Sponsor acknowledges that CMU is free to publish any and all CMU Intellectual Property and/or Joint Intellectual Property (including reports and papers of research and other activities conducted under the Project). Any such reports or papers may acknowledge that Sponsor was the sponsor of the Project, unless otherwise indicated in the SOW or unless Sponsor requests that a certain acknowledgment be removed during the review and comment process described below. During the Term and for a period of six (6) months from the End Date, CMU agrees to provide Sponsor with a copy of any reports or papers (excluding student theses and/or dissertations) about the Project and/or that include CMU Intellectual Property and/or Joint Intellectual Property for review and comment at least thirty (30) days prior to public release and/or submission to a third party for publication. During such thirty (30) day period, Sponsor can notify CMU of any specific Sponsor Confidential Information that has been inadvertently included in the document, Sponsor can notify CMU of any specific reference to Sponsor’s name or trademarks that Sponsor would like to have removed, and Sponsor can also identify any parts of the document that relate to patentable Sponsor Intellectual Property and/or Joint Intellectual Property for which Sponsor would like to seek Intellectual Property Protections. If Sponsor identifies any such Sponsor Confidential Information or requests that a reference to Sponsor’s name and/or trademarks be removed, CMU shall delete it from the document. If Sponsor identifies any such patentable Sponsor Intellectual Property and/or Joint Intellectual Property, CMU shall either remove the references to such Intellectual Property from the document or delay publication/submission for an additional sixty (60) days so that Sponsor can pursue Intellectual Property Protections. If Sponsor does not provide any such comments within the thirty (30) day period, CMU may proceed with the publication or submission.

# 12. Use of Names or Marks. Except for any permitted acknowledgment of Sponsor’s funding of the Project referenced in Section 11 above, each party agrees not to use the name or trademarks of the other party or any member of its staff in sales promotion work, advertising or other publicity without the prior written permission of the other party.

# 13. Termination*.* In addition to any termination rights specifically set forth elsewhere in this Agreement, either party may terminate this Agreement as follows.

## a. *Termination for Convenience*. Either party shall have the right to terminate this Agreement by providing the other party with at least sixty (60) days prior written notice

## b. *Termination for Cause*. Either party (the “Terminating Party”) may terminate this Agreement immediately by written notice to the other party (the “Other Party”) in that event that: (i) either party is unable to perform its obligations under this Agreement for at least thirty (30) days as a result of a force majeure event, or (ii) the Other Party is in violation of its obligations under this Agreement and has not cured such violation within thirty (30) days after receiving written notice from the Terminating Party.

## c. *Effect of Termination*. In the event of termination, Sponsor agrees to pay CMU for all work performed up through the effective date of termination. For purposes of clarification:

### (i) if this Agreement is a cost reimbursable agreement, CMU will invoice for all costs incurred through the effective date of termination. In addition, unless CMU terminates for convenience, CMU shall also invoice for the cost of all commitments made prior to the date of termination notification which could not be immediately cancelled and which are a direct result of the work under this Agreement. CMU will provide documentation on any and all cancelled commitments upon the reasonable request of Sponsor; and

### (ii) if this Agreement is a fixed price agreement, CMU will invoice for a percentage of the fixed price based on the percentage of work completed as of the effective date of termination. In addition, unless CMU terminates for convenience, CMU shall also invoice for the cost of all commitments made prior to the date of termination notification which could not be immediately cancelled and which are a direct result of the work under this Agreement. CMU will provide documentation on any and all cancelled commitments upon the reasonable request of Sponsor.

## d. *Provision of Deliverables*. In either event, provided Sponsor has fully paid CMU as provided in this Agreement, CMU will provide to Sponsor any Deliverables that were completed or partially completed as of the End Date.

## e. *Survival*. Any provisions of this Agreement which would naturally survive termination or expiration will do so (including but not limited to provisions regarding payment, intellectual property, confidentiality, publication, representations and warranties, limitation of liability, indemnity and dispute resolution).

# 14. NO REPRESENTATIONS AND WARRANTIES; LIMITATION OF LIABILITY

CMU DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PROJECT OR ANY INTELLECTUAL PROPERTY OR OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY CMU PURSUANT TO THIS AGREEMENT (INCLUDING ANY DELIVERABLES), AND THEY ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. ANY AND ALL IMPLIED WARRANTIES OR DUTIES ARE HEREBY EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, EXCLUSIVITY, INFORMATIONAL CONTENT, ERROR-FREE OPERATION, AND/OR RESULTS TO BE OBTAINED FROM USE. REASONABLE EFFORTS WILL BE USED TO PERFORM THE PROJECT, BUT THE NATURE OF RESEARCH IS UNCERTAIN AND SPECIFIC RESULTS CANNOT BE GUARANTEED. SPONSOR IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF CMU RELATING TO ANY MATTER, INCLUDING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED FROM THE PROJECT, INTELLECTUAL PROPERTY AND/OR ANY OTHER PROPERTY OR RIGHTS (INCLUDING THE DELIVERABLES) GRANTED AND/OR PROVIDED BY CMU PURSUANT TO THIS AGREEMENT.

CMU SHALL NOT BE LIABLE TO SPONSOR OR ANY THIRD PARTY FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT), EVEN IF CMU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

# 15. Insurance. During the Term, each party agrees to carry and maintain, at its own expense, commercial general liability insurance (or similar self-insurance) as well as workers compensation insurance in the minimum amounts required by applicable law. All liability policies are to be occurrence-based policies. Upon the written request of a party, the other party shall provide a certificate of insurance or other evidence of coverage.

# 16. Notices. Any notice to the other party under this Agreement must be in writing, signed by the party giving it, and provided either personally, by registered mail, certified mail, email, and/or reputable overnight courier (such as UPS, FedEx, etc.) to the appropriate address listed on the signature page to this Agreement. Either party may update its contact information by providing written notice to the other party as required by this Section.

# 17. Export Control and Restricted Party Screening. Each party is subject to any and all applicable export control laws and regulations in its performance of this Agreement (including but not limited to compliance with any and all applicable provisions of the Export Administration Regulations, International Traffic in Arms Regulations, and any and all applicable U.S. sanctions, embargoes and/or prohibitions on transactions with restricted parties).

# a. Without limiting the general nature of the foregoing, Sponsor will not disclose or re-export any technical data provided by CMU under this Agreement to any country or end-user, or for any end-use, for which the U.S. government requires an export license at the time of export or transfer under an applicable U.S. export law or regulation, unless and until Sponsor has obtained the appropriate license or other written authorization from the pertinent U.S. agency.

# As an institution of higher learning, CMU has many foreign national employees and students, and it typically performs fundamental research that is exempt from export control licensing under applicable export control laws. As a result, CMU does not wish to take receipt of export-controlled information or materials except as may be specifically agreed to in advance under a separate agreement by CMU and for which CMU has made specific arrangements. Sponsor agrees that it will not provide or make accessible to CMU any export-controlled information or materials without first informing CMU’s Office of Sponsored Programs of the export-controlled nature of the information or materials and obtaining from CMU’s Office of Sponsored Programs its written consent to accept such information or materials as well as any specific instructions regarding the mechanism pursuant to which such information or materials should be passed.

# To the extent there is a situation where the continued performance of this Agreement (including but not limited to the transfer of any Deliverables from CMU to Sponsor and/or the return of any materials being loaned by Sponsor under this Agreement) requires an export or other applicable license or authorization (such as an OFAC license) from the pertinent agency of the United States Government, Sponsor understands that: (i) CMU cannot guarantee that any such license sought by CMU will be issued in any particular timeframe, if at all; and (ii) if CMU determines in its sole discretion that such a license would be unlikely to be issued or that pursuing such a license would be financially or administratively burdensome or is otherwise not in the best interest of CMU, CMU may decline to pursue such a license. If for any reason the required license should not be issued by the timeframe required under this Agreement to enable continued performance, or should CMU decline to seek such a license as described above, CMU may terminate this Agreement upon written notice to Sponsor. In such case, Sponsor shall pay to CMU only those costs associated with the performance of the Agreement to the date when CMU was informed that the license would not be issued or Carnegie Mellon issued a notice of termination, as applicable, and CMU shall be released from any further performance of the Agreement.

# CMU’s failure to perform any obligations under this Agreement as a result of not having the required license to do so shall not constitute a breach of this Agreement by CMU. For clarity, nothing in this Section is intended to limit the right of a party to terminate this Agreement as otherwise permitted under this Agreement.

# b. Restricted Party Screening. As of the Effective Date of this Agreement, Sponsor represents that neither it, nor any agent, employee, officer or director thereof, is an individual, entity, or organization (i) listed in any list of designated or restricted persons or entities maintained by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury, the U.S. Department of State, the U.S. Department of Commerce, and/or any other applicable U.S. authority (collectively, "Sanctions Authority") or with whom a U.S. person or entity is otherwise restricted from doing business under any regulation, statute, executive order or other similar legal requirement imposed by any Sanctions Authority (collectively “Sanctions”); (ii) operating, organized or resident in a country, region or territory which is itself the subject or target of any countrywide Sanctions or any Sanctions applicable to the activities taking place under this Agreement (collectively, "Sanctioned Country"); or (iii) owned or controlled by any person described in the foregoing (i) or (ii) (any such person to be a "Sanctioned Person"). If Sponsor or any agent, employee, officer or director thereof, is or subsequently becomes a Sanctioned Person or violates any Sanctions with respect to any Deliverables provided by CMU pursuant to this Agreement then Sponsor will be deemed to be in material breach of this Agreement and, notwithstanding anything to the contrary herein, CMU will have the right to terminate this Agreement and any and all license or other rights granted by CMU hereunder immediately upon written notice, without penalty or liability. This provision shall survive the expiration or termination of this Agreement.

# 18. No Exclusivity*.* This is not an exclusive arrangement. Either party can perform or enter into research agreements with third parties which are similar to the Project, or can independently develop (either through third parties or through the use of its own personnel) or acquire technologies or products which are similar to and competitive with Intellectual Property resulting from the Project.

# 19. Severability*.* If any portion of this Agreement is determined by any court or governmental agency of competent jurisdiction to violate applicable law or otherwise not to conform to requirements of law, then the rest of the Agreement will remain in effect and the parties will substitute a suitable and equitable provision for the invalid/unenforceable provision in order to carry out the original intent and purpose of the original Agreement.

# 20. Independent Contractors*.* In all matters relating to this Agreement, the parties are acting as independent contractors. Neither party will represent that it has any authority to assume or create any obligation or warranty on behalf of the other party and/or to represent the other party as agent, employee or in any other capacity.

# 21. Section Headings; No Third Party Beneficiaries*.* The section headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement. Except for the rights of the CMU Parties under Section D12,,nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity other than CMU or Sponsor any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

# 22. Dispute Resolution*.* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions.

Except to the extent CMU elects binding arbitration as permitted below, any claims and/or controversies arising out of or relating to this Agreement (including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination) shall be settled exclusively in the United States District Court for the Western District of Pennsylvania (or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania). Each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

CMU has the right to elect, in its sole discretion, to have any claims and/or controversies arising out of or relating to this Agreement (including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination) settled exclusively by binding arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules. If CMU elects binding arbitration, the arbitration proceedings: (a) shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (b) each party shall bear its own costs of arbitration, (c) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, and (d) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any Federal, state or local court or before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement (provided that either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in any intellectual property and/or confidential or proprietary information as described in this Agreement).

23. Reporting. Notwithstanding anything to the contrary contained herein, information related to this Agreement, including a copy of this Agreement, may be reported by Carnegie Mellon as required by applicable Federal, state, and local disclosure laws and regulations.

# 24. Government Rights*.* The Sponsor understands and agrees that the CMU Background Intellectual Property may have been developed in whole or in part under an agreement with the United States government (the “Government”) and, in such event, the Government may have certain rights. This Agreement, any and all obligations of CMU, and any and all rights granted to Sponsor are made subject to any applicable rights of the Government.

# 25. Interest and Taxes. Any payment that is not made when due shall be considered delinquent. CMU shall have the right to charge interest on any delinquent amounts at the lower of the rate of the prime rate in the Wall Street Journal newspaper in its “Money Rates” column in effect on the date such amounts were due plus four percent (4%) per annum, but in no event to exceed the maximum rate of interest allowable under applicable law. The amounts to be paid by Sponsor under this Agreement do not include any charges for applicable taxes, governmental charges, duties or similar additions or deductions of any kind (including without limitation any and all federal, state, local, governmental, republic or provincial sales, use, goods and services, excise and withholding taxes) other than any United States Federal or state income taxes assessed on the income of CMU (collectively, “Taxes”). Sponsor agrees to pay any and all amounts required under this Agreement without deduction of any such Taxes. In the event by operation of law or otherwise, such Taxes are required to be deducted from any amounts paid to CMU under this Agreement, the amounts due under this Agreement shall be increased to such amounts as may be necessary to yield CMU the amount it would otherwise have received had such payments been made without deduction for any such Taxes. In addition, the amounts to be paid by Sponsor under this Agreement do not include customs duties or any other importation or exportation fees and associated costs, if any. Sponsor agrees to pay any such costs within thirty (30) days after receipt of an invoice from CMU.

# 26. No Assignment*.* Sponsor may not assign any or all of its rights and/or obligations under this Agreement without the prior written consent of CMU, which consent may be granted or withheld in CMU’s sole discretion. Any attempted assignment in violation of this section shall be void and of no effect.

# 27. Binding Effect; No Waiver*.* This Agreement is binding upon and shall inure to the benefit of the parties hereto, their representatives, successors and permitted assigns. Any failure (or successive failures) to enforce any provision of this Agreement shall not be construed to be a waiver of (or otherwise negatively affect) any future enforcement of such provision.

# 28. Force Majeure*.* Except for Sponsor’s payment obligations, neither party shall be liable under this Agreement for delay in performance due to fire, flood, strike, or other labor difficulty, act of God, war (declared or undeclared), terrorist act, act of any governmental authority, acts or omissions of the other party, riot, fuel or energy shortage, or due to any other cause beyond the party’s reasonable control. Subject to a party’s right to terminate this Agreement as provided in Section 15 above, in the event of any delays in performance due to any such cause, the dates for performance will be postponed by a period of time equal to the delay period.

# 29. Entire Agreement*.* This Agreement (including its appendices) constitutes the entire agreement between the parties and supersedes all previous agreements and understandings relating to the subject matter of this Agreement. The Agreement may not be altered, amended, or modified except by a written instrument signed by the duly authorized representatives of both parties. If Sponsor issues a purchase order to enable payment to CMU under this Agreement, Sponsor agrees that the terms and conditions of this Agreement shall apply in lieu of any terms and conditions printed on the purchase order.

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

|  |  |  |
| --- | --- | --- |
| **Carnegie Mellon University** |  | **[Sponsor]** |
|  |  |  |
| *(Signature)* |  | *(Signature)* |
| *(Name)* |  | *(Name)* |
| *(Title)* |  | *(Title)* |
| *(Date)* |  | *(Date)* |

*Sponsor understands and agrees that CMU will not be bound by this Agreement and/or any amendment hereto unless signed by a duly authorized signatory listed in CMU’s policy entitled “Authorized Signatures for Agreements, Contracts, Licenses” (currently posted at* [*http://www.cmu.edu/policies/documents/AuthSig.html*](http://www.cmu.edu/policies/documents/AuthSig.html)*) or who Sponsor knows possesses a valid, written signature delegation issued pursuant to such policy.*

|  |  |
| --- | --- |
| **Carnegie Mellon University** | **Sponsor** |
| **For Billing Information** | |
| Attn: Elizabeth Callaway  Sponsored Projects Accounting Office  Carnegie Mellon University  5000 Forbes Avenue  Pittsburgh, Pennsylvania 15213  (412) 268-2091 Telephone  (412) 268-5841 Fax  Email: callaway@andrew.cmu.edu | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **For Contract Issues** | |
| **Attn:**  Office of Sponsored Programs  Carnegie Mellon University  5000 Forbes Avenue  Pittsburgh, PA 15213  (412) 268-8746 Telephone    Email: osp@andrew.cmu.edu  With a copy to: kdowning@nrec.ri.cmu.edu | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **For Technical Issues** | |
| **Attn:**  National Robotics Engineering Center  Carnegie Mellon University  10 40th Street  Pittsburgh, PA 15201  (412) 681-XXXX Telephone  (412) 681-XXXX Fax  Email: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX A**

Project Details/Equipment and Materials/CMU Background Intellectual Property

**A1.** **Project Details.**

Project Title:

SOW:

Deliverables:

**A2.** **Equipment and Materials.**

Pursuant to Section 5 of the Agreement, list equipment and property (if any) to be loaned by Sponsor (*if none, state “N/A” or “None”*):

Pursuant to Section 5 of the Agreement, list deviations (if any) to the standard Section 5 language regarding purchased or loaned property or equipment (*if none, state “N/A” or “None”*):

**A3.** **CMU Background Intellectual Property.**  List CMU Background Intellectual Property (if any) required to be listed pursuant to Section 6(e) of the Agreement (*if none, state “N/A” or “None”*):

**APPENDIX B**

Payment Terms

**B1.** **Financial Terms.**

Project Price (includes cost of performance of the Project, as well as CMU overhead and/or other applicable facilities and administration charges and fees, including any applicable license fees for any rights granted in Appendix C and D) (check one):

□ The Project Price billed to Sponsor will not exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ unless agreed by the Sponsor in writing. The Project will be performed on a cost-reimbursable basis (i.e., CMU’s performance on the Project continues until CMU’s cumulative costs, overhead, charges and fees for the Project have reached such not-to-exceed Project Price).

□ The Project Price is the fixed price of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. CMU will not invoice Sponsor for any Project Price in excess of such amount unless Sponsor agrees in writing.

CMU will invoice Sponsor for the Project Price on the schedule set forth in Section B2 below.

**B2.** **Invoicing.** CMU will send invoices to Sponsor at the billing address set forth in the Agreement. Invoices will be sent as follows: [*insert schedule on which invoices will be sent—for example, monthly for cost-reimbursable, or on a set schedule for fixed price*]

**B3.** **Payment.** Invoice payments are due within thirty (30) days of receipt of invoice by Sponsor. Payments shall be made in U.S. Dollars. Checks shall be payable to Carnegie Mellon University and sent to Carnegie Mellon University, P.O. Box 371032, Pittsburgh, PA 15250-7032. Wire transfers should be sent as follows:

Bank Name: BNY Mellon

Address: 500 Ross Street

Pittsburgh PA 15262

Beneficiary: Carnegie Mellon University

Account Name: Cash Management Account

Account Number: 197-9003

ABA Number: 043000261

SWIFT Code: IRVTUS3N

Bank Contact: Cash Management

Customer Service - Jan Schade, 412-234-3359

**APPENDIX C**

Licensing

C1. Non-Exclusive, Commercial License Granted to Deliverables. Provided Sponsor is current in its payment of the Project Price, and subject to and contingent upon the non-exclusive license terms and conditions set forth in Appendix D, CMU hereby grants to Sponsor, and Sponsor hereby accepts, a non-exclusive, world-wide license to the Licensed Technology in the <*insert field of use>* (“FOU”). "Licensed Technology" shall mean (a) any and all technology that constitutes CMU Intellectual Property and/or CMU Infrastructure Intellectual Property described in a Disclosure Notice, all on an "as is" basis at the end of the Term of the Project as incorporated in a Deliverable(s) provided to Sponsor; (b) the trade secrets, know-how, design architecture, software and algorithm(s) including related code and related copyrights, owned by CMU and specifically related to the technology described in (a) above, on an "as is" basis at the end of the Term of the Project; and (c) any patent or any patent application, including any continuation, continuation-in-part, divisional or modification filed in the U.S. or in any other country and any patent claiming priority therefrom or reissue thereof which issues to CMU and specifically claims the technology or other intellectual property described in (a) or (b) above.

C2. Option for Exclusive License. Sponsor will have one hundred eighty (180) days after receiving a Disclosure Notice (the “Negotiation Period”) to elect in writing to negotiate an exclusive commercial license to any CMU Intellectual Property and/or Joint Intellectual Property listed in the Disclosure Notice that was incorporated into a Deliverable provided to Sponsor(but excluding any such Intellectual Property that constitutes CMU Infrastructure Intellectual Property or is subject to an Open License, which are not available for exclusive licensing). The field of use for any exclusive license shall be in a specified field of use, which is expected to be the FOU referenced in Section C1 above unless otherwise agreed in writing by the parties. During the Negotiation Period, CMU will not conduct license negotiations with any other party for the same CMU Intellectual Property and/or Joint Intellectual Property in the same FOU that is eligible for exclusive licensing by Sponsor, unless Sponsor indicates during the Negotiation Period that it is not interested in negotiating an exclusive license for such Intellectual Property. If Sponsor is in breach of this Agreement at the time it receives the Disclosure Notice (for example, if Sponsor is delinquent in making payments as required under this Agreement), it is not entitled to request any exclusive negotiations during the Negotiation Period and CMU is free to pursue licenses with other third parties during such time. If Sponsor would like to negotiate such any commercial license after the Negotiation Period ends, Sponsor is always free to contact CMU at any time and request to do so (however, CMU cannot guarantee that the relevant Intellectual Property will be available for the desired license at that time).

Except for any non-exclusive license granted pursuant to C1 above, the granting of any commercial license is subject to the negotiation and execution of a mutually-agreeable, separate written license agreement. However, CMU’s expectations are that any such license will, at a minimum: (a) have a limited term and cover a defined field of use; (b) require mutually-agreeable financial consideration for the license (which could be royalties on net sales, fixed price per units sold, and/or upfront fixed fees); (c) require Sponsor to pay for Intellectual Property Protections applicable to the Intellectual Property covered under the license, to the extent not previously paid by Sponsor (where the Sponsor covers 100% of such costs for exclusively licensed intellectual property and 50% of such costs for non-exclusively licensed intellectual property, with a mechanism for proration in the event of additional licensees); (d) include sublicensing rights consistent with Section D4 of Appendix D below and require CMU’s prior written consent to any other sublicensing; and (e) include disclaimers and indemnification for the benefit of CMU.

C3. CMU Background Intellectual Property. CMU Background Intellectual Property (including any listed in Appendix A) would need to be separately licensed and is subject to availability. However, during the Term initially specified in this Agreement, CMU agrees that it will not exclusively license the CMU Background Intellectual Property listed in Appendix A in the FOU listed above.

C4. Internal License Granted to CMU. Sponsor hereby grants to CMU a non-exclusive, non-transferable, royalty-free, non-sublicensable, perpetual license for all Sponsor Intellectual Property for CMU’s internal academic and research purposes ("CMU Internal License"). Pursuant to such CMU Internal License, CMU may copy, distribute, modify and use the Sponsor Intellectual Property for research purposes and general academic use within CMU.

**APPENDIX D**

Non-Exclusive Licensing Terms and Conditions

#### D1 Definitions.

## a. *Derivative*. "Derivative" shall mean computer software or other intellectual property developed by Sponsor which includes, or is based in whole or in part on, the Licensed Technology, including, but not limited to, translations of the Licensed Technology to other foreign or computer languages, adaptation of the Licensed Technology to other hardware platforms, abridgments, condensations, revisions, and software incorporating all or any part of the Licensed Technology which may also include Sponsor-created modifications, enhancements or other software.

## b. *Disposition*. “Dispose” or “Disposition” shall mean the use, sale, lease or other transfer.

## c. *Licensed Product*. "Licensed Product" shall mean any product and/or service which constitutes, is based on, incorporates or utilizes, wholly or in part, Licensed Technology and/or any and all Derivatives.

Any other capitalized terms not otherwise defined in this Appendix D shall have the meanings given to them elsewhere in the Agreement.

#### D2 License Scope. The license granted by University pursuant to Section C1 of Appendix C of the Agreement is a nonexclusive, royalty-free, perpetual (i.e., for the life of the applicable Intellectual Property rights, but subject to termination as provided herein), worldwide, license to CMU’s interest in the Licensed Technology to make, have made, use, copy, sell, offer to sell, import and otherwise commercially Dispose of Licensed Products and to create and commercialize Derivatives of Licensed Technology, in the FOU, effective as of the date of CMU’s applicable Disclosure Notice pursuant to Section 7 of the Agreement or the date upon which Sponsor received the Deliverables containing the Licensed Technology, whichever is later. Any use of the Licensed Technology to make, have made, use, copy, or otherwise Dispose of Licensed Products outside the Field of Use or to create Derivatives outside the Field of Use shall be a default by Sponsor of this Agreement.

#### D3 Ownership of Derivatives. Sponsor shall be entitled to establish all proprietary rights for itself in the Intellectual Property rights represented by Derivatives, whether in the nature of trade secrets, copyrights, or other rights, provided that Sponsor shall promptly notify CMU of Sponsor-originated bug fixes to the Licensed Technology, which shall be part of the Licensed Technology and owned by CMU. Any copyright registration by Sponsor for Derivatives shall give full attribution to CMU’s copyrights. Carnegie Mellon shall have the right to use Derivatives for research, educational, academic, and/or administrative purposes.

#### D4 Sublicensing. No right to sublicense the Licensed Technology is hereby granted to Sponsor except that (a) Sponsor may sublicense to its end-users and customers Licensed Technology in the ordinary course of business to the extent necessary for use and practice of the Licensed Product Disposed of by Sponsor to said end-users and customers and/or (b) Sponsor may sublicense the Licensed Technology to its Affiliates, resellers, suppliers, and partners in order to have the Licensed Products made on behalf of Sponsor, provided that Sponsor is responsible for such entities’ exercise of these license rights and compliance with the terms and conditions of this license (such that any breach of such license terms by such entities shall be considered a breach by Sponsor). Otherwise, sublicensing shall require CMU’s prior written consent. Unless otherwise agreed by CMU in writing, in the event CMU provides its prior written consent to additional sublicensing, any and all such permitted sublicenses shall provide that the obligations to CMU under this Agreement related to the license grants, license restrictions and prohibitions in Appendices C and D and in the main body of the Agreement, and any and all liability-related provisions (including but not limited to the disclaimer of warranties and limitations on liability, the indemnification provisions, and the obligation to obtain insurance) shall be binding upon such sublicensee as if it were Sponsor under this Agreement and that CMU is an express third-party beneficiary of such sublicense. Sponsor will provide copies of any such sublicenses to CMU upon its reasonable request.

#### D5 Reservation of Rights to Licensed Technology. CMU shall retain the right to use the Licensed Technology and shall have the right to use, free of charge, any product or process developed by Sponsor which contains or is based on any of the Licensed Technology and/or Derivatives for CMU research, educational, academic, and/or administrative purposes. Nothing in this Agreement shall restrict academic research or other not-for-profit scholarly activities, which are undertaken at a nonprofit or governmental institution in the area of Licensed Technology and/or any other areas.

#### D6 Compliance and Costs. All costs and expenses incurred in carrying out Sponsor’s obligations and exercising its rights under this Agreement (including but not limited to payment of any required taxes) shall be paid by Sponsor, and Sponsor shall not be entitled to reimbursement from Project Price or otherwise therefor from CMU. Sponsor shall possess or obtain at its own expense all necessary licenses and permits and shall comply with all laws, ordinances, rules or regulations affecting the exportation or Disposition of Licensed Products, Licensed Technology and/or Derivatives. Sponsor shall keep University fully informed of, and shall move expeditiously to resolve, any complaint by a governmental body relevant to the Licensed Products.

#### D7 Government Rights. The license rights granted under this Agreement are subject to any government license rights under 35 USC §202 (c) (4) and any march-in rights of the United States of America under 35 USC §203. This Agreement, any and all obligations of University, and any and all rights granted to Sponsor are made subject to any applicable rights of the United States government.

#### D8 Open Source Software and Terms. To the extent any Licensed Technology is subject to the terms of any Open License, the licensing of such Licensed Technology is subject to any relevant Open License terms, notwithstanding anything to the contrary herein or elsewhere in the Agreement.

#### D9 Marking Requirements.

## a. Sponsor shall have included in all sales, marketing literature and invoices relating to Licensed Product, a statement to the effect that "this product or portions thereof is manufactured under license from Carnegie Mellon University."

## b. Sponsor shall mark each Licensed Product which it Disposes in accordance with the applicable patent laws of the countries in which the materials are Disposed. In addition, Sponsor shall include patent information on the Licensed Products as follows: (i) if a Licensed Product falls within the scope of one or more claims of a pending patent, Sponsor shall mark each Licensed Product and/or packaging therefor with “Patent Pending”; and (ii) if a Licensed Product falls within the scope of one or more claims of an unexpired patent, Sponsor shall mark each Licensed Product and/or packaging therefor, with the applicable patent number or numbers in accordance with the applicable laws of the countries in which the materials are intended to be used.

## c. Sponsor acknowledges that the title to the Licensed Technology (including any copyright) shall remain with CMU and that any copies of the Licensed Technology or portions thereof made by Sponsor in accordance with the rights granted hereunder shall include a CMU copyright notice thereon. The notice shall be affixed to all copies or portions thereof in such a manner and location as to give reasonable notice of CMU’s claim of copyright and shall be in the following format: “Copyright 201\_ Carnegie Mellon University. All rights reserved.” or “© 201\_Carnegie Mellon University. All Rights Reserved.”

#### D10 Use of Name and Marks. Sponsor acknowledges that it does not have any rights or title whatsoever in or to CMU’s trade name or in or to any of CMU’s trademarks (including but not limited to Carnegie Mellon University and CMU) except as expressly provided under this Agreement. Sponsor shall neither register nor use any CMU trademarks or trade names. Any reference by Sponsor to CMU beyond the above may only be done with express written permission of University’s Director of the Center for Technology Transfer and Enterprise Creation.

#### D11 Termination of the Licenses Granted in this Agreement.

## a. In the event that Sponsor defaults in the payment of the Project Price and/or the performance of any of its obligations concerning the license that are set out in this Appendices C and D and/or of the Agreement (including but not limited to the failure to pay any reimbursements for Intellectual Property Protections and/or fulfill the indemnification obligations) and fails to cure such default within thirty (30) days after written notice of such default from CMU, CMU shall have the right by written notice to Sponsor to terminate the licenses granted in this Agreement.

## b. In the event that any of (i) Sponsor or (ii) a subsidiary of Sponsor or (iii) a third party acting on behalf of Sponsor or one of its subsidiaries challenges or disputes the validity or enforceability of any Licensed Technology in any judicial or administrative proceeding, CMU may, at its option and sole discretion, terminate the license rights granted to Sponsor herein as to such challenged Intellectual Property by notice in writing to Sponsor.

#### D12 Disclaimers and Other Relevant Agreement Terms; Indemnification. Unless otherwise specifically provided in this Appendix D, the relevant terms and conditions of the Agreement shall continue to apply to the licenses granted hereunder (including but not limited to Section 14).

Sponsor shall defend, indemnify, and hold harmless CMU and its trustees, officers, employees, students, attorneys and agents (“CMU Parties”) from and against any liability, damage, loss or expense (including attorneys’ fees and expenses) incurred by or imposed upon any of CMU and/or the other CMU Parties in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to Sponsor pursuant to Appendices C and/or D or any failure to perform any obligation of Sponsor under Appendices C and/or D, including any Disposition of Licensed Product(s), under any theory of liability (including without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

#### D13 Insurance for License Grant. Sponsor shall, at its own expense, obtain and maintain commercial general liability insurance with a limit of not less than one million US Dollars ($US 1,000,000) per occurrence and two million US Dollars ($US 2,000,000) aggregate for products liability and completed operations from an insurance company(ies) having a financial rating from AM Best or similar rating service of at least an “A-“. CMU shall be identified and named as an additional insured on such insurance policy(ies). Sponsor agrees to provide CMU with evidence of such insurance upon the execution of this Agreement (and thereafter from time to time as CMU may request).

#### D14 CMU Background Intellectual Property. To the extent the exploitation of the Licensed Technology requires the use of any CMU Background Intellectual Property (including but not limited to any CMU Background Intellectual Property listed in Appendix A), the ability for Sponsor to exercise its license rights to the Licensed Technology is subject to and contingent upon Sponsor negotiating and executing a separate written non-exclusive license agreement with CMU for the use of such CMU Background Intellectual Property.

#### D15 Intellectual Property Protection Costs. To the extent Sponsor has not already paid for such costs and expenses pursuant to Section 8 of the Agreement, Sponsor shall reimburse fifty percent (50%) of Intellectual Property Protection costs and expenses incurred by CMU with respect to the Licensed Technology within thirty (30) days from receipt of notification or invoice therefor from CMU. If Sponsor does not reimburse CMU for such amounts within such 30-day period, Sponsor shall have no license rights relating to such Intellectual Property Protections in the relevant country. In the event CMU has entered into or does enter into additional commercial licenses with third parties for the same Licensed Technology, the amount billed to Sponsor for such Intellectual Property Protection Costs will be adjusted on a pro rata basis beginning upon the second additional commercial licensee (provided, however, if Sponsor requested that CMU file the relevant Intellectual Property Protections and has been paying 100% of such costs and expenses, then Sponsor’s costs shall be prorated beginning on the first additional commercial licensee obtained by CMU for the same Licensed Technology).

#### D16 Governing Law and Jurisdiction. The terms of Appendices C and D shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to conflict of law principles in that or any other jurisdiction. All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled (a) at CMU’s election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (i) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (ii) each party shall bear its own cost of arbitration, (iii) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, and (iv) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court of before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement, provided that either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in any intellectual property and/or confidential or proprietary information as described in this Agreement, or (b) in the event that CMU does not elect binding arbitration as permitted in point (a) above, exclusively in the U.S. District Court for the Western District of Pennsylvania or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

#### D17 Non-Assignment. The licenses granted to Sponsor under the Agreement are not assignable without CMU’s prior written consent.