

## NON-EXCLUSIVE LICENSE AGREEMENT

**THIS AGREEMENT** ("Agreement") is dated and effective as of the date of last signature ("Effective Date"), and is made by and between the University of Washington, a public institution of higher education and an agency of the state of Washington acting through its administrative offices at UW CoMotion, 4545 Roosevelt Way NE, Suite 400, Seattle, WA 98105 ("University"), and \_\_\_\_\_, having a principal place of business at \_\_\_\_\_ ("Licensee"), agree as follows:

### 1. BACKGROUND

- 1.1 University has certain rights to Biological Material known as \_\_\_\_\_ (as defined in Section 2.1), developed in the laboratory of \_\_\_\_\_.
- 1.2 University desires to have Biological Material marketed at the earliest possible time in order that products resulting therefrom may be available for public use and benefit.
- 1.3 Licensee wishes to acquire a license to said Biological Material to make, use, and sell Licensed Products in the Licensed Field of Use.

### 2. DEFINITIONS

- 2.1 "Biological Material" means \_\_\_\_\_ (with a University Reference Number \_\_\_A), provided to Licensee pursuant to this Agreement.
- 2.2 "Licensed Field of Use" means the research reagents resale market and specifically excludes all diagnostic, therapeutic, prophylactic or human clinical trial fields of use.
- 2.3 "Licensed Products" means any product in the Licensed Field of Use containing, derived from, or made using Biological Material.
- 2.4 "Licensed Territory" means worldwide.
- 2.5 "Net Sales" means the gross revenue derived from the sale of Licensed Products, less the following items but only insofar as they actually pertain to the disposition of such Licensed Products, are actually paid, are included in such gross revenue, and are separately billed:
  - 2.5.1 Import, export, excise and sales taxes, and custom duties; and
  - 2.5.2 Credit for returns, allowances, or trades.
- 2.6 "Third Party" means any individual or entity other than University and Licensee.

### 3. GRANT

- 3.1 University hereby grants, and Licensee accepts, a nonexclusive license to Biological Material in the Licensed Field of Use and Licensed Territory to make, use, and sell Licensed Products. Said license does not include the right to grant sublicenses and does not include the right to transfer Licensed Products to Third Parties or affiliates for resale. Additionally, Licensee shall not transfer Biological Material to any Third Party, for any purpose.
- 3.2 The term of this Agreement shall commence as of the Effective Date and shall expire ten (10) years from the Effective Date, unless sooner terminated according to Article 8 hereunder. The term of the Agreement may be extended by mutual agreement in writing of University and Licensee.

- 3.3 University retains title to all Biological Material and reserves and retains the right to make and use Biological Material and to grant the foregoing rights to other commercial or non-commercial institutions.
- 3.4 Nothing in this Agreement shall be construed as granting by implication, estoppel, or otherwise any licenses or rights under patents or patent applications of University.

#### **4. PAYMENTS**

- 4.1 Licensee shall pay to University a noncreditable, nonrefundable license issue fee of \_\_\_\_ Thousand Dollars (\$\_000) no later than thirty (30) days after the Effective Date.
- 4.2 In addition, Licensee shall pay University an annual license maintenance fee of \_\_\_\_ Thousand Dollars (\$) payable no later than forty-five (45) days after the anniversary of the Effective Date for each year Agreement is in effect.
- 4.3 Within thirty (30) days of the University receiving the license issue fee according to Section 4.1, University shall notify \_\_\_\_ to supply \_\_\_\_\_ samples of Biological Material, and Licensee shall pay all the associated handling and shipping costs. If Biological Material is not usable due to contamination, or for some other reasonable cause, and, such cause is documented to University no later than thirty (30) days after receipt, University will make a good faith effort to resupply Biological Material at no additional cost subject to availability of Biological Material. In the event University is unable to resupply Biological Material, the Agreement will terminate pursuant to Article 8.
- 4.4 In addition, Licensee shall pay University an earned royalty of \_\_\_\_ percent (\_\_\_%) on Net Sales.
- 4.5 Licensee agrees to make written reports recounting Net Sales and royalty payments to University no later than forty (45) days after the end of each calendar quarter for the Net Sales which occurred in the immediately preceding calendar quarter.
- 4.6 Any payments not made when due will bear interest at the Prime Rate published at the time due in the Wall Street Journal plus 2%.
- 4.7 Licensee shall make all payments to University in U.S. Dollars, shall mail them to the address specified in Subsection 9.5, and shall include University License agreement number \_\_\_\_A. Upon request, University shall deliver to Licensee written wire transfer instructions.

#### **5. NEGATION OF WARRANTIES**

Except as expressly set forth in this Agreement, UNIVERSITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF BIOLOGICAL MATERIAL AND/OR LICENSED PRODUCTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, OR TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

#### **6. INDEMNITY**

- 6.1 Licensee shall indemnify, hold harmless, and defend University, its regents, officers, inventors, employees, students, and agents against any and all claims including but not limited to death,

illness, personal injury, property damage, intellectual property infringement, and improper business practices arising out of the manufacture, use or sale of Biological Material and/or Licensed Products by Licensee.

## **7. NAMES AND MARKS**

Nothing contained in this Agreement shall be construed as conferring any right to use any name, trade name, trademark, service mark, symbol or other designation of the other party, or the name of any faculty member, employee, or student of the other party, without prior written consent of that party, unless such listing is required under local laws or regulations, provided that either party may state the existence of this Agreement. For any use other than the foregoing, the parties hereby expressly agree not to use the other party's name or any contraction, abbreviation, or simulation thereof without prior written approval from an authorized representative of the other party.

## **8. TERMINATION**

- 8.1 Licensee may terminate this Agreement by giving University notice in writing at least thirty (30) days in advance of the effective termination date provided that Licensee shall thereupon cease use and sale of Biological Material and any Licensed Products.
- 8.2 Licensee shall make a written report to University no later than ninety (90) days after the date of termination of this Agreement, stating the number, description, and Net Sales of all Licensed Products ever made, sold, or otherwise disposed of and upon which royalties are payable hereunder but which were not previously reported to University for any reason.
- 8.3 University may terminate this Agreement if Licensee is in breach of any provision hereof and Licensee fails to remedy any such breach no later than sixty (60) days after written notice thereof by University.
- 8.4 Surviving any termination are:
- 8.4.1 Any cause of action or claim of Licensee or University, accrued or to accrue, because of any breach by the other party;
- 8.4.2 Payment of accrued royalties; and
- 8.4.3 Provisions of Articles 5 "Negation of Warranties", 6 "Indemnity", 7 "Names and Marks", and 9.3 "Public Records Act".
- 8.5 Concurrent with notice of termination by either Licensee or University, Licensee destroy all Biological Material and Licensed Products in its possession, and shall provide written confirmation of said destruction.

## **9. MISCELLANEOUS**

- 9.1 Licensee Compliance With All Laws - Licensee shall comply with all applicable laws, statutes, regulations, guidelines and reporting requirements in all applicable jurisdictions in its use, storage, disposal, handling, transferring and selling of Biological Material and/or Licensed Products.
- 9.2 LIMITATION OF LIABILITY OF UNIVERSITY - UNIVERSITY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE COSTS AND FEES PAID TO UNIVERSITY UNDER THIS AGREEMENT.

UNIVERSITY WILL NOT BE LIABLE DIRECTLY OR INDIRECTLY FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF PROFITS, OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

- 9.3 Public Records Act- As an agency of the State of Washington, University is subject to the Washington Public Records Act, RCW 42.56 et seq. ("Act"). No obligation assumed by University under this Agreement shall be deemed to be inconsistent with University's obligations as defined under the Act and as interpreted by University in its sole discretion. In the event University receives a request for public records under the Act for documents containing confidential information, and if University concludes that the documents are not otherwise exempt from public disclosure, University will provide Licensee notice of the request before releasing such documents. Such notice shall be provided in a timely manner to afford Licensee sufficient time to review such documents and/or seek a protective order, at Licensee's expense utilizing the procedures described in RCW 42.56.540. University shall have no obligation to protect the confidential information from disclosure in response to a request for public records.
- 9.4 Assignment – Licensee shall not assign this Agreement to a Third Party without the express written consent of University, except that Licensee may assign or otherwise transfer this Agreement and the license granted hereby and the rights acquired by it hereunder so long as such assignment or transfer is accompanied by a sale or other transfer of Licensee’s entire business, including a change of control. Licensee shall give University thirty (30) days prior written notice of such assignment and transfer. Upon such assignment or transfer, the term "Licensee" as used in this Agreement will include such assignee or transferee and this Agreement will be binding upon Licensee’s permitted successors and assigns. Any attempted assignment, transfer or delegation in breach of this provision will be deemed void and will entitle University to terminate this Agreement upon written notice to Licensee.
- 9.5 Notices - All notices under this Agreement will be deemed to have been fully given when done in writing and deposited in the United States mail, registered or certified, and addressed as follows:

If to University: UW CoMotion  
Attn: Director, Innovation Development  
4545 Roosevelt Way NE, Suite 400  
Seattle, WA 98105-4608

If to Licensee: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

Either party may change its address upon written notice to the other party.

- 9.6 Waiver and Severability - None of the terms of this Agreement can be waived except by the written consent of the party waiving compliance. If any provision of this Agreement is held illegal, void, or unenforceable, the remaining portions will remain in full force and effect.
- 9.7 Law and Venue - The laws of the state of Washington will govern the validity, construction, and enforceability of this Agreement, without giving effect to the conflict of laws principles thereof. Any claim related in any manner to this Agreement will be instituted and commenced in, and venue will be either King County, Washington or the United States District Court for the Western District of Washington.
- 9.8 Audit Rights - Licensee shall, at the request of University, permit one or more accountants selected exclusively by University to have access to Licensee's records and books of account pertaining to this Agreement during ordinary working hours to audit with respect to any payment period ending prior to such request, the correctness of any report or payment made under this Agreement, or to obtain information as to the payments due for any such period in the case of failure of Licensee to report or make payment according to the terms of this Agreement. The accountant will not disclose to University any information relating to the business of Licensee except that which is necessary to inform University of: the accuracy or inaccuracy of Licensee's reports and payments; compliance or noncompliance by Licensee with the terms and conditions of this Agreement; and the extent of any inaccuracy or noncompliance. If the accountant determines that Licensee's royalties calculated for any quarterly period are under reported by more than five percent (5%), the costs of any audit and review initiated by University will be borne by Licensee; otherwise, University will bear the costs of any audit initiated by University.
- 9.9 Export Controls - Licensee shall abide by all U.S. export laws and regulations. Accordingly, Licensee is solely responsible for securing any necessary permissions or licenses to exercise its rights under this Agreement.
- 9.10 Entire Agreement - This Agreement (including all attachments, exhibits, and amendments hereto) is intended by the parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. This Agreement cancels, supersedes, and revokes all prior negotiations, representations and agreements among the parties, whether oral or written, relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

**University of Washington**

**Licensee**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_