

**APPENDIX 9**



**REPUBLIC OF GHANA**

**MINISTRY OF ENVIRONMENT, SCIENCE, TECHNOLOGY  
AND INNOVATION (MESTI)**

**GHANA JOBS AND SKILLS PROJECT  
Credit # 6716-GH  
PROJECT ID: P166996**

**DEVELOPMENT OF FRAMEWORK FOR TECHNOLOGY TRANSFER**

**MODEL TECHNOLOGY TRANSFER AGREEMENTS**

**License Agreement**

**APRIL, 2023**

**THIS LICENSE AGREEMENT** (“Agreement”) is made this.....day of.....20-- BETWEEN ..... Academic Institution / Company (select one as appropriate) of ..... (address) and duly represented by ..... (name and position of authorized representative), (hereinafter referred to as the “Licensor”) which expression shall where the context so requires or admits, include its lawful representatives and assigns of the one part AND ..... (name of Academic Institution / Company) of ..... (address) and duly represented by ..... (name and position of authorized representative), (hereinafter referred to as “the Licensee” which expression shall where the context so requires or admits, include its lawful representatives and assigns) of the other part. The Licensor and the Licensee each shall be referred to herein as a “Party” and together as the “Parties”.

## **WHEREAS**

- A. The Licensor and the Licensee are the joint owners of the Technology.
- B. The parties have agreed that the Licensor will grant a license to the Licensee to Commercialise the Licensor’s interest in the Technology.
- C. The Licensee will Commercialise the Technology in accordance with this Agreement.

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

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1. Definitions**

To avoid ambiguity in terminologies, for the purposes of this Agreement, the following words wherever used in this agreement shall mean:

**Affiliate** means any entity which controls, is controlled by, or is under common control with a party, and for that purpose control means the ownership or direct or indirect control of at least 50% of the voting shares of another entity, or having directly or indirectly the power to direct or cause the direction of the management and policies of another entity.

**Commercialisation Agreement** means an agreement between Licensee and a Third-Party granting license for Commercialisation of the Joint IP and Joint Technology.

**Commercialisation Costs** mean all out-of-pocket expenses reasonably incurred by the Licensee in Commercialising the Joint IP and Joint Technology, including Patent Expenses, travel and accommodation expenses, legal expenses, and fees and expenses of other advisers and consultants.

**Commercialisation Revenue** means all consideration received by the Licensee from Commercialising the Joint IP and Joint Technology, including upfront fees, royalties upon sales, royalties upon sublicense fees, milestone payments, other lump sum amounts, dividends and proceeds of sale of shares in a company into which the Joint IP and Joint Technology may be licensed, and all other monies whatsoever, but excludes any monies received pursuant to a research agreement for research and expended upon research.

**Commercialise** means making, using, selling, offering for sale, importing, copying, or distributing any product, process or original work for consideration, including without limitation, all activities directed to marketing, promoting, manufacturing, packaging and distributing products or services, offering for sale and selling products or services, importing products for sale, permitting or licensing others to do any of the foregoing, or using products to render services, where in each case, products includes software programs.

**Confidential Information** means any information that is labelled or identified at the time of disclosure under this Agreement as confidential or proprietary to the Discloser, including inventions; discoveries; facts; data; ideas; manner, method or process of manufacture; method or principle of construction; chemical composition or formulation; techniques; products; prototypes; processes; names; know-how; routines; specifications; drawings; trade secrets; technology methods; computer programs; works in respect to which copyright subsists; circuit board layouts; business plans; marketing plans; strategies; market analysis; feasibility plans; concept documents; expert's reports; forecasts; projections; methodologies; financial accounts; financials statements; cash flow statements; valuations; and other knowledge.

**Discloser** means a party to this Agreement which discloses Confidential Information.

**Effective Date** means the date set forth at beginning of this Agreement or, if no date is set forth, the date of signature of the last party to sign this Agreement.

**Improvement** means any beneficial addition, modification, alteration or change to Joint IP and Joint Technology solely or jointly made by employees of a party.

**Intellectual Property or IP** means any legally or contractually enforceable right in any Joint Technology, including without limitation, Patents and the claimed inventions; copyrights and copyrighted original works, including software; industrial design rights and design patents; integrated circuit layout designs; plant breeders right or other right in plant varieties, trade secrets or knowhow.

**Joint IP** means Intellectual Property jointly owned by Licensor and Licensee as listed in the First Schedule.

**Joint Technology** means Technology jointly owned by Licensor and Licensee as outlined in the Second Schedule.

**Licensed IP** means the Licensor's interest in any Intellectual Property listed in the Third Schedule.

**Licensed Technology** means the Licensor's interest in any Joint Technology as outlined in the Fourth Schedule.

**Ownership Proportion**<sup>1</sup> means the parties respective ownership in Joint IP and Joint Technology:

- (a) in relation to the Licensor - \*%, and
- (b) in relation to the Licensee - \*%.

**Patents** mean (a) patent applications in any country (including provisional applications, continuation applications, continued prosecution applications, continuation-in-part applications, divisional applications, substitute applications, or abandoned applications and applications for certificates of invention), including without limitation, patent applications under the International Treaties and Conventions, including the Patent Cooperation Treaty and the European Patent Convention; (b) any patents issued or issuing from such patent applications (including certificates of invention); (c) all patents and patent applications based on, corresponding to, or claiming the priority date(s) of any of the foregoing; (d) any reissues, substitutions, confirmations, registrations, renewals, patents of addition, validations, re-examinations, additions, continuations, continued prosecution applications, continuations-in-part, or divisions of or claiming priority to any of the foregoing; and (e) term extensions, supplementary protection certificates and other governmental action which provide exclusive rights to a product beyond the original patent expiration date.<sup>2</sup>

**Patent Expenses** mean all reasonable costs, including attorney's fees, incurred in preparation, filing, and processing patent applications to issuance or abandonment and in maintaining patents.<sup>3</sup>

**Proposed Publication** means a manuscript or abstract intended for publication, a paper or abstract intended to be orally presented, or any poster presentation, that includes any reference to Confidential Information or Joint Technology.

**Public Domain** means the general store of knowledge that is known or generally available and ascertainable by members of the community.

**Recipient** means a party to this Agreement to whom Confidential Information is disclosed.

**Revenue Sharing Period** means each consecutive period ending ...\*<sup>4</sup> each year.

**Student Thesis** means a thesis by a student required to be examined to complete academic requirements for the making of an academic award, which refers to or contains any part of the Joint Technology or Confidential Information.

**Technology** means conceptions, ideas, innovations, discoveries, inventions, processes, machines, biological materials, formulae, equipment, compositions of matter, formulations, plans, specifications, drawings, improvements, enhancements, modifications, technological developments, methods, techniques, systems, designs, production systems and plans, scientific, technical or engineering information, algorithms, concepts, ideas, methods, methodologies, including business method, software, documentation, data, programs and information (irrespective of whether in human or machine-readable form), integrated circuits and their design and layout,

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<sup>1</sup> Insert the Licensor's and the Licensee respective Ownership proportions, each expressed as a percentage

<sup>2</sup> Delete definition if the license does not include a patent or a patent application

<sup>3</sup> Delete definition if the license does not include a patent or a patent application

<sup>4</sup> Insert specific dates

and works of authorship, whether or not patentable, copyrightable, or susceptible to any other form of legal protection.

**Territory** means the whole world<sup>5</sup>.

**Third Party** means any person or entity that is not a party to this Agreement or an Affiliate thereof.

## **1.2 Interpretation**

- (a) A reference to a party to this Agreement includes a reference to that party's executor, administrator, heirs, successors, permitted assigns, guardian, and trustee in bankruptcy, all of whom, respectively, are bound by the provisions of this Agreement.
- (b) Headings in this Agreement are inserted for guidance only, and shall not affect the meaning and interpretation of the remaining provisions of this Agreement.
- (c) Words in this Agreement importing the singular number or plural number shall include the plural number and singular number respectively.
- (d) Words in this Agreement importing persons include all persons, entities and associations, including companies, trusts, bodies corporate, statutory bodies, partnerships, and joint venturers.
- (e) Where a word or phrase is given a particular meaning in this Agreement, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (f) Where a party to this Agreement is more than one person the covenants and obligations on their part contained in this Agreement are binding upon each of them jointly and severally.
- (g) The word "including" is not a word of limitation.
- (h) If something must be done on a day that is not a business day, it may be done on the next day that is a business day.
- (i) A reference to any statute is a reference to that statute, as amended and in force from time to time.

## **2. TERM**

### **2.1 Agreement Term<sup>6</sup>**

This Agreement, unless terminated in accordance with its terms, will remain in effect from the Effective Date until the later of the date of expiration of the last to expire of Joint IP or the 20<sup>th</sup> anniversary of the Effective Date.

### **2.2 Revenue Sharing Term<sup>7</sup>**

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<sup>5</sup> Parties may negotiate specific geographical areas and insert same.

<sup>6</sup> If there is no Joint IP, delete "the later of the date of expiration of the last to expire of Joint IP or". If there is no Joint Technology, delete "the later of" and "or the 20<sup>th</sup> anniversary of the Effective Date."

<sup>7</sup> In there is no Joint IP, delete the first sentence and "If in a country there is no Joint IP." If there is no Joint Technology, delete the last sentence, "on the later of" and "or the 20<sup>th</sup> anniversary of the Effective Date."

The obligation to share Commercialization revenue under this Agreement will expire on a country-by-country basis on the later of the date the last Joint IP in such country is abandoned, expires or is declared invalid or the 20<sup>th</sup> anniversary of the Effective Date. If in a country there is no Joint IP, the obligation to share revenue from such country will expire on the earlier of the date on which all substantial Joint Technology enters the Public Domain in such country or the 20<sup>th</sup> anniversary of the Effective Date.

### **3. GRANT OF LICENSE**

#### **3.1 Grant**

The Licensor grants to the Licensee an exclusive license to Commercialise the Licensed IP and the Licensed Technology in the Territory.

#### **3.2 Commercialisation by Granting Licenses**

The Licensee may only Commercialize the Licensed IP and Licensed Technology by way of granting licenses under Joint IP and Joint Technology to Third Parties. Accordingly, Licensor grants Licensee the right to grant sublicenses to such Third Parties under Licensed IP and Licensed Technology.

### **4. COMMERCIALISATION OF TECHNOLOGY**

#### **4.1 Commercialization Costs**

The Licensee shall solely incur all Commercialisation Costs in Commercialising the Joint IP and Joint Technology.

#### **4.2 Commercialization Decisions**

(a) The Licensee shall consult with the Licensor in relation to the proposed manner of Commercialisation of the Joint IP and Joint Technology, and steps taken in that Commercialisation.

(b) The Licensee shall decide all matters with respect to the manner of Commercialising the Joint IP and Joint Technology.

#### **4.3 Reasonable Efforts to Commercialize**

The Licensee shall use its reasonable efforts to Commercialise the Joint IP and Joint Technology.

#### **4.4 Communications**

(a) The Licensee shall keep the Licensor informed of the progress of Commercialising the Joint IP and Joint Technology.

(b) The Licensee shall provide to the Licensor all reasonable information which the Licensor may request relation to the Commercialisation of the Technology.

#### **4.5 Referral of Enquiries**

The Licensor shall provide to the Licensee all leads and prospects in relation to the Commercialisation of the Joint IP and Joint Technology.

#### **4.6 Copies of Commercialisation Agreements**

The Licensee shall deliver to Licensor a true copy of each Commercialisation Agreement within 30 days after it is signed.

### **5. COMMERCIALISATION REVENUE**

#### **5.1 Disbursement of Commercialisation Revenue**

Commercialisation Revenue which the Licensee receives from the Commercialisation of the Joint IP and Joint Technology shall be applied by the Licensee in the following order of priority:

- i. firstly, by the Licensee retaining an amount equal to Commercialisation Costs and Patent Expenses not previously reimbursed, and whether incurred before or after the date of this Agreement;
- ii. secondly, by the Licensee retaining \*%<sup>8</sup> of the remaining amount as its compensation for its Commercialisation activities;
- iii. thirdly, in payment to the Licensor of the Licensor's Ownership Proportion of the remaining amount, and
- iv. fourthly, the Licensee retaining the remainder.

#### **5.2 Payment of Commercialisation Revenue**

Within 30 days after the end of each Revenue Sharing Period, Licensee shall deliver to Licensor a written statement providing (a) all Commercialisation Revenue received by Licensee during the Revenue Sharing Period, (b) the calculation of parts of the disbursement under clause 5.1, and the amount payable to Licensor. Concurrently with delivery of each such statement, Licensee shall pay to Licensor the amount payable, by electronic bank transfer, to an account nominated in writing by the Licensor.

#### **5.3 Accounts**

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<sup>8</sup> If the Licensee is to receive a percentage of Commercialisation Revenue as compensation for the Licensee's commercialization efforts, insert a percentage here (such as 15% to 30%) otherwise delete paragraph (ii)

The Licensee must keep and maintain all such accounts and records as are required to be kept by good accounting practice, in relation to the Commercialisation of the Joint IP and Joint Technology, including the Commercialization Agreements entered, investment and shares in Third Parties to which Joint IP or Joint Technology is licensed, Commercialization Revenue received, Commercialization Costs incurred, Patent expenses incurred, and royalty and dividend statements from Third Party licensees.

## **5.4 Inspection of Accounts**

5.4.1. Licensor, at its expense, may appoint a qualified person to inspect the Licensee's books and records maintained pursuant to clause 5.4. Such person, upon seven days advance written notice, during normal business hours, may inspect and copy all accounts and records kept pursuant to clause 7.4 at the place they are normally retained.

5.4.2. Licensor may conduct only one such inspection in any 12-month period.

5.4.3. Licensee agrees to reasonably cooperate with such person to facilitate such inspection.

5.4.4. If because of any inspection the Licensor discovers any underpayment of the amounts required to be paid by the Licensee to Licensor pursuant to this Agreement and the underpayment exceeds five percent (5%) of the amount that should have been paid, the Licensee shall reimburse the Licensor for all reasonable costs incurred in relation to that inspection.

## **6. INTELLECTUAL PROPERTY**

### **6.1 Ownership**

The parties acknowledge that the Joint IP and Joint Technology (other than the copyright in any Student Thesis) is the joint property of the Licensor and the Licensee in the Ownership Proportions. Any copyright in any Student Thesis is owned by the student who is the author of the Student Thesis.

### **6.2 Infringement**

If either party shall learn or believe that any unauthorised person has come into possession of any part of the Joint IP or Joint Technology, any person has made any improper or unauthorised use of the Joint IP or Joint Technology; or any unauthorised person is doing anything in contravention of rights that attach to and arise from the Joint IP or Joint Technology, that party shall promptly report the full particulars to the other party.

## **7. PATENTS**

### **7.1 What will be Patented**

7.1.1. Licensee shall control and manage prosecution of all pending patent applications and the maintenance of all issued patents within Joint IP.



7.1.2. The Licensee shall consult with Licensor on all actions that may have an impact on the scope, content, pendency or issuance of all Patents in Joint IP. The Licensee shall consider all Licensor comments and suggestions.

7.1.3. Licensee shall give Licensor access to or copies of all documents and correspondence relating to all patent applications within Joint IP, and if Licensee uses outside patent attorneys, shall instruct them to provide such access or copies to Licensor.

7.1.4. All applications for patents in Joint IP shall be in the joint names of the Licensor and the Licensee.

## **7.2 Patent Expenses**

All Patent Expenses shall be paid by the Licensee.

## **8. CONFIDENTIAL INFORMATION**

### **8.1 Ownership of Confidential Information**

The Confidential Information is the property of the Discloser. Joint Technology will be Confidential Information of both Licensee and Licensor. Each party will be considered a Recipient and the other party a Discloser this clause 8 with respect to Joint Technology.

### **8.2 Use of Confidential Information**

The Recipient may use the Confidential Information solely as expressly permitted by this Agreement, and for no other purpose, and Recipient shall keep the Confidential Information secret and confidential, and not disclose, communicate, or otherwise make known to any person any part of the Confidential Information without the prior written consent of the Discloser, which the Discloser may give or to decline to give in its discretion.

### **8.3 Non-Disclosure of Confidential Information**

A Recipient must keep the Confidential Information secret and confidential, and must not, disclose, communicate, or otherwise make known to any person any part of the Confidential Information without the prior written consent of the Discloser, which the Discloser shall be at liberty to give or to decline to give in its unfettered and uncontrolled discretion.

### **8.4 Relief to Recipient**

- (a) The Recipient shall be relieved from the Recipient's obligations contained in clauses 8.2 and 8.3 in respect to any Confidential Information which:
  - (i) the Recipient can show was in the possession of the Recipient as at the date of the disclosure, and that it was not already known subject to an obligation of confidentiality, or
  - (ii) becomes part of the Public Domain otherwise than by a breach of this Agreement, or
  - (iii) the Recipient can show was received in good faith from a person from a person without any obligation of confidentiality.

- (b) The Recipient is also relieved from the Recipient's obligations contained in clause 11.2 to the extent that the Recipient has a legal obligation to disclose the Confidential Information, provided the Recipient notified the Discloser of the legal obligation, and if possible, postponed the disclosure to enable the Discloser, if it decides to do so, to seek relief for the Recipient from that legal obligation to disclose. Compelled disclosure of Licensed Technology will not relieve Licensee from its obligation under this Agreement so long as Licensee uses such Licensed Technology.

## **8.5 Damages Inadequate**

The Recipient acknowledges that:

- (a) damages may be an inadequate remedy to the Discloser in the event of any breach of clause 8.2 or 8.3 occurring, and that only injunctive relief or some other equitable remedy might be adequate to properly protect the interests of the Discloser, and
- (b) the Discloser would not have entered into this Agreement but for the acknowledgment made by the Recipient in paragraph (a).

## **8.6 Disclosure to Directors and Employees**

- (a) The Recipient may disclose the Confidential Information to such of its directors and employees as is necessary to enable the Recipient to fully take advantage of the Confidential Information for the purposes of this Agreement.
- (b) The Recipient warrants that each person to whom the Recipient is permitted to disclose the Confidential Information, before such disclosure is made, is subject to contractual or other duties of confidentiality to the Recipient at least to the extent imposed upon the Recipient pursuant to this Agreement.
- (c) The Discloser may require that no Confidential Information be disclosed to a director or employee of the Recipient unless that person enters into a confidentiality undertaking upon such terms as the Discloser shall reasonably require.

## **8.7 Disclosure for Commercialisation**

- (a) The Licensee may, without the prior written consent of the Licensor, disclose Confidential Information for the purpose of exercising its rights pursuant to this Agreement.
- (b) The Licensee must ensure that its disclosure of Confidential Information pursuant to paragraph (a) is upon such terms, or is restricted to such an extent as:
  - (i) protects the Confidential Information from unauthorised or improper use or disclosure
  - (ii) does not prejudice any possible future patent application in relation to what is to be disclosed.

## **8.8 Infringement of Confidentiality**

If the Recipient shall learn or believe that:

- (a) any unauthorised person has come into possession of any part of the Confidential Information
- (b) any person has made any improper or unauthorised use of the Confidential Information, or
- (c) any unauthorised person is doing anything in contravention of rights that attach to and arise from the Confidential Information,

The Recipient must immediately report full particulars to the Discloser, and must provide to the Discloser all assistance and information it may request with respect to that information.

## **8.9 Public Statements**

Neither party may make any public or media statement concerning this Agreement without the consent of the other party.

## **8.10 Survival of Obligations**

The termination of this Agreement shall not affect each party's obligations in this Agreement set out in clauses 8.1 to 8.8.

# **9. PUBLICATIONS**

## **9.1 Publications to be Provided**

Each party must serve upon the other a copy of any Proposed Publication.

## **9.2 Objection to Publication**

A party receiving a Proposed Publication may, within 30 days of a Proposed Publication being served upon it, object to the publication of the Proposed Publication.

## **9.3 When publication may be Authorised**

A party may publish or authorise the publication of a Proposed Publication if:

- (a) the contents of the Proposed Publication is the subject of a patent that has issued, or
- (b) the contents of the Proposed Publication is the subject of an application for a patent or provisional patent that has been lodged, or
- (c) the Proposed Publication was served in accordance with clause 9.1, and the party served informs the other that it does not object to its publication, or
- (d) the Proposed Publication was served in accordance with clause 9.1, but the party served did not object to publication within the time required by clause 9.2, or
- (e) the Proposed Publication was served in accordance with clause 9.1, the party served objects to publication within the time required by clause 9.2, and a period of 6 calendar months elapses from the date of the objection.

## **9.4 Patent Applications**

If clause 9.3(e) applies, the parties will use their reasonable efforts to ensure that the contents of a Proposed Publication is protected by the lodging of a provisional patent application within the time mentioned in that clause.

## **9.5 Student Thesis**

A Student Thesis that is proposed to be published in an academic journal shall be a Proposed Publication, and shall be dealt with in accordance with clauses 9.1 to 9.9.

## **9.6 Examination of Student Thesis**

(a) Within the time mentioned in clause 9.2, a party may notify the other that it requires any examination of a Student Thesis to be undertaken by examiners bound by obligations of confidentiality.

(b) If a party does not notify the other that it requires any examination of a Student Thesis to be undertaken by examiners bound by obligations of confidentiality, the party serving the Student Thesis may permit:

- (i) The examination of the Student Thesis, and
- (ii) The deposit of the Student Thesis in any library.

(c) If a party notifies the other that it requires any examination of a Student Thesis to be undertaken by examiners bound by obligations of confidentiality, the party serving the Student Thesis Licensee must ensure that:

- (i) The examination of the Student Thesis is undertaken by examiners who are bound by obligations of confidentiality, and
- (ii) The deposit of the Student Thesis in any library is deferred until one of the events in clause 9.3 occurs.

## **9.7 Proposed Publications and a Party's Confidential Information**

A Proposed Publication and a Student Thesis must not contain any Confidential Information that originates from the other party or any Joint Technology.

# **10. WARRANTIES**

## **10.1 Commercialization is Uncertain**

Each party acknowledges the fundamental uncertainty with respect to Commercialization of new technology.

## **10.2 Warranties by Licensor**

- (a) In relation to Patents in Licensed IP, the Licensor warrants to the Licensee that as of the Effective Date, to the best of its actual knowledge, the Licensor solely owns such Patents and the inventions disclosed and claimed therein both legally and beneficially, and the use of such inventions as claimed in such Patents does not infringe any patent or other intellectual property rights of any Third Party published as of the Effective Date.
- (b) In relation to Licensed Technology, the Licensor warrants to the Licensee that as of the Effective Date, to the best of its actual knowledge, the Licensor owns the Licensed Technology both legally and beneficially and has the right to disclose and authorize Licensee to use it in accordance with this Agreement, and the Licensor has not received any notice or claim from a Third Party alleging use of Licensed Technology infringes any patent or other intellectual property rights of any Third Party published as of the Effective Date.
- (c) Licensor further warrants to Licensee:
  - (i) the Licensed IP and the Licensed Technology is not encumbered, mortgaged, or charged in any way, nor subject to any lien;
  - (ii) there is no litigation pending in respect to the Licensed IP or the Licensed Technology, and there is no claim or demand that has been received from any Third Party in relation to the Licensed IP and the Licensed Technology; and
  - (iii) no license or right in the Licensed IP and the Licensed Technology has been granted that conflicts with right granted to Licensee in this Agreement.

### **10.3 Acknowledgments**

Each party acknowledges that:

- (a) except for such warranties as are expressly set out in this Agreement there are no other terms or warranties binding upon the Licensee or between the Licensee and the Licensor;
- (b) no party has made, and no person on behalf of a party has made any term, warranty, undertaking, or understanding whatsoever that is not expressly set out in this Agreement;
- (c) to the full extent permitted by law, there are no statutory warranties binding upon either party; and
- (d) no representation or promise of any description, not expressly included in this Agreement, was made before this Agreement was entered.

### **10.4 No Other Warranties**

Each party acknowledges that the other has not made and does not make any warranty or representation whatsoever as to:

- (i) the safety of the Joint IP or Joint Technology,
- (ii) the Commercialisation of the applications or products derived from the Joint IP or Joint Technology,

- (iii) the marketability of such applications or products,
- (iv) the profits or revenues that may result from the Commercialisation of such applications or products,
- (v) the Commercialisation prospects of any part of the Joint IP or Joint Technology,
- (vi) any Commercialization outcome,
- (vii) whether any patent application may be granted, or granted with the claims sought, or any reduced claims, or
- (viii) whether any patent granted may be declared invalid or cease to be registered.

## **11. OBLIGATIONS OF THE LICENSOR**

- 11.1 Transferor shall provide requisite training for the transferee and its personnel on the effective utilization of licensed technology as detailed in the Schedule which shall serve as a guide and transferor shall adhere to the training schedule
- 11.2 The transferor shall pay all taxes due on all royalties.
- 11.3 Transferor shall give full description of the technology and to supply all necessary documentation and information in the English language.
- 11.4 Transferor guarantees the efficient performance of the technology and the continuous availability of essential spare parts during the tenure of the agreement.
- 11.5 Transferor shall inform the transferee of improvements and innovations relating to the technology and shall supply them on terms mutually acceptable to the parties.

## **12. RELEASE & INDEMNITY**

### **12.1 Release**

i. Each party releases the other its officers, employees, sub-contractors and agents from and against all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising out of the Commercialisation of the Joint IP or Joint Technology.

ii. To the full extent permitted by law, a party, its officers, employees, sub-contractors and agents shall not be liable to the other for any special, indirect or consequential damages, including consequential financial loss arising out of this Agreement, or its performance.

### **12.2 Release and Confidentiality**

Clause 11.1 does not apply in relation to any breach by the Licensor its officers, employees, sub-contractors or agents of any obligation of confidentiality in this Agreement.

### **12.3 Indemnity**

The Licensee shall indemnify the Licensor and its officers and employees from and against all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, but excluding special, indirect or consequential loss, including consequential financial loss) arising out of the licensee's and its affiliate's use and Commercialisation of the Licensed IP or Licensed Technology.

### **13. DISPUTE RESOLUTION**

13.1. Any dispute arising directly under the express terms of this Agreement or the grounds for termination thereof shall be resolved as follows.

i. First, within ..... days after either Party identifies the existence of a dispute, each party shall appoint a representative with authority to resolve the identified dispute and such representatives, within ..... days after their appointment, shall meet to attempt to resolve such dispute.

ii. If the representatives cannot resolve the dispute, either Party may make a written demand for formal dispute resolution. Within ..... days after such written demand, the Parties shall meet for one day with an impartial mediator solely to consider dispute resolution alternatives other than litigation, which may include further negotiations, mediation, conciliation, arbitration, litigation, and expert determination.

iii. If an alternative method of dispute resolution is not agreed upon within .... days after the one-day mediation, either Party may begin litigation proceedings.

iv. Each Party agrees not to file for or otherwise initiate a litigation or arbitration directed to the dispute being discussed by the Parties under this clause before or during such discussions.

v. Each Party further agrees that the discussions under this clause shall be "Without Prejudice" and it will retain in confidence any information disclosed by the other Party during such discussions (except for information already in the public domain).

### **14. TERMINATION**

#### **14.1 Termination for Default**

If one party is in default of any obligation contained in this Agreement, that default has continued for not less than .... days, the non-defaulting party serves upon the defaulting party notice in writing requiring the default to be remedied within .... days of the date of such notice, or such greater number of days as the non-defaulting party may in its discretion allow; and the defaulting party fails to remedy the default within .... days after such notice, the non-defaulting party may immediately terminate this Agreement by notice in writing to the defaulting party.

#### **14.2 Termination does not Affect Prior Rights or Obligations or Accrued Rights**

14.2.1. The termination of this Agreement by any party shall not relieve the other party from performing all obligations which:

- (i) fell due to be performed before the effective termination of this Agreement, or

- (ii) fall due to be performed as a result of that termination.

14.2.2. The termination of this Agreement shall not affect any rights which accrue to any party before the termination, or which arise connected with the termination, which are preserved.

## **15. SERVICE OF NOTICES**

All notices and other communications permitted or required by this Agreement shall be in writing to the parties at their respective addresses first set out above, or to such other address as a party may subsequently specify by notice, and shall be deemed to have been received:

(1) upon delivery in person;

(2) upon the passage of seventy-two (72) hours following post by first class registered or certified mail, return receipt requested, with postage prepaid;

(3) upon the passage of twenty-four (24) hours following post by overnight receipted courier service; or

(4) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile a copy of such notice will be concurrently sent by certified mail, return receipt requested and postage prepaid, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal.

## **16. GENERAL**

### **16.1 No Assignment by or Sub-Contracting by the Licensee**

The Licensee shall not assign, sub-contract, or transfer, any of its rights or obligations in this Agreement to any person, without the prior consent in writing of the Licensor, which the Licensor shall not unreasonably withhold.

### **16.2 Relationship between the Parties**

i. The relationship between the parties is that of licensor and licensee, and nothing shall be construed or interpreted to make one party the agent, partner, joint venturer or representative of the other.

ii. Neither party may at any time, without the prior written consent of the other act as or represent that it is the agent, partner, joint venturer or representative of the other.

### **16.3 Further Assurance**

Each party shall on demand by another party perform all such acts and execute all such agreements, assurances and other documents and instruments as that party reasonably requires either to perfect the rights and powers afforded, created or intended to be afforded or created by this Agreement or to give full force and effect to, or facilitate the performance of, the transactions provided for in this Agreement.

### **16.4 Counterparts**



This Agreement may be executed in separate counterparts, and all those counterparts together constitute one agreement.

### **16.5 Legal Costs**

Each party shall be responsible for its own legal fees and costs in connection with the preparation, negotiation and execution of this Agreement.

### **16.6 Warranty of Authority**

Where this Agreement is signed by a person for and on behalf of a party to this Agreement, that person:

- i. warrants that the person is the authorised agent of that party with express authority to enter into and sign this Agreement for and on behalf of that party, and thereby to bind that party to the obligations upon that party contained in this Agreement; and
- ii. acknowledges that the other party to this Agreement would not have entered into this Agreement but for the warranty of authority contained in paragraph (i).

### **16.7 Whole Agreement**

The parties acknowledge that solely in relation to the subject matter of this Agreement this Agreement merges all discussions between the parties, up to the date of this Agreement, the whole of the agreement between the parties is contained in this Agreement, and there are no agreements, understandings, other terms whether express or implied, or collateral agreements in force or effect between the parties that are not contained in this Agreement.

### **16.8 Variations**

No variation to this Agreement shall be binding upon the parties unless that variation is in writing, and is signed by all the parties to this Agreement.

### **16.9 Waiver**

15.9.1. No failure or delay of any party to exercise any right given pursuant to this Agreement or to insist on strict compliance by any other party of any obligation in this Agreement shall constitute a waiver of any party's rights to demand exact compliance with the terms of this Agreement.

16.9.2. Waiver by any party of any particular default by any other party shall not affect or prejudice each party's right in respect of any prior or subsequent default of the same or of a different nature.

16.9.3. Any delay or omission by any party to exercise any right arising from any default shall not affect or prejudice that party's right in respect to such a default or any subsequent default or the continuance of any default.

16.9.4. Any waiver shall be an effective waiver only if the waiver is expressly set out in writing and signed by the party making the waiver.

## **16.10 Applicable Law**

- i. The parties agree that this Agreement is made and entered into in the Republic of Ghana and shall be construed according to the laws thereof.
- ii. The parties agree to submit themselves to the exclusive jurisdiction of the laws in force for the time being in the Republic of Ghana.

## **16.11 Severance**

If it is held by a court that any part of this Agreement is or would be void, voidable, illegal or unenforceable, or the application of any part of this Agreement to any person or circumstances is or may become invalid or unenforceable, that part shall be severable and shall not affect the continued operation of the remaining terms of this Agreement.

## **17. FORCE MAJEURE**

17.1. Neither party shall be liable for any failure to perform as required by this Agreement, if the failure to perform is caused by circumstances reasonably beyond such party's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, thefts, or other such occurrences.

17.2 Force majeure shall not include any of the following:

- i. Any event caused by the negligence or intentional action of either party, its agents, employees or subcontractors; or
- ii. Insufficiency of funds or the inability of a party to pay any sum of money required to be paid under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED for and on behalf of the Institution

By the above-named Representative

.....

Signature

In the presence of:

.....

Name & Signature

Name:

Address:

Occupation:

SIGNED for and on behalf of the Collaborator

By the above-named Representative

.....

Name & Signature

In the presence of

.....

Signature

Name:

Address:

Occupation:

**FIRST SCHEDULE: JOINT IP**

1.

## **SECOND SCHEDULE: JOINT TECHNOLOGY<sup>9</sup>**

Outline jointly-owned Technology.

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<sup>9</sup> Delete this Schedule if no Technology is licensed.

**THIRD SCHEDULE**

**LICENSED IP**

**FOURTH SCHEDULE**

**LICENSED TECHNOLOGY**