NON-EXCLUSIVE BIOLOGICAL MATERIALS LICENSE AGREEMENT

This Agreement is made and entered into as of the _____ day of __________, 2015 (“Effective Date”), by and between The Salk Institute for Biological Studies, San Diego, California, a California nonprofit public benefit corporation, having an office at 10010 North Torrey Pines Road, La Jolla, CA 92037 (“Salk”), and _________________ having its principal office at ________________ (“Licensee”).

WHEREAS, the Materials (as hereinafter defined) were developed and/or discovered by Dr. _______________, an employee of Salk, working either alone or together with other researchers at Salk;

WHEREAS, the Materials, which are generally referred to as “_______________ (Salk Ref No. ________________),” are the property of Salk (“Salk Property”) and Salk desires to have the Materials utilized in the public interest; and

WHEREAS, Licensee desires to obtain from Salk, and Salk is willing to grant to Licensee, a non-exclusive license to use the Materials upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises set forth above and the mutual covenants contained herein, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 – DEFINITIONS

For purposes of this Agreement, the following words and phrases shall have the following meanings:

a) “Licensee” shall mean ________________ , and all entities at least fifty percent (50%) owned or controlled by ________________.

b) “Materials” shall mean the hybridoma cell line producing ________________, referred to by Salk Ref. No. ______ , entitled “______________“ created by Salk __________ ________, including all Progeny, subclones and derivatives thereof, obtained by or on behalf of Licensee with Salk’s consent from Professor _______________. any
Researchers working with Professor __________, Salk or any other party, listed on Exhibit A attached hereto.

c) “Progeny” shall mean biological materials obtained or derived from cells, DNA and/or RNA contained in the ________________, including cross-breeds or offspring of mice.

d) “Licensed Products” shall refer to and mean monoclonal antibodies derived from or produced by use of any of the Materials.

e) “Combination Product” shall mean a combination product or kit containing one or more active components that are Licensed Products, and sold in combination with one or more separate products which are not Licensed Products.

f) “Salk’s Rights” shall mean: (i) Salk’s rights as owner by assignment of the Materials; and (ii) existing know-how embodied by or necessary to grow the Materials (“Know-How”)

g) “Net Sales” shall mean Licensee’s invoice price for Licensed Products less the sum of the following: (i) Actual cost of freight charges or freight absorption, separately stated in such invoice; (ii) Actual trade, quantity or cash discounts allowed, if any; (iii) Sales taxes, tariff duties and/or use taxes separately stated on each invoice; and (iv) Actual allowances or credits granted to customers because of rejections or returns.

h) “Combination Product Net Sales” shall mean Licensee’s invoice price for Combination Products less the sum of the following: (i) Actual cost of freight charges or freight absorption, separately stated in such invoice; (ii) Actual trade, quantity or cash discounts allowed, if any; (iii) Sales taxes, tariff duties and/or use taxes separately stated on each invoice; and (iv) Actual allowances or credits granted to customers because of rejections or returns.

i) “Licensed Field” shall be limited to educational and nonhuman research use.
j) "Affiliate" of Licensee means any entity that Controls Licensee, directly or indirectly, is Controlled by Licensee or is under common Control with Licensee. "Control" means (i) having the actual, present capacity to elect or appoint a majority of the directors of such affiliate; (ii) having the power to direct at least forty-nine percent (49%) of the voting rights entitled to elect or appoint directors; or (iii) in any country where the local law will not permit foreign equity participation of a majority, ownership or control, directly or indirectly, of the maximum percentage of such outstanding stock or voting rights permitted by local law.

ARTICLE 2 – GRANT

2.1 Subject to the terms and conditions of this Agreement, including payment of the fees set forth in Article 4, Salk hereby grants to Licensee and its Affiliates, to the extent it may lawfully do so, a non-exclusive, non-transferable, revocable, limited license to, possess and use the Materials to manufacture, produce, have produced, sell and/or distribute the Licensed Products or Combination Products in the Licensed Field. The parties acknowledge that if any United States agency has funded research from which the Materials of any of Salk’s Rights arose, the United States may be entitled to certain rights under the provisions of 35 U.S.C. § 200, et seq. and applicable regulations of Chapter 37 of the Code of Federal Regulations. The license granted hereunder shall be subject to such rights.

2.2 Licensee shall not have the right to (a) enter into sublicensing arrangements for any of the rights, privileges and licenses granted hereunder, (b) knowingly use Salk’s Rights to test compounds for any commercial purpose outside the Licensed Field, or (c) Salk’s Rights to make, produce, sell, or distribute Licensed Products for human diagnostic or therapeutic use.

2.3 Licensee acknowledges that the Materials are and remain the sole property of Salk, and the license granted hereunder shall not be construed to confer any rights upon Licensee
by implication, estoppel or otherwise as to any technology not specifically set forth in Exhibit A hereof.

**ARTICLE 3 – TRANSFER AND DISPOSITION OF MATERIALS**

Within thirty (30) days of the Effective Date of this Agreement, Salk shall direct to transfer of the Materials to Licensee. Upon termination or expiration of this Agreement, Licensee shall, at Salk’s option, either return or destroy the Materials and any Progeny.

**ARTICLE 4 – ROYALTIES AND OTHER LICENSE CONSIDERATION**

4.1 In consideration of the rights and license granted to Licensee by Salk, Licensee agrees to pay to Salk royalties and other monetary consideration as follows:

   (i) Non-refundable, initial license fee of dollars within twenty days (20) days of the Effective Date of this Agreement;

   (ii) Royalties in an amount equal to:

      (aa) for Licensed Products, percent (XX%) of Net Sales; and

      (bb) for Combination Products, the greater of percent (X%) of Combination Product Net Sales; or percent (XX%) of Net Sales received for the Licensed Product in a country, if sold separately in finished form in such country.

4.2 All payments pursuant to this Agreement may be made by check or by wire transfer (along with applicable wire transfer fees) in United States dollars without deduction or exchange, collection or other charges and directed to the address or, in the case of wire transfer, to the bank, set forth in Paragraph 9.

4.3 Any amounts pursuant to this Agreement which remain unpaid more than thirty (30) days after they are due to Salk shall accrue interest calculated from the due date until payment is received at the lesser of: (a) the rate of one and one-half percent (1.5%) per month; or
(b) the maximum amount permitted under applicable laws. Interest shall be compounded monthly.

4.4 Licensee shall sell Licensed Products or Combination Products to Salk and its Affiliates upon request at such price(s) and on such terms and conditions as such Licensed Products or Combination Products are made available to Licensee’s most favored customer.

ARTICLE 5 – REPORTS

5.1 Within forty-five (45) days after each March 31, June 30, September 30 and December 31 of each year during the term of this Agreement, Licensee shall deliver to Salk true, accurate and detailed reports of the following information in a form acceptable to Salk:
   i. Number of Licensed Products and Combination Products sold by Licensee;
   ii. Net Sales of Licensed Products and Combination Products; and
   iii. Total royalties due under paragraph 4(ii).

5.2 If no royalties shall be due hereunder, Licensee shall so advise Salk in writing within forty-five (45) days after the end of any calendar quarter for which no royalties are due.

5.3 Licensee shall keep full, true and accurate books of account, in accordance with generally accepted accounting principles, containing all information that may be necessary for the purpose of showing the amounts payable to Salk hereunder. Such books of account shall be kept at Licensee’s customary place of business for such records. Such books and the supporting data related thereto shall be open at all reasonable times upon reasonable advance written notice to Licensee for three (3) years following the end of the calendar year to which they pertain to the inspection of Salk for the sole purpose of verifying Licensee’s royalty statement or compliance in other respects with this Agreement. The fees and expenses of Salk’s representatives shall be borne by Salk, however, if an error of more than five percent (5%) of the total payments due or owing for any year is discovered, then Licensee shall bear the fees and expenses of Salk’s representatives.
ARTICLE 6 – INDEMNIFICATION/INSURANCE/DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY

6.1 Licensee shall at all times during the Term and thereafter indemnify, defend and hold Salk, its trustees, officers, employees, students, agents and affiliates harmless from and against any and all claims, proceedings losses, liabilities, damages, costs, and expenses, including court costs, attorneys’ fees and other related expenses, arising out of or related to any activities of Licensee concerning the Materials or any Progeny, including, but not limited to, (a) the death or illness of, or injury to, any person or persons or (b) any damage to property or the environment.

6.2 Licensee shall obtain and carry in full force and effect during the Term and for at least 3 (three) years thereafter liability insurance with sufficient occurrence and annual aggregate limits to protect Salk in regard to events covered by Section 8. Such insurance policy or policies must, at a minimum:

(a) Consist of broad form contractual liability coverage;

(b) Include product liability insurance;

(c) Have total limits of not less than five million U.S. dollars (U.S. $5,000,000) annual aggregate and five million U.S. dollars (U.S. $5,000,000) for each occurrence as a combined single limit for products liability claims;

(d) Have total limits of not less than two million U.S. dollars (U.S. $2,000,000) annual aggregate and one million U.S. dollars (U.S. $1,000,000) for each occurrence as a combined single limit for claims not included in (c) above, including but not limited to bodily injury or property damage;

(e) Have total limits of not less than one million U.S. dollars (U.S. $1,000,000) per occurrence for errors and omissions; and

(f) Be deemed primary, name Salk as an additional insured party, and contain a waiver of subrogation endorsement in favor of Salk.
Insurance coverage shall in no way affect or limit Licensee’s liability with respect to this Agreement.

Certificates of insurance evidencing the coverage required above shall be filed with Salk’s Office of Technology Development, 10010 North Torrey Pines Road, La Jolla, California 92037 U.S.A, no later than fifteen (15) days after execution of this Agreement and on or before July 1 of each subsequent year during the pendency of this Agreement. Such certificates shall provide that the insurer will give Salk not less than thirty (30) days advance written notice of any material changes in or cancellation of coverage.

6.3 THE MATERIALS ARE PROVIDED TO LICENSEE “AS IS” AND “WITH ALL DEFECTS.” SALK MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. SALK ADDITIONALLY DISCLAIMS ALL OBLIGATIONS AND LIABILITIES ON THE PART OF SALK FOR DAMAGES IN CONNECTION WITH THIS AGREEMENT, THE MATERIALS OR ANY PROGENY, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES, ATTORNEYS’ AND EXPERTS’ FEES, AND COURT COSTS (EVEN IF SALK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FEES OR COSTS). LICENSEE ASSUMES ALL RESPONSIBILITY AND LIABILITY FOR LOSS OR DAMAGE CAUSED BY MATERIALS OR PROGENY WHICH ARE USED BY LICENSEE HEREUNDER.

ARTICLE 7 – ASSIGNMENT

Neither this Agreement nor any rights granted to Licensee hereunder are assignable or transferrable without the prior written consent of Salk, and any attempt to do so shall be null and void.
ARTICLE 8 – TERM AND TERMINATION

The term of this license shall begin on the Effective Date of this Agreement and continue for a period of ten (10) years thereafter (the “Term”), unless otherwise terminated as provided herein or as permitted by law. If Licensee has paid Salk all fees specified in Section 4(a), Licensee may terminate this Agreement at any time by giving at least ninety (90) days written notice of such termination to Salk. If Licensee at any time defaults in the timely payment of any monies due to Salk or commits any breach of any other covenant herein contained, and Licensee fails to remedy any such breach or default within thirty (30) days after written notice thereof by Salk, or if Licensee commits any act of bankruptcy, becomes insolvent, is unable to pay its debts as they become due, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not dismissed within thirty (30) days, or offers any component of the Materials to its creditors, Salk may, at its option, immediately terminate this Agreement and any license granted hereunder by giving written notice of termination to Licensee. Upon the termination or expiration of this Agreement, (a) the last sentence of Article 3 and Articles 5, 6, 7, 8 and 10 will survive, and (b) Licensee shall remain obligated to provide an accounting for and to pay license fees pro rata to the date of the termination.

ARTICLE 9 – NOTICES

9.1 Any notice or communication pursuant to this Agreement shall be sufficiently made or given if sent by certified or registered mail, postage prepaid, or by overnight carrier, with proof of delivery by receipt, addressed to the address below or as either party shall designate by written notice to the other party.

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:

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

9.2 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)
Credit to: Salk Institute for Biological Studies, San Diego California
10010 North Torrey Pines Road
La Jolla, CA 92037
Account No.: 80003007853
Route No. (ABA#): 321081669
Additional Message: Sender’s name, purpose of wire, & Attn: Constance Mueller
Email notification: finance@salk.edu

ARTICLE 10 – MISCELLANEOUS

10.1 This Agreement may not be amended or modified except by the execution of a written instrument signed by the parties hereto.

10.2 This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The forum for any action relating to this Agreement shall be the Courts of San Diego, California.

10.3 The parties acknowledge that this Agreement and the Exhibit hereto set forth the entire understanding and intentions of the parties hereto as to the subject matter hereof and supersedes all previous understandings between the parties, written or oral, regarding such subject matter.

10.4 Nothing contained in this Agreement shall be construed as conferring upon either party any right to use in advertising, publicity or other promotional activities any name, trade name, trademark, or other designation of the other party, including any contraction, abbreviation, or simulation of any of the foregoing. Without the express written approval
of the other party, neither party shall use any designation of the other party in any promotional activity associated with this Agreement. Neither party shall issue any press release or make any public statement in regard to this Agreement without the prior written approval of the other party.

10.5 If one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby. In the event any provision is held illegal or unenforceable, the parties shall use reasonable efforts to substitute a valid, legal and enforceable provision which, insofar as is practical, implements purposes of the provision held invalid, illegal or unenforceable.

10.6 Failure at any time to require performance of any of the provisions herein shall not waive or diminish a party’s right thereafter to demand compliance therewith or with any other provision. Waiver of any default shall not waive any other default. A party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized officer of the party making such waiver.

10.7 This Agreement is not intended to establish any partnership, joint venture, agency, or other relationship between the parties except that of independent contractors. The relationship established by this Agreement is non-exclusive. Nothing in this Agreement shall prohibit or restrict Licensor from licensing the Materials to any third party.

10.8 The parties acknowledge and agree that invoices, purchase orders or other mechanisms or documents for administering any order, payment or other obligation set forth herein will not contain terms or conditions separate from, in addition to, and/or in conflict with this Agreement, and that any such terms, if present, will be null, void and without effect and will not be enforceable by either party hereto.

[signatures on following page]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SALK INSTITUTE FOR BIOLOGICAL STUDIES

By_________________________________
Name: Paul Roben, Ph.D.
Title: Senior Director, Office of Technology Development

LICENSEE

By
Name:
Title:
## EXHIBIT A
### MATERIALS

<table>
<thead>
<tr>
<th>Salk Case No.</th>
<th>Publication</th>
<th>Title</th>
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EXHIBIT B
Sample Royalty Report

Licensee name:
Reporting period:
Date of report:

Royalty Reporting Form

<table>
<thead>
<tr>
<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: