EXCLUSIVE PATENT LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into as of _________________________, 2015, (the "Effective Date") by and between The Salk Institute for Biological Studies, San Diego, California, a California nonprofit public benefit corporation, organized and existing under the laws of the California ("Salk"), and ______________________________, a corporation organized under the laws of the State of _________________________ ("Licensee").

WHEREAS, Salk is the owner of certain Patent Rights, entitled “____________” [Salk Ref No. RDXXXX] (as hereinafter defined) and of Biological Materials (as hereinafter defined) relating to same;

WHEREAS, the development of the inventions listed in Schedule A was sponsored in part by the National Institutes of Health and, as a consequence, Salk is subject to obligations to the Federal Government as set forth in 35 U.S.C. §200 et seq.;

WHEREAS, Salk desires that the Patent Rights and Biological Materials be developed and utilized to the fullest extent possible so that products resulting therefrom may be available for public use and benefit;

WHEREAS, Salk has determined that the best method for disseminating the Patent Rights and Biological Materials is through the grant of an exclusive license to an entity willing to establish a program to develop therapeutic, diagnostic or research products in the Field of Use covered by such Patent Rights and Biological Materials;

WHEREAS, Licensee represents that it has the intent and resources to develop and market products based upon the Patent Rights and Biological Materials; and

WHEREAS, Licensee wishes to obtain, and Salk is willing to grant, a license to the Patent Rights and Biological Materials, in the defined Field of Use, subject to the terms set forth below.
NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, the parties hereby agree as follows:

1 DEFINITIONS.

1.1 The term "Affiliate" shall mean any entity that controls, is controlled by or is under common control with Licensee, where "control" means beneficial ownership of more than fifty percent (50%) of the outstanding shares or securities or the ability otherwise to elect a majority of the board of directors or other managing authority.

1.2 The term “Biological Materials” shall mean the materials supplied by Salk (identified in Exhibit B and any materials transferred during the Term) together with any progeny, mutants, or derivatives thereof supplied by Salk or created by Licensee.

1.3 The term "Commercial Sale" shall mean any transaction that transfers to a purchaser, for value, physical possession of and title to a Licensed Product, after which transfer the seller has no right or power to determine the purchaser's resale price. Transfer of possession and title to an Affiliate or Sublicensee shall not constitute a Commercial Sale unless the Affiliate or Sublicensee is an end user of the Licensed Product.

1.4 The term "FDA" shall mean the United States Food and Drug Administration or foreign equivalent.

1.5 The term "Field of Use" shall mean__________

1.6 The term "Licensed Product" shall mean any product which is composed of or incorporates, or is directly or indirectly discovered, developed and/or identified using, the Licensed Technology. The term Licensed Product shall also include any product, the manufacture, use, importation, sale or offer for sale of which in the absence of this license would infringe the Patent Rights. Without limiting the foregoing, Licensed Product includes any derivative compound developed from a compound discovered or identified using the Licensed Technology.

1.7 The term "Licensed Technology" shall mean the Patent Rights and the Biological Materials.
1.8 The term "Net Sales" shall mean the gross sales by Licensee, its Affiliates or Sublicensees in the Commercial Sale of Licensed Product less the following items if separately stated on purchase orders, invoices, or other documents of sale:

   (a) outbound shipping, storage, packing and insurance expenses, each as actually paid or allowed;

   (b) amounts repaid or credited by reason of rejections, defects or returns or because of retroactive price reductions; and

   (c) sales and other excise taxes, use taxes, tariffs, license fees and duties actually paid or allowed.

No deductions shall be made for commissions paid to individuals whether they are with independent sales agencies or regularly employed by Licensee, its Affiliates or Sublicensees and on its payroll, or for cost of collections. Net Sales shall occur on the date of billing for a Licensed Product. If a Licensed Product is distributed at a discounted price that is substantially lower than the customary price charged by Licensee, or distributed for non-cash consideration (whether or not at a discount), Net Sales shall be calculated based on the non-discounted price of the Licensed Product charged to an independent third party during the same reporting period or, in the absence of such sales, on the fair market value of the Licensed Product.

Net sales shall include the fair market value of any non-cash consideration received by Licensee, its Affiliates or Sublicensees for the sale, lease, or transfer of Licensed Products.

1.9 The term "Patent Costs" shall mean out-of-pocket expenses incurred by Salk in connection with the preparation, filing, prosecution, maintenance, and interference proceedings of patent applications and patents, including the fees and expenses of attorneys and patent agents, filing fees and maintenance fees, but excluding costs associated with any patent infringement actions.

1.10 The term "Patent Rights" shall mean inventions claimed in below-described (a), (b), (c), (d) and (e), and inventions not claimed but for which support is found in (a), (b), (c), (d) and (e).
(a) Patent applications listed in Exhibit A and patents issuing therefrom.

(b) Patents listed in Exhibit A.

(c) Divisional applications and continuation applications that claim the benefit of priority to any of the patents described in (a) or (b) or patent applications described in (a) or (b) and patents issuing therefrom.

(d) Continuation-in-part applications only to the extent the invention(s) are supported by the patents described in (a) or (b) and patent applications described in (a) or (b) and patents issuing therefrom.

(e) Reissue patents and reexamination patents related to patents described in (a), (b), (c) and (d).

1.11 The term "Sublicensee" shall mean any non-Affiliate third party to whom Licensee has granted a sublicense pursuant to Section 2 of this Agreement.

