

LICENSE AGREEMENT AND TERMS OF USE

This Agreement (“Agreement”), effective as of the date on which the LICENSEE downloads FILE(s) from the WEBSITE (“Effective Date”), is by and between you the user, on behalf of yourself or any entity or group you work for or come under the employment of (“LICENSEE,” as this term is further defined hereinbelow) and the Board of Regents of the University of Oklahoma, a constitutional state entity of the State of Oklahoma, by and through the Office of Technology Commercialization located at 301 David L. Boren Boulevard, Suite 3120, Norman, Oklahoma, 73019 (“UNIVERSITY”). LICENSEE and UNIVERSITY may be referred to herein in the singular as a “Party” and collectively as the “Parties.”

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, the sufficiency of which is hereby acknowledged by the Licensee downloading the FILE(s) as stated above, the Parties expressly agree as follows:

I. Definitions

- a. “COPYRIGHTS” shall mean any copyrightable material, whether officially filed upon by UNIVERSITY or not, including but not limited to data, designs, drawings, bill of materials and/or work instructions created by UNIVERSITY and contained within the FILE(S).
- b. “FILE(S)” shall mean the downloadable files of data capable of facilitating the LICENSEE’s ability to reproduce, make or have made equipment, items and/or products which are capable of being accessed by the LICENSEE from and through the WEBSITE and which contains UNIVERSITY INTELLECTUAL PROPERTY.
- c. “INTELLECTUAL PROPERTY” (IP) shall include any UNIVERSITY PATENTS, COPYRIGHTS (and/or TECHNICAL KNOW-HOW included or contained within the FILE(S)).
- d. “LICENSEE” shall mean the person accessing, installing, downloading, copying, or otherwise using FILE(S) if use hereunder is solely for personal use by the LICENSEE. If FILE(S) are being accessed and/or used by the user on behalf of the user’s legal entity and/or organization, such as, by way of example only, a corporation, limited liability company or partnership, then by proceeding with access and/or use of the FILE(S), the user warrants, covenants, and represents that: (a) he or she has the legal authority to bind that legal entity and/or organization to the provisions, terms, and/or restrictions set forth in this Agreement; and (b) such legal entity and/or organization shall, for purposes of this Agreement, be the LICENSEE.
- e. “PATENT(S)” shall mean any patents and pending patent applications filed by the UNIVERSITY associated with any of the FILE(s), and all divisionals, continuations, continuations-in-part, and letters patent that issue thereon and reissues, reexaminations or extensions thereof and any corresponding foreign patents and patent applications.
- f. “PRODUCT(S)” shall mean (i) any product, device, system, article of manufacture, kit, machine, composition of matter, or service (or component thereof); or (ii) any method of using any of the foregoing; or (iii) any process for making any of the foregoing, that, in the case of (i), (ii), or (iii), incorporates, utilizes, or is derived from any UNIVERSITY IP.
- g. “TECHNICAL KNOW-HOW” shall mean UNIVERSITY property interest in any know-how, technical information, and data which was each of the following: (i) developed by

UNIVERSITY, (ii) developed before the Effective Date, (iii) provided to or received by Company, and (iv) necessary or useful for the discovery, development, manufacture, use, sale, offering for sale, importation, exportation, distribution, rental or lease of a PRODUCT. Technical Information includes, but is not limited to, the following: (i) any know-how, technical information, and data disclosed in any Patent; and (ii) any reports or disclosures concerning research or inventions provided or disclosed to, or otherwise received by LICENSEE.

- h. "WEBSITE" shall mean without limitation, <http://www.ou.edu/foroklahoma>, as well as www.ou.edu and any and all UNIVERSITY website subdomains and/or any website(s) in which the FILE(S) is capable of being accessed, downloaded, and/or otherwise used.

II. Grant of LICENSE

- a. By accessing, installing, downloading, copying, and/or otherwise using the FILE(S), LICENSEE understands, acknowledges, and expressly agrees to be bound by this Agreement, including, but not limited to, any and all provisions, terms, restrictions, and warranties set forth herein.
- b. UNIVERSITY hereby grants to LICENSEE a non-exclusive, non-transferable, worldwide, revocable, royalty free, fully paid up license, without the right to sublicense, to access and/or use the FILE(S) to make, have made, use, sell, and import any PRODUCT, and/or reproduce, adapt, translate, distribute, perform, display, modify, create derivative works of and otherwise exploit UNIVERSITY INTELLECTUAL PROPERTY in FILE(s), solely for the purpose of diagnosing, preventing, containing, and treating COVID-19 ("LICENSE").
- c. For PRODUCTS LICENSEE sells or otherwise distributes in exchange for value, LICENSEE will distribute the resulting PRODUCTS as widely as possible and at as low of cost as possible that allows broad accessibility during the TERM of the license.
- d. UNIVERSITY grants LICENSEE this LICENSE from the EFFECTIVE DATE until the World Health Organization declares the COVID-19 Pandemic to have ended, but in any event not beyond January 1, 2023, unless otherwise extended by the UNIVERSITY ("TERM").
- e. LICENSEE acknowledges, understands, and expressly agrees that UNIVERSITY has no obligation to provide to LICENSEE any maintenance, support, update services, and/or materials of and/or related to the FILE(S).
- f. The LICENSE granted shall automatically be suspended, and the UNIVERSITY shall be free to assert the IP, the terms of this Agreement, and any other claims against the LICENSEE, if the LICENSEE or any entity affiliated with the LICENSEE or any entity regarding LICENSEE's use of FILE(S) threatens or initiates a suit or legal proceeding alleging the infringement of any patent or other intellectual property right against the UNIVERSITY or any entity affiliated with the UNIVERSITY, including but not limited to other entities to which the UNIVERSITY has licensed the IP, FILES and/or PRODUCTS.

III. ASSIGNMENT AND SECURITY

- a. LICENSEE shall not assign this Agreement to any other party, and any attempt by LICENSEE to assign it shall be void *ab initio*. LICENSEE agrees to implement and maintain adequate

and commercially reasonable security measures to ensure LICENSEE's compliance with the provisions, terms, restrictions, and warranties set forth in this Agreement.

IV. OWNERSHIP

- a. This Agreement does not and shall not grant the LICENSEE ownership rights of any kind in and/or to the FILE(S) and UNIVERSITY INTELLECTUAL PROPERTY.
- b. At all times, UNIVERSITY does and shall solely and exclusively retain the entire and full right, title, and interest in and to the FILE(S) and UNIVERSITY INTELLECTUAL PROPERTY.

V. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- a. The UNIVERSITY makes no representation or warranty of any kind with respect to the design located in the FILE(S), whether express or implied, including any representation or warranty relating to the compliance of any part based on such FILE(S) and/or with any specific regulation, any warranty of merchantability, fitness for a particular purpose, or non-infringement of any patent or other proprietary right.
- b. The FILE(S) and/or design located in the FILE(S) should not be considered Personal Protective Equipment or "PPE" because its capability to provide protection is unknown. Caution should be exercised when considering the use of the FILE(S). The FILE(S) and/or design located in the FILE(S) is not intended to be a suitable replacement for N-95 or other surgical masks for healthcare workers, nor does it eliminate the risk of contracting or exposure of others to any disease or infection. The FILE(S) and/or design located in the FILE(S) and any resulting manufacturing is not regulated by the U.S. Food & Drug Administration (F.D.A.) or the U.S. Centers for Disease Control and Prevention (CDC), nor has it been evaluated or approved by The National Institute for Occupational Safety and Health (NIOSH) or any other regulatory authority. LICENSEE shall be responsible for obtaining any necessary regulatory approvals related to the end use of the FILE(S) in LICENSEE's PRODUCT(S) which is required by law (i.e. approval by the F.D.A., CDC or other regulatory authority in the country in which LICENSEE intends to use their PRODUCT(S)).
- c. The LICENSEE downloading the FILE(S) acknowledges that any use of the FILE(S) and/or design located in the FILE(S) are at LICENSEE's own free will and own initiative and is aware that there are certain risks associated with using the parts based on such FILE(S), including but not limited to, injury to the body, general health, and well-being, death, and/or property damage. LICENSEE hereby voluntarily assumes all risks associated with downloading and using the FILE(S), including the suitability and compliance with any applicable regulations.
- d. The UNIVERSITY shall not be liable for any claims, demands, damages or injuries, including but not limited to, property damage, bodily injury, death, indirect, special or consequential damages, arising out of or in connection with LICENSEE's downloading, manufacture, commercialization, and any other use of the FILE(S) and/or design located in the FILE(S).
- e. UNIVERSITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE FILE(S), OUTPUTS OF THE FILE(S), AND/OR THIS AGREEMENT.
- f. LICENSEE UNDERSTANDS, ACKNOWLEDGES, AND EXPRESSLY AGREES THAT UNIVERSITY MAKES NO REPRESENTATION OR WARRANTY TO THE OPERABILITY, QUALITY, ACCURACY, FITNESS FOR ANY USE, MERCHANTABILITY, SAFETY, AND/OR BREADTH OF THE FILE(S).

LICENSEE HEREBY ACCEPTS FULL AND COMPLETE RESPONSIBILITY FOR ANY AND ALL CONCLUSIONS, USES, AND ANALYSES RESULTING FROM LICENSEE'S ACCESS TO AND/OR USE OF THE FILE(S).

- g. LICENSEE understands, acknowledges, and expressly agrees that UNIVERSITY makes no representation in this Agreement as to whether there is any intellectual property, including, but not limited to, patents and/or copyrights, now held, or which may be held, by a third party(-ies) or by UNIVERSITY related to the FILE(S), nor does UNIVERSITY make any representation and/or warranty that the FILE(S) does not infringe any intellectual property rights, including, but not limited to patents and/or copyrights, now held or that will be held by a third party(-ies) or by UNIVERSITY.
- h. LICENSEE acknowledges, covenants, and expressly agrees that he/she/it has not been induced in any way by UNIVERSITY or its Regents, directors, officers, employees, students, agents, or representatives to enter into this Agreement, and further warrants and represents that: (1) LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to this Agreement and all other matters pertaining to this Agreement; (2) LICENSEE has adequate knowledge and expertise, or, where such knowledge is inadequate, has retained the guidance and/or advice of knowledgeable and expert consultants to adequately conduct the due diligence with respect to this AGREEMENT and the subject matter contained herein; and (3) LICENSEE expressly agrees to accept any and all risks inherent in this Agreement.
- i. IN NO EVENT SHALL UNIVERSITY, ITS REGENTS, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, AGENTS, AND/OR REPRESENTATIVES BE LIABLE IN ANY WAY FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, AND/OR PUNITIVE DAMAGES OF ANY KINDS, INCLUDING ECONOMIC DAMAGES, FOR INJURY TO PERSON OR PROPERTY AND LOST PROFITS, RESULTING FROM LICENSEE'S ACCESS AND/OR USE OF THE FILE(S) AND/OR FROM ANY DAMAGES ARISING OUT OF AND/OR RELATED TO THIS AGREEMENT.
- j. LICENSEE acknowledges, understands, and expressly agrees that the UNIVERSITY's limitations and exclusions of liability and the disclaimers of warranty set forth in this Agreement form an essential basis of the bargain by and between the Parties.

VI. TERMINATION AND EFFECTS OF TERMINATION

- a. UNIVERSITY may terminate this Agreement for any reason at its sole and exclusive discretion upon: (1) UNIVERSITY posting a notice on the UNIVERSITY website stating that all licenses relating to the FILE(S) are terminated, which shall be effective and enforceable at the time of posting such notice; or (2) providing LICENSEE three (3) days prior written notice, such notice may be transmitted electronically, including, but not limited to, via email, to LICENSEE which shall be considered a legally sufficient notice.
- b. If LICENSEE at any time fails to abide by the terms, provisions, and/or restrictions set forth in this Agreement, UNIVERSITY shall, in addition to any other rights and/or remedies to which UNIVERSITY may be entitled, either in law or equity, have the right to immediately terminate this Agreement without prior notice to LICENSEE.
- c. Upon termination of this Agreement, LICENSEE shall, and hereby warrants and represents that LICENSEE shall, immediately cease accessing and/or using the FILE(S) in any and all

manner(s) and shall, at the UNIVERSITY's request, provide a written certification attesting to LICENSEE's cessation of access and/or use of the FILE(S).

VII. INDEMNIFICATION

- a. LICENSEE shall indemnify, defend and hold harmless UNIVERSITY, its Regents, officers, directors, employees, students, agents, and/or representatives from any liability and against any claims, demands, suits, or causes of action whatsoever arising out of and/or related to the exercise of any of the rights granted by this Agreement.
- b. UNIVERSITY shall not be liable for any indirect, incidental, special, consequential, or punitive damages arising out of or in connection with this Agreement, the FILE(S) (including, but not limited to, use and/or access thereof), analyses and/or outputs of the FILE(S) and/or which are generated by the FILE(S), and/or the WEBSITE (including, but not limited to, use and/or access thereof), regardless of whether the UNIVERSITY knows or should know the possibility of such damages.
- c. In the event any legal action is commenced against UNIVERSITY, UNIVERSITY shall promptly notify LICENSEE of the action, request LICENSEE defend UNIVERSITY as per its duty under this Section, and shall cooperate with LICENSEE's defense of the claim as reasonably required by LICENSEE so long as LICENSEE shall reimburse UNIVERSITY for all of the costs and expenses reasonably incurred by UNIVERSITY to provide any such cooperation and assistance in accordance with LICENSEE's request.
- d. LICENSEE shall bear all costs and expenses incurred by LICENSEE in connection with the defense or satisfaction of any claim, and, shall pay any amounts required by any judgment or order of any court to be paid by UNIVERSITY, so long as UNIVERSITY shall fulfill its obligation as outlined in this section of this Agreement.

VIII. MISCELLANEOUS

- a. This Agreement shall be construed in accordance with the laws of the State of Oklahoma, without giving force and effect to its choice of law provision or to which party drafted particular provisions of this Agreement. Any legal action in connection with this Agreement shall be filed in a court of competent jurisdiction in the State of Oklahoma, to which jurisdiction and venue the Parties expressly agree.
- b. LICENSEE may not use and shall not use or otherwise export and/or re-export the FILE(S) except as authorized by United States laws and the laws of the jurisdiction in which the FILE(S) was obtained. In particular, but without limitation, the FILE(S) may not be and shall not be exported and/or re-exported: (a) into (or to a national or resident of) any country subject to U.S. embargoes or trade sanctions that would prohibit such an export or re-export; or (b) to anyone on the U.S. Treasury Department list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the FILE(S), LICENSEE represents and warrants that LICENSEE is not located in, under the control of, or a national or resident of any such country or on any such list.
- c. LICENSEE hereby warrants and represents that he/she/it shall comply with all applicable laws, rules, and/or regulations that apply to this Agreement and the FILE(S).

- d. If any provision of this Agreement is found to be illegal, invalid, and/or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- e. This Agreement represents the complete and exclusive statement of agreement between and understandings of the Parties with respect to the subject matter herein and supersedes all prior agreements, proposals, representations and other communications, verbal or written, between the Parties with respect to the FILE(S).
- f. LICENSEE shall be responsible for and pay all applicable taxes, if any, that may be levied by any taxing authority which are or may be payable pursuant to this Agreement and/or LICENSEE's access to and/or use of the FILE(S).