1.12 The term “Sublicensing Revenue” shall mean all upfront, license, and technology access fees, product milestone payments (whether research, preclinical or developmental), royalties and other remuneration, however characterized (except for direct reimbursement of research expenditures actually incurred), owed to or received by Licensee under the sublicense or other agreement with a Sublicensee for the use of the Licensed Technology or sale of any Licensed Product, by such Sublicensee. Any non-cash consideration received by Licensee from Sublicensees shall be valued at its fair market value as of the date of receipt. Sublicensing Revenue shall include any premiums paid on equity investment.

2 GRANT OF RIGHTS.

2.1 Patent Rights and Biological Materials. Salk hereby grants to Licensee and its Affiliates subject to the terms and conditions hereof:

(a) an exclusive license to the Patent Rights, and

(b) a non-exclusive commercial license to the Biological Materials

in each case in the Field of Use, to make, have made, to use, have used, to import, have imported, to offer for sale, sell and have sold, and otherwise exploit any Licensed Product for the Term defined in Section 10.1.
2.2 **Sublicenses.**

(a) Licensee shall have the right to enter into sublicensing arrangements for the rights, privileges and licenses granted hereunder, except that sublicensees shall not have rights to sublicense. Such sublicense agreements shall include a royalty rate upon sublicense Net Sales in an amount at least equal to the rate set forth in Section 3.4. Rights of any sublicensee shall terminate upon termination of this Agreement.

(b) Licensee agrees that any sublicense granted by it shall provide that the obligations to Salk of Sections 4, 5.2(a), 7, 8.4, 9.2, 11, 13.4 and 15.7 of this Agreement shall be binding upon the sublicensee as if it were a party to this Agreement. Licensee is responsible for timely enforcement of sublicense agreements. Each sublicense granted by Licensee pursuant to this Agreement shall include an audit right by Salk of sublicensee of the same scope as provided in Section 9.2 with respect to Licensee.

(c) Licensee agrees to forward to Salk a copy of any and all sublicense agreements promptly upon execution thereof, but in no event later than thirty (30) days after each such sublicense agreement has been executed by both parties thereto.

2.3 **Government Rights.** The license granted hereby is subject to the rights of the United States government, if any, as set forth in 35 U.S.C. §200, et seq. Pursuant to this law, the United States government may have acquired a nonexclusive, nontransferable, paid up license to practice or have practiced for or on behalf of the United States the inventions described in the Patent Rights throughout the world. Pursuant to 35 U.S.C. §200, et seq. Licensed Technology produced for sale in the United States shall be substantially manufactured in the United States (unless a waiver under 35 U.S.C. §204 is granted by the appropriate United States government agencies).

2.4 **Retained Rights.** Under the license granted herein, Salk reserves the right to use for research purposes including sponsored research and collaborations, and the right to allow other nonprofit or academic institutions to use for research purposes, any Patent Rights and Biological Materials licensed hereunder, without Salk or such other institutions being obligated to pay Licensee royalties or other compensation. Salk shall have no obligation to notify or inform Licensee of such use.

2.5 **No Additional Rights.**

(a) Nothing in this Agreement shall be construed to confer any rights upon Licensee by implication, estoppel, or otherwise as to any technology or patent rights of Salk or any other entity.
other than the Patent Rights, regardless of whether such technology or patent rights shall be dominant or subordinate to any Patent Rights.

(b) A license in any other territory or field of use shall be the subject of a separate agreement and shall require Licensee’s submission of evidence, satisfactory to Salk, demonstrating Licensee’s willingness and ability to develop and commercialize in such other territory and/or field of use.

3 LICENSE CONSIDERATION.

3.1 In consideration of the rights, privileges and license granted by Salk hereunder, Licensee shall pay royalties and other monetary consideration as follows:

(a) License Fee. Initial license fee, nonrefundable and noncreditable against royalties, of _______ ($______) payable within fifteen (15) days of the Effective Date of this Agreement. Licensee represents that the execution and delivery of this Agreement and the payment of the license fee have been duly and validly authorized by all necessary corporate action by Licensee.

(b) Annual Maintenance Fees. Annual maintenance fees, non-refundable and non-creditable against royalties, until the first Net Sales occur, as follows:

(i) ____________________________;

(ii) ____________________________; and

(iii) ____________________________.

(c) Milestone Payments. Licensee shall provide Salk with written notice within thirty (30) days of the achievement by Licensee, its Affiliates or Sublicensees of each of the milestone events set forth below in respect of each Licensed Product. Within ten (10) days after delivering each such notice, Licensee shall pay to Salk the amounts set forth below in cash:

(i) ____________________________;

(ii) ____________________________; and

(iii) ____________________________.
(d) Royalty Payments. Licensee shall pay to Salk a royalty of ______________ percent (___%) on Net Sales of Licensed Products sold by Licensee or its Affiliates through the period ending on the later of (i) the life of the applicable patent, on a country by country basis, included in the Patent Rights, or (ii) fifteen (15) years from the Effective Date of this Agreement. Royalty payments shall be made in accordance with Section 9. On sales of Licensed Products by Licensee to Sublicensees or on sales made in other than an arm's-length transaction, the value of the Net Sales attributed under this Article 3 to such a transaction shall be that which would have been received in an arm's-length transaction, based on sales of like quantity and quality products on or about the time of such transaction.

3.5 Sublicensing Revenue. Licensee shall pay to Salk a share of Sublicensing Revenue of ___ percent (____%) for any sublicense granted.

3.6 Minimum Annual Royalty. Beginning with the first Net Sales, Licensee shall pay to Salk a minimum royalty in the amount of (i) ______ Thousand Dollars ($_______) per calendar year for the first three (3) calendar years after the first Net Sales, and (ii) _____________ Thousand Dollars ($__________) in each subsequent calendar year during the term of this Agreement, but only to the extent such minimum royalty is greater than the aggregate annual royalty computed in accordance with Section 3.4 above. The minimum royalty for any calendar year will be paid to Salk (less credit for the earned royalties previously paid by Licensee on Net Sales made in such calendar year) no later than March 31 of the subsequent calendar year.

4 OWNERSHIP OF INTELLECTUAL PROPERTY.

Licensee (for itself, its Affiliates and Sublicensees) acknowledges and agrees that Salk is and shall remain (as to Licensee) the [sole or joint] owner of the Patent Rights, subject to the rights of the Federal Government as set forth in 35 U.S.C. §200 et seq., and that Licensee (including its Affiliates and Sublicensees) has no rights in or to the Patent Rights other than the rights specifically granted herein.

5 BIOLOGICAL MATERIALS.

5.1 Availability. Upon execution of this Agreement, Salk or its designee shall make available to Licensee the Biological Materials described in Exhibit B. Thereafter, Licensee may request
and obtain from Salk additional quantities of said Biological Materials that Salk has in its possession and does not need for its own research or to meet other contractual obligations, at reasonable charge by Salk for handling and shipping. If Salk fails to fulfill the request of Licensee for Biological Materials, Licensee shall be free to produce such Biological Materials itself, or to purchase such Biological Materials from a third party.

5.2 Title and Improvements.

(a) Title to Biological Materials provided by Salk and received by Licensee shall remain with Salk. Licensee shall have only the right to use Biological Materials in accordance with the grant of rights under Section 2 hereof, and shall not use Biological Materials for any other purpose. Licensee shall not permit Biological Materials or any sample thereof to be distributed or delivered to any person whatsoever, other than to its own employees and those of its Affiliates and Sublicensees to be used as permitted herein. Licensee shall refer to Salk requests for Biological Materials from other research investigators or others.

(b) Licensee shall notify Salk of any improvements (including, but not limited to, derivatives and variants) to the Biological Materials made by Licensee, irrespective of whether any such improvements were made in collaboration with Salk or any of its employees. At Salk’s request, Licensee shall provide Salk with reasonable quantities of such improvements, and scientists at Salk shall have the right to use them for internal research at Salk.

5.3 Acknowledgment. Licensee (for itself, its Affiliates and Sublicensees) acknowledges that Biological Materials are experimental in nature and may have unknown characteristics. Licensee agrees that Biological Materials shall not be used in humans, including for purposes of therapy or diagnostic testing. Licensee further agrees to use prudence and reasonable care in the use, handling, storage, transportation, disposition and containment of Biological Materials and all products derived therefrom. If Salk possesses Material Safety Data Sheets for any Biological Materials it will provide Licensee with copies thereof.

5.4 Representation. Licensee shall comply with all applicable Governmental laws and regulations, and with all published Governmental guidelines, pertaining to the use, handling, storage, transportation, disposition and containment of Biological Materials and all products derived therefrom.
5.5 **No Warranty.** BIOLOGICAL MATERIALS ARE PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED.

6 **DISCLAIMERS.**

6.1 **Warranty Disclaimers by Salk.** Except as expressly set forth in this agreement, and without limiting the generality of Section 6.2, nothing herein shall be construed as:

(a) a warranty or representation by Salk as to the validity, enforceability or scope of any Patent Rights;

(b) a warranty or representation that using, making, selling, importing or otherwise disposing of any product or performing any process pursuant to any license granted in this Agreement is or will be free from infringement, directly or indirectly, of any patent, copyright or other right of any third party under the laws of the United States or any other jurisdiction;

(c) an obligation to bring or prosecute actions or suits against third parties for infringement, except to the extent and in the circumstances described in Section 8.3; or

(d) a grant by implication, estoppel, or otherwise of any licenses under any patent application, patent, material or any other right of Salk or other person other than as provided in Section 2 hereof.

6.2 **No Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SALK MAKES NO REPRESENTATION AND EXTENDS NO WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES AS TO TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.3 **Disclaimer of Liability.** IN NO EVENT SHALL SALK BE LIABLE TO LICENSEE ITS AFFILIATES OR SUBLICENSEES OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL,
INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOSS OF DATA, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE LICENSED TECHNOLOGY. SALK'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE LICENSED TECHNOLOGY, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO SALK UNDER THIS AGREEMENT WITHIN THE TWELVE MONTHS PRECEDING THE CLAIM.

7 INDEMNIFICATION AND INSURANCE.

7.1 Indemnification. Licensee its Affiliates and Sublicensees agree to indemnify, hold harmless and defend Salk, its trustees, officers, employees and agents, the sponsors of the research that led to the Licensed Technology and the inventors of the patents and patent applications included in the Patent Rights (hereinafter the “Indemnitees”) from and against any and all losses, liability, damages, deficiency, costs, expenses or obligations, of any kind or nature (including attorneys’ fees, expert witness fees, and court costs) with respect to any claims, suits, demands, judgments or causes of action (collectively, “Claims”) directly or indirectly arising out of or relating to this Agreement or any activities of Licensee concerning the Licensed Technology or any Licensed Products, including, but not limited to, (a) the research, development, manufacture, storage, offering for sale, sale or other distribution, or any other use of Licensed Products or Licensed Technology, or exercise of rights granted hereunder, by Licensee, its Affiliates, its Sublicensees, or its distributors, agents or representatives; (b) the use by end-users and other third parties of Licensed Products or Licensed Technology; or (c) any representation, warranty or statement by Licensee or its Affiliates, Sublicensees, distributors, agents or representatives, concerning the Indemnitees, the Licensed Technology, or the Licensed Products. In the event any such claims, demands or actions are made, Licensee shall defend the Indemnitees at Licensee's sole expense by counsel selected by Licensee, subject to approval by Salk, which is not to be unreasonably withheld. Salk will have the right to participate in the defense of any Claim with its own counsel and at its own expense. No settlement, consent judgment or other voluntary final disposition may be entered into without the prior written consent of Salk, which consent shall not be unreasonably withheld.

7.2 Insurance. (a) Licensee shall maintain, and shall require its Affiliates and Sublicensees to maintain, continuously and without interruption during the Term (as defined in Section 10.1), comprehensive
general liability insurance, including products liability insurance, with reputable and financially secure insurance carriers with ratings of at least A- as rated by A.M. Best to cover the activities of Licensee, its Affiliates and its Sublicensees. Such insurance (a) shall include endorsements naming Salk as an additional insured and waiving any right of subrogation against Salk, (b) shall require prior notice to Salk before cancellation, and (c) shall be written to cover claims incurred, discovered, manifested, or made during or after the expiration of this Agreement. Such insurance shall have a minimum limit of two million dollars ($2,000,000.00) per specific occurrence and a minimum limit of five million dollars ($5,000,000.00) for aggregate liability insurance; provided, however, that not less than thirty (30) days before the earlier date upon which Licensee or its Affiliates or Sublicensees (i) initiates testing of Licensed Products in a clinical trial involving human subjects for purposes of diagnosis or treatment, or (ii) makes a commercial sale of any Licensed Product, such coverage shall be increased to a minimum limit of five million dollars ($5,000,000.00) per specific occurrence and a minimum limit of ten million dollars ($10,000,000.00) for aggregate liability insurance.

(b) Within thirty (30) days of the Effective Date of this Agreement, Licensee shall furnish a Certificate of Insurance evidencing primary coverage and additional insured requirements and provide Salk with copies of subsequent annual Certificates of Insurance. Licensee shall provide Salk with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance; if Licensee does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, Salk shall have the right to terminate this Agreement effective at the end of such fifteen (15) day period without notice or any additional waiting periods. It is the intention of the parties hereto that Licensee shall, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverages set forth in this Section. Failure of Licensee to comply with this requirement shall be considered a material breach of the Agreement.

(c) Licensee shall maintain insurance as required by this Section 14.2 beyond the expiration or termination of this Agreement during any period that any product, process, or service, relating to, or developed pursuant to, this Agreement is being commercially distributed or sold by Licensee or a Sublicensee, Affiliate or agent of Licensee and thereafter for a period of five (5) years. The minimum amounts of insurance coverage required shall not be construed to create a limit of Licensee's liability with respect to its indemnification under this Agreement. Failure of Licensee to comply with the requirements of this Section 7.2a shall be considered a material breach of the Agreement.
8.1 Prosecution and Maintenance.

(a) Salk has or shall apply for, seek prompt issuance of and maintain during the term of this Agreement the Patent Rights in the United States and in such foreign countries as may be designated by Licensee in a written notice to Salk within a reasonable time in advance of the required foreign filing dates. Licensee shall have the opportunity to advise and cooperate with Salk in the prosecution, filing and maintenance of such patents. Notwithstanding Licensee's obligations of payment in Section 8.2 hereof, Salk shall select all outside counsel for prosecution of the Patent Rights and such counsel shall represent Salk in such prosecution. Salk shall have full control over prosecution and maintenance of the patent applications and patents contained in the Patent Rights.

(b) Licensee shall immediately notify Salk of a change in its entity status under 37 C.F.R. section 1.27. Licensee's entity status may change due to a change in the number of its employees or if any rights under Patent Rights have been transferred to or released from an affiliate, collaborator or sublicensee.

8.2 Patent Costs.

(a) All fees and costs, including attorneys’ fees, relating to the filing, prosecution, maintenance, and post grant proceedings of the Patent Rights shall be the responsibility of Licensee, whether incurred prior to or after the Effective Date. Within five (5) business days after the execution of this Agreement, Licensee shall pay to Salk ____________________($__________) as reimbursement for all Patent Costs incurred through ________________ (Pre-agreement Expenses). Licensee shall reimburse Salk for all Patent Costs thereafter incurred with respect to the Patent Rights.

(b) All fees and costs incurred after the Effective Date, or fees and costs incurred before the Effective Date, but not included in the Pre-agreement Expenses stated above, shall be paid by Licensee within thirty (30) days after receipt of Salk’s invoice therefor. Additionally, Licensee shall be liable to Salk for all of Salk’s out-of-pocket filing, prosecution, and maintenance costs (including all attorneys’ fees and costs), for any and all patent prosecution and maintenance actions that will be taken by patent counsel after the term of this Agreement but in response to any instructions that were sent during the term of this Agreement from Salk to patent counsel relating to the Patent Rights. Payments pursuant to this Section 8.2 are not creditable against royalties. Pursuant to Section 9.5, late payments shall be
subject to a charge of one and one-half percent (1.5%) per month compounded, or $250, whichever is greater. The payment of such late charges shall not prevent Salk from exercising any other rights it may have as a consequence of the lateness of any payment. Failure to pay within thirty (30) days will be considered a material breach of this Agreement.

(c) Licensee may elect to surrender its Patent Rights in any country by providing to Salk written notice of such intent at least ninety (90) days prior to such surrender. Such notice may be provided by mail, electronic mail or facsimile directly to Salk Patent Counsel. Such notice shall not relieve Licensee from responsibility to reimburse Salk for patent-related expenses incurred prior to the expiration of the ninety (90) day notice period (or such longer period specified in Licensee’s notice). In the event Licensee elects to surrender any Patent Rights, such patent application or patent shall be excluded from the definition of the Patent Rights and from the scope of the license granted under this Agreement, and all rights relating thereto shall revert to Salk and may be freely licensed by Salk. If Licensee surrenders its Patent Rights in a given country a patent application or patent included in the Patent Rights and Salk, ceases to prosecute such patent application or maintain such patent, Licensee shall not sell a product covered by the claims of any such patent as issued or, in the case of an application, covered in the claims as written at the time Licensee notified Salk of its decision not to support the application, unless Licensee is obligated to pay royalties and/or other payments under this Agreement on sales in said country because such product is covered by another patent or patent application licensed hereunder.

8.3 Infringement of Patent Rights.

(a) In the event Licensee or Salk becomes aware of any actual or potential infringement of any Patent Rights, that party shall promptly notify the other and the parties shall discuss the most appropriate action to take. Salk and Licensee will cooperate with each other to attempt to terminate such infringement without litigation.

(b) If attempts to abate such infringement are unsuccessful, Licensee shall consult with Salk and shall consider the views of Salk regarding the advisability of the proposed action and its effect on the public interest. Licensee may bring an action at its own expense, in which event Salk shall cooperate with Licensee as reasonably requested, at Licensee's expense. No settlement, consent
judgment or other voluntary final disposition of the action may be entered into without the prior written consent of Salk, which consent shall not be unreasonably withheld. To the extent Licensee's recoveries from such infringement action exceed Licensee's expenses, Licensee agrees to pay Salk ten percent (10%) of such excess recoveries.

(c) (i) If required by law, Salk shall permit any action under this Section to be brought in its name, including being joined as a party-plaintiff, provided that Licensee shall hold Salk harmless from, and indemnify Salk against, any costs, expenses, or liability that Salk incurs in connection with such action. To the extent recoveries from such action exceed Licensee's expenses, Licensee agrees to pay Salk ten percent (10%) of such excess recoveries.

(ii) Salk may, on its own initiative, join such action at its own expense. In the event recoveries exceed Salk and Licensee’s expenses, Salk and Licensee agree to split such excess recoveries.

(d) In the event that Licensee elects not to institute or prosecute any suit to enjoin or recover damages from any infringer, then Salk alone may, in its sole discretion and at its expense, initiate and conduct an infringement action and any settlement or award which may be obtained shall be solely Salk’s.

(e) The parties agree to allow non-profit research organizations to practice the methodologies included in the Licensed Technology to the extent the results thereof are not used or, to their knowledge, contemplated to be used for the purpose of development or exploitation by commercial entities and that such activity shall not constitute infringement for purposes hereof.

8.4 Defense Against Third Party Infringement Claims. In the event any Licensed Product becomes the subject of a claim for patent or other proprietary right infringement anywhere in the world by virtue of the incorporation of the Patents Rights or Biological Materials therein, the parties shall promptly give notice to the other and meet to consider the claim and the appropriate course of action. Licensee shall have the right to conduct the defense at its own expense of any such suit brought against Licensee and/or Salk, but no settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the prior written consent of Salk, which consent shall not be unreasonably withheld.
8.5 Marking. Licensee agrees to mark and to require any Affiliate or Sublicensee to mark any Licensed Products (or their containers or labels) made, sold, or otherwise distributed by it or them with any notice of patent rights necessary or desirable under applicable law to enable the Patent Rights to be enforced to their full extent in any country where Licensed Products are made, used, sold, or offered for sale.

9 REPORTING, VERIFICATION AND PAYMENT.

9.1 Books and Records. Licensee agrees to keep proper records of scientific research and keep books of account in accordance with generally accepted accounting practices. Such records and books shall include all information necessary for the accurate determination of royalty payments, Sublicensing Revenue, milestone achievement and diligence obligation. Within thirty (30) days after each March 31, June 30, September 30 and December 31 of each year during the term of this Agreement beginning in the year of the first commercial sale of Licensed Product, Licensee shall deliver to Salk true, accurate and detailed reports of the following information in a form as illustrated in Exhibit D:

(a) Number of Licensed Products manufactured and sold by Licensee and all sublicensees;

(b) Total billings for all such Licensed Products;

(c) Accounting for all Licensed Technology services used or sold by Licensee and all sublicensees;

(d) Deductions set forth in Section 1.8;

(e) Total royalties due;

(f) Name and addresses of sublicensees; and

(g) Total Sublicense Revenue received during such calendar quarter and total amount of payment due pursuant to Section 3.5.

Licensee shall report Salk the date of the first commercial sale of a Licensed Technology within sixty (60) days of occurrence in each country. Progress Reports showing records of scientific research are to be provided in accordance with Section 13.3.
9.2 Audit. On reasonable written notice, Salk, at its own expense, shall have the right to have an independent party, inspect and audit the books and records of Licensee, its Affiliates and its Sublicensees during usual business hours for the sole purpose of, and only to the extent necessary for, determining the correctness of royalty payments, Sublicensing Revenue, and milestone achievement under this Agreement. Such examination with respect to any fiscal year shall not take place later than three (3) years following the expiration or termination of this Agreement. The expense of any such audit shall be borne by Salk; provided, however, that, if the audit discloses an error in excess of five percent (5%) in favor of Licensee, then Licensee shall pay, in addition to the amount of any underpayment, the cost to Salk of the audit.

9.3 Foreign Payments. Royalties based on Net Sales in any foreign country shall be payable to Salk in the United States in United States Dollars. Dollar amounts shall be calculated using the foreign exchange rate, as published by the Wall Street Journal, in effect for such foreign currency on the last business day of each quarter for which a report is required. Where royalties are due for Net Sales in a country where, for reasons of currency, tax or other regulations, transfer of foreign currency out of such country is prohibited, Licensee has the right to place Salk's royalties in a bank account in such country in the name of and under the sole control of Salk; provided, however, that the bank selected be reasonably acceptable to Salk and that Licensee inform Salk of the location, account number, amount and currency of money deposited therein. After Salk has been so notified, those monies shall be considered as royalties duly paid to Salk and will be completely controlled by Salk.

9.4 Taxes. Taxes imposed by any governmental agency on any payments to be made to Salk by Licensee hereunder shall be paid by Licensee without deduction from any payment due to Salk hereunder. Licensee acknowledges that Salk, as a not-for-profit corporation, does not qualify under U.S. tax laws for a tax credit on any taxes paid by Licensee.

9.5 Late Payments. Late payments shall be subject to a charge of one and one-half percent (1.5%) per month compounded, or $250 per month, whichever is greater. The payment of such late charges shall not prevent Salk from exercising any other rights it may have as a consequence of the lateness of any payment.

10 TERM AND TERMINATION.
10.1 **Term.** Unless earlier terminated under this Section 10, this Agreement shall become effective as of the date of this Agreement and expire on the later to occur of the following (the "Term"):  
(a) fifteen (15) years from and after the Effective Date of this Agreement; or  
(b) the date of expiration of the last to expire of any patent included in the Patent Rights; or  
(c) abandonment of the last remaining patent application included in the Patent Rights.

10.2 **Termination**  
(a) **Termination by Licensee.** Licensee may initiate termination of this Agreement by giving written notice to Salk. Ninety (90) days after such notice and upon Licensee fulfilling the below obligations, the License will be deemed terminated.  
(i) Licensee shall pay a termination fee of twenty-five Thousand Dollars ($25,000); and  
(ii) Licensee shall pay all amounts due as well as all non-cancelable costs to Salk through the termination date; and  
(iii) Licensee shall submit a report of the type described in Section 9.1; and  
(iv) Licensee shall return Biological Materials and any other materials, samples, documents, and information, which embody or disclose Patent Rights or any Biological Materials provided to Licensee by Salk in connection with this Agreement.  

(b) **Termination By Salk.** Salk shall have the right to terminate this Agreement, upon written notice, if:  
(i) Licensee defaults in the performance of any of the obligations herein contained and such default has not been cured within thirty (30) days after receiving written notice thereof from Salk; or  
(ii) Licensee ceases to carry out its business, becomes bankrupt or insolvent, applies for or consents to the appointment of a trustee, receiver or liquidator of its assets or seeks relief under any law for the aid of debtors.
The failure of Salk to exercise its rights of termination shall not be deemed to be a waiver of any right Salk might have, nor shall such failure preclude Salk from exercising or enforcing said right upon any subsequent failure by Licensee.

10.3 Consequences of Expiration or Termination.

(a) In the event of expiration of this Agreement or termination of the Agreement for any reason whatsoever:

(i) Licensee shall not thereby be discharged from any liability or obligation to Salk that became due or payable prior to the effective date of such expiration or termination.

(ii) The rights and obligations of the parties under Sections 6.3, 7, 9.2, 10.4, 11 and 12 shall survive any expiration or termination of this Agreement.

(iii) Licensee shall promptly return all materials, samples, documents, information, and other materials which embody or disclose Patent Rights or any Biological Materials; provided, however, that Licensee shall not be obligated to provide Salk with proprietary information which Licensee can show that it independently developed.

(b) In the event of termination of the Agreement:

(i) If Licensee, its Affiliates or its Sublicensees then possess Licensed Product, have started the manufacture thereof or have accepted orders therefor, Licensee, its Affiliates or its Sublicensees shall have the right, for up to one hundred twenty (120) days following date of termination, to sell their inventories thereof, complete the manufacture thereof and market such fully manufactured Licensed Product, in order to fulfill such accepted orders, subject to the obligation of Licensee to pay Salk the royalty payments therefor as provided in Section 3 of this Agreement;

(ii) Subject to Section 10.4(b)(i), Licensee shall discontinue and shall cause its Affiliates and Sublicensees to discontinue, the manufacture, use, marketing, offering for sale and sale of Licensed Products. Licensee and any sublicensee may, however, after the effective date of such termination, sell all products under the Licensed Technology which Licensee
produced prior to the effective date of such termination, provided that Licensee shall pay to Salk the royalties thereon as required by Section 3 hereof and submit the reports required by Section 9.1 hereof.

11 CONFIDENTIAL INFORMATION.

All confidential scientific and technical information with respect to the Licensed Technology communicated by Salk to Licensee, including, without limitation, information contained in patent applications, shall be received in strict confidence by Licensee, its Affiliates and Sublicensees, used only for the purposes of this Agreement and not disclosed by Licensee, its Affiliates and Sublicensees or their respective agents or employees without the prior written consent of Salk, unless such information (i) was in the public domain at the time of disclosure, (ii) later became part of the public domain through no act or omission of the recipient party, its employees agents, successors, or assigns, (iii) was lawfully disclosed to the recipient by a third party having the right to disclose it, (iv) was already known by the recipient at the time of disclosure and recipient can so demonstrate by competent written proof or (v) is required to be disclosed to a governmental agency pursuant to such agency's rule and regulations in order to secure regulatory approval, provided that Licensee shall first give notice to Salk of such disclosure and shall have made a reasonable effort to maintain the confidentiality of such information. Nothing contained herein shall prevent Licensee or its Affiliates from disclosing information to Sublicensees so long as such Sublicensees agree to be bound by these confidentiality provisions.

12 CHOICE OF LAW; DISPUTE RESOLUTION.

12.1 Governing Law. This Agreement is made in accordance with and shall be governed and construed in accordance with the laws of the State of California, as applied to contracts executed and performed entirely within the State of California, without regard to conflicts of laws rules.

12.2 Venue. The parties hereby irrevocably submit to the jurisdiction of a court of competent jurisdiction in the State of California San Diego County, and, by execution and delivery of this Agreement, each (a) accepts, generally and unconditionally, the jurisdiction of such court and any related appellate court, and (b) irrevocably waives any objection it may now or hereafter have as to the venue of any such suit, action or proceeding brought in such court or that such court is an inconvenient forum.
12.3 Dispute Resolution. If a dispute arises between the parties relating to the interpretation or performance of this Agreement or the grounds for the termination thereof, the parties agree to hold a meeting, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If the dispute remains unresolved forty-five (45) days after the first meeting for the purpose of dispute resolution, then each party shall have the right to pursue other remedies legally available to resolve the dispute.

13 COMMERCIALIZATION.

13.1 Commercial Development Obligation. In order to maintain in force the license granted hereunder, Licensee shall use reasonable efforts and diligence to develop Licensed Products, as promptly as is reasonably and commercially feasible, and thereafter to produce and sell reasonable quantities of Licensed Products. The parties hereto acknowledge and agree that achievement of the milestones described in Section 13.2 on or before the dates set forth therein shall be evidence of compliance by Licensee with its commercial development obligations hereunder for the time periods specified in Section 13.2. In the event Salk, at any time, has a reasonable basis to believe that Licensee is not using reasonable efforts and diligence as required hereunder, Salk shall provide Licensee with a notice that specifies the basis for such belief. Upon such notice, Licensee has thirty (30) days to respond in writing with proof of diligence and/or a plan for cure to Salk’s satisfaction or Salk has the right to terminate the Agreement.

13.2 Diligence Milestones

(a) Prior to signing this Agreement, Licensee shall have provided to Salk the Commercial Development Plan attached hereto as Exhibit C, under which Licensee intends to bring the subject matter of the Patent Rights to the point of commercial use. This Commercial Development Plan is hereby incorporated by reference into this Agreement and is the basis for the following performance Milestones.

(b) File, or have filed, within three (3) years after the Effective Date, the first IND using a product or service included in Licensed Technology;

(c) Enroll the first patient in a Phase I clinical trial using a product or service included in Licensed Technology within five (5) years after the Effective Date;
(d) Enroll the first patient in a Phase II clinical trial using a product or service included in Licensed Technology within seven (7) years after the Effective Date;

(e) Enroll the first patient in a Phase III clinical trial using a product or service included in Licensed Technology within ten (10) years after the Effective Date; and

(f) File, or have filed, within thirteen (13) years after the Effective Date of this Agreement the first BLA using a product or service included in Licensed Technology.

Licensee's failure to perform its obligations under Section 13.2 will be considered a material breach of this Agreement. Salk shall provide Licensee with a notice that specifies the basis for such belief. Upon such notice, Licensee has thirty (30) days to respond in writing with proof of diligence and/or a plan for cure to Salk’s satisfaction or Salk has the right to terminate the Agreement.

13.3 Progress Reports. Licensee shall provide to Salk on or before February 15 of each year a written report of its progress with respect to the scientific research and discovery, development, and commercialization of Licensed Products. Such report shall include (i) identification of the Licensee, Affiliate or Sublicensee officers and employees having primary responsibility for developing such products, (ii) an estimate of the resources, including people and funds, needed in the future to bring such products to market, and (iii) the current status of and timetable for developing such products including if applicable, plans for preclinical studies and estimated dates for initiation and completion of clinical trials, manufacturing, sublicensing, marketing and sales during the most recent twelve (12) month period and plans for the forthcoming year. If multiple technologies are covered by the license granted hereunder, the Progress Report shall provide the information set forth above for each technology and/or each Field of Use. If actual progress differs from that anticipated in the Commercial Development Plan required under Section 13.2, Licensee shall provide to Salk a written explanation of the reasons for the difference and a written proposal for a modified Commercial Development Plan for Salk’s review and approval. Licensee shall also provide any relevant additional data Salk requires to evaluate Licensee’s performance.

13.4 U.S. Manufacture. If and to the extent required by applicable United States laws and regulations, Licensee agrees that Licensed Products will be manufactured in the United States or its territories, subject to such waivers as may be required by or obtained from the United States Department of Health and Human Services or any successor agency or designee.
13.5 **Foreign Registration.** Licensee agrees to register this Agreement with any foreign governmental agency that requires such registration, and Licensee shall pay all costs and legal fees in connection therewith. In addition, Licensee shall assure that all foreign laws affecting this Agreement or the sale of Licensed Products are fully satisfied.

14 **ADDRESSES.**

14.1 Except as otherwise provided, payments to be made hereunder to Salk shall be made by wiring the required amount to Salk's bank in accordance with Salk's instructions or by mailing or sending by commercial courier checks for the required amount to Salk's address. Except as otherwise provided, notices and reports provided for herein shall effectively be given by mailing the same by certified or registered mail or by delivery by commercial courier, in each case properly addressed with charges prepaid. For the purposes of making payments and giving notices, the addresses of the parties hereto are as follows:

In the case of Salk:

Office of Technology Development
Salk Institute for Biological Studies
10010 N Torrey Pines Rd
La Jolla, California 92037 U.S.A.
Attn: Business Manager

In the case of Licensee:

________________________________________
________________________________________
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or to such subsequent addresses as either party may furnish the other by giving notice thereof as provided in this Section 14.1.

14.2 Any payments to Salk hereunder by wire transfer shall be directed as follows:

Send wire to: First Republic Bank
111 Pine Street
San Francisco, CA 94111

Swift No.: FRBBUS6S (for foreign transactions)
15  MISCELLANEOUS.

15.1 Assignment. This Agreement is not assignable without the prior written consent of Salk and any attempt to do so shall be null and void.

15.2 Headings. The headings used in this Agreement are for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

15.3 Amendment. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by both parties.

15.4 Bankruptcy. Licensee agrees to provide notice to Salk of its intention to file a voluntary petition in bankruptcy or, where known to Licensee, of another party's intention to file an involuntary petition in bankruptcy for Licensee, said notice to be received by Salk at least one hundred and twenty (120) days prior to filing such petition. Salk may terminate this Agreement upon receipt of such notice at its sole discretion. Unless otherwise provided by law, Licensee's failure to provide such notice to Salk will be deemed a material, pre-petition, incurable breach of this Agreement and the Agreement will terminate automatically on the date of filing such voluntary or involuntary petition in bankruptcy. Notwithstanding the above, Licensee agrees to provide notice to Salk upon filing a voluntary petition in bankruptcy.

15.5 Export Control. Licensee agrees that with respect to the performance of this Agreement or the practice of the rights granted by the Salk hereunder, it shall comply with any and all applicable United States export control laws and regulations, as well as any and all embargoes and/or other restrictions imposed by the Treasury Department’s Office of Foreign Asset Controls.

15.6 Force Majeure. Any delays in performance by any party under this Agreement (other than the payment of monies due) shall not be considered a breach of this Agreement if and to the extent
caused by occurrences beyond the reasonable control of the party affected, including but not limited to, acts of god, embargoes, governmental restrictions, strikes or other concerted acts of workers, fire, flood, explosion, riots, wars, civil disorder, rebellion or sabotage. The party suffering such occurrence shall immediately notify the other party and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence.

15.7 Independent Contractors. The parties agree that this Agreement constitutes an arm’s length business transaction and does not create a fiduciary relationship. The parties acknowledge that they consulted, or had the opportunity to investigate and/or consult, with their legal counsel and/or other advisors with respect to the Patent Rights, Licensed Technology, and the terms of this Agreement.

15.8 Use of Salk’s Name. Except as otherwise provided herein or required by law, Licensee will not originate any publication, news release or other public announcement, written or oral, whether in the public press or otherwise, relating to this Agreement or to the performance hereunder, without the prior written approval of Salk, which approval will not be unreasonably withheld. Such planned publication, news release or other public announcement shall be provided fifteen (15) days in advance for approval by Salk. Salk agrees that Licensee may make known in promotional and technical literature that the Licensed Technology was developed at Salk by Dr. David Schubert and other scientists in his/her laboratory and that products are offered under license from Salk; provided, however, that such use shall not state or imply that Salk has any relationship with Licensee other than as licensor [or shareholder].

15.9 Patent Challenge. If Licensee challenges the validity or enforceability of Salk’s Patent Rights or Salk’s ownership of the Patent Rights anywhere in the world, the Licensee shall continue to pay to Salk all royalties and other financial obligations required under this Agreement, to include patent costs and fees. If any such challenge is unsuccessful by Licensee, the royalty rates and any Sublicense Revenue rate set forth in Section 3 above shall automatically double in value, to include all royalty minimums and floors; and Licensee shall reimburse Salk for all fees and costs associated with defending such action, including but not limited to attorneys fees and expert fees. The effective date of such increase in royalty rates shall be the date of the first court order or date of issuance of a re-examination certificate (or foreign equivalents thereof) declaring any claim of the Patent Rights as valid or enforceable.

15.10 Publication. Licensee agrees that Salk (including its employees) shall have a right to publish in accordance with its general policies, and that this Agreement shall not restrict, in any fashion, Salk’s right to publish.
15.11 **Severability.** If any term, condition or provision of this Agreement is held to be unenforceable by a court having proper jurisdiction for any reason, it shall, if possible, be interpreted rather than voided, in order to achieve the intent of the parties to this Agreement to the extent possible. In any event, all other terms, conditions and provisions of this Agreement shall be deemed valid and enforceable to the full extent of the law.

15.12 **Waiver.** None of the terms, covenants, and conditions of this Agreement can be waived except by the written consent of the party waiving compliance. Waiver of one term, covenant or condition, shall not be construed as waiver of any other term, covenant or condition.

15.13 **Entire Agreement.** This Agreement and Exhibits attached hereto contain the entire agreement and understanding between the parties with respect to the subject matter hereof, and merges all prior discussions, representations and negotiations with respect to the subject matter of this Agreement.

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

[remainder of page intentionally left blank]
THE SALK INSTITUTE FOR BIOLOGICAL STUDIES

By: __________________________________________
   
   Paul Roben, Ph.D.

Title: Senior Director, Office of Technology Development

LICENSEE

By: __________________________________________

Title: ________________________________________
## EXHIBIT A
## PATENT RIGHTS

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<tr>
<th>Salk Case No.</th>
<th>Application No.</th>
<th>Application Filing Date</th>
<th>Patent No.</th>
<th>Patent Issuance Date</th>
<th>Title</th>
<th>Country</th>
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EXHIBIT B

Biological Materials
EXHIBIT D
Sample Royalty Report

Licensee name:
Reporting period:
Date of report:

Royalty Reporting Form

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<th>Product name</th>
<th>No. units sold (including sublicense)</th>
<th>Invoiced price per unit</th>
<th>Gross sales</th>
<th>Allowable deductions</th>
<th>Net sales</th>
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| Total net sales | $         |
| Royalty rate   | $         |
| Royalty due    | $         |

Total royalty due: $_________________

Name and addresses of sublicensees:

Total non-royalty sublicense income: $_________________

Report prepared by:
Title:
Date: