

EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement (hereinafter called "Agreement"), to be effective as of the [date] day of [month], 2020 (hereinafter called "Agreement Date"), is by and between [Name of Institution] (the "College"), a [state in which incorporated] non-profit corporation, having its principal place of business at [Address], and [Name of Licensee], a corporation organized under the laws of [state in which incorporated] and having a principal place of business at [Address], and its Affiliates (hereinafter, collectively referred to as "LICENSEE.")

WITNESSETH:

WHEREAS, the College is the owner of the Subject Technology as defined below; and

WHEREAS, the College is willing to grant a royalty bearing, worldwide, exclusive license to the Subject Technology to LICENSEE on the terms set forth herein; and WHEREAS, LICENSEE desires to obtain said exclusive license under the Subject Technology.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto expressly agree as follows:

1. DEFINITIONS AS USED HEREIN

1.1 The term "Subject Technology" shall mean all technology, cell lines, biological materials, compounds, know-how, methods, documents, materials,

tests, all improvements thereto, and all confidential information related to [name of invention] which was developed as of the Agreement Date by [name of Principal Investigator], an employee of the College and a faculty member in the Department of [name of the department] at the College. The term "Subject Technology" shall also include Indian Patent Application Serial No. [____], entitled [Title of pending application], filed [date], together with all applications for patent or like protection on said invention and all patents or like protection that may in the future be granted on said invention whether in India or any other country and all substitutions for and divisions, continuations, continuations in part, renewals, reissues, extensions and the like on said applications and patents.

1.2 The term "Licensed Product(s)" shall mean all products that incorporate, utilize or are made with the use of the Subject Technology.

1.3 The term "Field" shall mean _____

1.4 The term "Net Sales" shall mean the gross amount of monies or cash equivalent of other consideration which is paid by unrelated third parties to LICENSEE for the Licensed Products by sale or other mode of transfer, less all trade, quantity and cash discounts actually allowed, credits, and allowances actually granted on account of rejections, returns or billing errors, duties, transportation and insurance, taxes and other governmental charges actually paid. The term "Net Sales" in the case of non-cash sales, shall mean all equivalent or other consideration received by LICENSEE for the Licensed Products.

1.5 The term "Affiliates" shall mean any corporation, partnership, joint venture or other entity of which the common stock or other equity ownership thereof is twenty five percent (25%) or more owned by LICENSEE.

1.6 The term "the Parties" shall mean LICENSEE and the College.

NOTE: if license will include sublicense rights, include the following term.

1.7 The term "SUBLICENSING REVENUE" shall mean all cash, sublicensing fees, royalties and all other payments and the cash equivalent thereof paid to LICENSEE by sublicensees of LICENSEE of its rights hereunder, other than research and development money paid to LICENSEE to conduct research in the FIELD

2. GRANT OF LICENSE

2.1 The College hereby grants to LICENSEE an exclusive, worldwide, right and license under the Subject Technology to make, use, market, sell and offer for sale Licensed Products in the Field.

NOTE: if exclusive license, use these terms as guidelines:

2.2 The grant in Section 2.1 shall be further subject to, restricted by and non-exclusive with respect to:

(i) the use of the Subject Technology by the College for non-commercial research, patient care, teaching and other educationally related purposes;

(ii) the use of the Subject Technology by the inventors thereof for non-commercial research purposes at academic or research institutions; and

(iii) any non exclusive license of the Subject Technology that the College is required by law or regulation to grant to India or to a foreign state pursuant to an existing or future treaty with India.

NOTE: if non-exclusive license, use these terms as guidelines:

2.2 The College shall at all times retain the right to:

(i) use the Subject Technology for its non-commercial research, patient care, teaching and other educationally related purposes;

(ii) allow the inventors to use the Subject Technology for non-commercial research purposes at academic institutions;

(iii) grant any non-exclusive license to the Subject Technology that the College is required by law or regulation to grant to India or to a foreign state pursuant to an existing or future treaty with India; and

(iv) grant non-exclusive licenses and other rights to the Subject Technology to third parties, whether such be commercial entities, academic institutions or other persons.

3. MARKETING EFFORTS

LICENSEE shall use reasonable efforts, as defined herein, to effect assiduously the introduction of Licensed Products into the commercial market as soon as practicable. Such efforts shall include, but not be limited to:

- (i) sufficient funding at the College to continue Dr. _____'s research efforts at a rate mutually agreed to by LICENSEE, the College and Dr. _____,
- (ii) submitting an IND to the FDA within three years of the Agreement Date,
- (iii) launching a prophylactic or therapeutic product in a North American or European market within [] years of the Agreement Date,
- (iv) publishing and distributing a product circular for the Subject Technology;
- (v) advertising in at least one of the key journals (i.e., Science, Nature, Cell, Biotechniques) at least _____ times during the first year of the introduction of Licensed Products and twice annually for _____ years thereafter; and

(vi) marketing the Licensed Products with the same diligence as LICENSEE employs for comparable products marketed by LICENSEE.

4. PAYMENTS AND REPORTS

4.1 As partial consideration for the rights conveyed by the College under this Agreement, LICENSEE shall pay the College a license fee of _____ (\$XX,XXX) upon execution of this Agreement.

4.2 In addition to the foregoing license execution fee, LICENSEE shall pay the College a running royalty of ____ percent (X%) of Net Sales. Such running royalties shall be payable as provided in Paragraph 4.5.

4.3 In the event that the running royalties paid on Net Sales in any calendar year do not reach the minimum amount set out below for such year, LICENSEE shall pay an additional amount with the payment due for the period ending December 31 of such year, so that the total amount paid for such year shall reach such minimum amount:

Year One Rs.

Year Two Rs.

Year Three Rs.

Year Four Rs.

Year Five and after Rs.

4.4 LICENSEE shall also pay the College the following milestone payments: (a) _____ thousand rupees (Rs.XX,000) upon the submission of an IND to the FDA; (b) _____ thousand rupees (Rs.XX,000) upon the submission of and NDA to the FDA and (c) _____ thousand

rupees (Rs.X00,000) upon product approval and launch in a North American or European market.

4.5 In addition to the foregoing fees and running royalties, LICENSEE agrees to pay to the College as royalties hereunder, xx percent (XX%) of all SUBLICENSING REVENUE.

4.6 Payment of the royalties specified in Paragraph 4.2 and Paragraph 4.3 shall be made by LICENSEE to the College within thirty (30) days after March 31, June 30, September 30 and December 31 of each year during the term of this Agreement covering the quantity of Licensed Products sold by LICENSEE during the preceding calendar quarter. After termination or expiration of this Agreement, a final payment shall be made by LICENSEE covering the whole or partial calendar quarter. Each quarterly payment shall be accompanied by a written statement of Net Sales of Licensed Products by LICENSEE during such calendar quarter. Such written statements shall be duly signed by an authorized signatory of LICENSEE on behalf of LICENSEE and shall show the Net Sales of Licensed Products by LICENSEE during such calendar quarter and the amount of royalties payable under this Agreement based thereon.

4.7 Should LICENSEE fail to make any payment whatsoever due and payable to the College hereunder, the College may, at its sole option, terminate this Agreement as provided in Paragraph 7.2.

4.8 All payments due hereunder are expressed in and shall be paid by check payable in India currency, without deduction of exchange, collection or other charges, to the College, or to the account of the College at such other bank as the College may from time to time designate by notice to LICENSEE.

4.9 In the event that any payment due hereunder is not made when due, the payment shall accrue interest beginning on the tenth day following the due date thereof, calculated at the annual rate of the sum of (a) two percent (2%) plus (b)

the prime interest rate quoted by The Wall Street Journal on the date said payment is due, the interest being compounded on the last day of each calendar quarter, provided, however, that in no event shall said annual interest rate exceed the maximum legal interest rate for corporations. Each such royalty payment when made shall be accompanied by all interest so accrued. Said interest and the payment and acceptance thereof shall not negate or waive the right of the College to seek any other remedy, legal or equitable, to which it may be entitled because of the delinquency of any payment.

5. RECORDS AND INSPECTION

LICENSEE shall maintain or cause to be maintained a true and correct set of records pertaining to the Net Sales of Licensed Products by LICENSEE under this Agreement. During the term of this Agreement and for a period of two (2) years thereafter, LICENSEE agrees to permit an accountant selected and paid by the College and reasonably acceptable to LICENSEE to have access during ordinary business hours to such records as are maintained by LICENSEE as may be necessary, in the opinion of such accountant, to determine the correctness of any report and/or payment made under this Agreement. In the event that the audit reveals an underpayment of royalty by more than five percent (5%), the cost of the audit shall be paid by LICENSEE. If the underpayment is less than five percent (5%) but more than two percent (2%), LICENSEE and the College shall each pay fifty percent (50%) of the cost of the independent audit. Such accountant shall maintain in confidence, and shall not disclose to the College, any information concerning LICENSEE or its operations or properties other than information directly relating to the correctness of such reports and payments.

6. SUBLICENSES

All sublicenses granted by LICENSEE of its rights hereunder shall be subject to the terms of this License Agreement and shall provide for the payment of royalties hereunder at least to the levels specified for payments by LICENSEE to the College in Paragraph 4.2 hereof. LICENSEE shall obtain prior written approval from the College, which shall not be unreasonably withheld, prior to entering into any sublicensing agreement. LICENSEE shall be responsible for its sublicensees and shall not grant any rights which are inconsistent with the rights granted to and obligations of LICENSEE hereunder. Any act or omission of a sublicensee which would be a breach of this License Agreement if performed by LICENSEE shall be deemed to be a breach by LICENSEE of this License Agreement. Each sublicense agreement granted by LICENSEE shall include an audit right by the College of the same scope as provided in Paragraph 5 hereof with respect to LICENSEE. No such sublicense agreement shall contain any provision which would cause it to extend beyond the term of this License Agreement. LICENSEE shall give the College prompt notification of the identify and address of each sublicensee with whom it concludes a sublicense agreement and shall supply the College with a copy of each such sublicense agreement.

7. PATENTS AND INFRINGEMENT

7.1 After the Agreement Date, LICENSEE agrees to pay all costs, incident to the United States and foreign applications, patents and like protection, including all costs incurred for filing, prosecution, issuance and maintenance fees as well as any costs incurred in filling continuations, continuations-in-part, divisionals or related applications and any re-examination or reissue proceedings.

7.2 In the event that LICENSEE decides not to continue prosecution of a patent application to issuance or maintain any United States or foreign patent application or patent on technology within the Patent Rights, LICENSEE shall timely notify the College in writing in order that the College may file United

States and said foreign applications and continue said prosecution or maintenance of such patent applications at its own expense. LICENSEE's right under this Agreement to practice the invention under this patent shall immediately terminate upon the College's assuming said costs. If LICENSEE fails to notify the College in sufficient time for the College to assume the cost, LICENSEE shall be considered in default of this Agreement.

7.3 LICENSEE agrees to keep the College fully informed, at LICENSEE's expense, of prosecutions pursuant to this Section 7 including submitting to the College copies of all official actions and responses thereto; provided, however, the College shall be responsible for any of its expenses including attorney's fees that the College incurs in reviewing and commenting on the information the College received from the LICENSEE. LICENSEE shall consult the College regarding any abandonment of the prosecution of the patents.

7.4 The College agrees to reasonably cooperate with LICENSEE to whatever extent is reasonably necessary to procure patent protection of any rights, including fully agreeing to execute any and all documents to provide LICENSEE the full benefit of the licenses granted herein.

7.5 Each Party shall promptly inform the other of any suspected infringement of any claims in the Patent Rights or misuse, misappropriation, theft or breach of confidence of other proprietary rights in the Subject Technology by a third party, and with respect to such activities as are suspected, LICENSEE shall have the right, but not the obligation, to institute an action for infringement, misuse, misappropriation, theft or breach of confidence of the proprietary rights against such third party. If LICENSEE fails to bring such an action or proceeding within a period of three (3) months after receiving notice or otherwise having knowledge of such infringement, then the College shall have the right, but not the obligation, to prosecute at its own expense any such claim. Should either the College or LICENSEE commence suit under the provisions of

this Paragraph 7.5 and thereafter elect to abandon the same, it shall give timely notice to the other Party who may, if it so desires, continue prosecution of such action or proceeding. All recoveries, whether by judgment, award, decree or settlement, from infringement or misuse of Subject Technology shall be apportioned as follows: the Party bringing the action or proceeding shall first recover an amount equal to two (2) times the costs and expenses incurred by such Party directly related to the prosecution of such action or proceeding and the remainder shall be divided equally between LICENSEE and the College.

7.6 Neither the College nor LICENSEE shall settle any action covered by Paragraph 7.5 without first obtaining the consent of the other Party, which consent will not be unreasonably withheld.

7.7 The College shall not be liable for any losses incurred as the result of an action for infringement brought against LICENSEE as the result of LICENSEE's exercise of any right granted under this Agreement. The decision to defend or not defend shall be in LICENSEE's sole discretion.

8. TERM AND TERMINATION

8.1 Unless earlier terminated as hereinafter provided, this Agreement shall extend for the life of the last to expire patent issued on the Subject Technology and shall then expire automatically, or if no patent issues on the Subject Technology, this Agreement shall continue in full force and effect for a period of ten (10) years from the first commercial sale of Licensed Products by LICENSEE. After such expiration, LICENSEE shall have a perpetual, royalty-free license to the Subject Technology.

8.2 In the event of default or failure by LICENSEE to perform any of the terms, covenants or provisions of this Agreement, LICENSEE shall have thirty (30) days after the giving of written notice of such default by the College to correct such default. If such default is not corrected within the said thirty (30) day

period, the College shall have the right, at its option, to cancel and terminate this Agreement. The failure of the College to exercise such right of termination for non-payment of royalties or otherwise shall not be deemed to be a waiver of any right the College might have, nor shall such failure preclude the College from exercising or enforcing said right upon any subsequent failure by LICENSEE.

8.3 The College shall have the right, at its option, to cancel and terminate this Agreement in the event that LICENSEE shall (i) become involved in insolvency, dissolution, bankruptcy or receivership proceedings affecting the operation of its business or (ii) make an assignment of all or substantially all of its assets for the benefit of creditors, or in the event that (iii) a receiver or trustee is appointed for LICENSEE and LICENSEE shall, after the expiration of thirty (30) days following any of the events enumerated above, have been unable to secure a dismissal, stay or other suspension of such proceedings. In the event of termination of this Agreement all rights to the Subject Technology shall revert to the College.

8.4 At the date of any termination of this Agreement pursuant to Paragraph 8.2 hereof for breach by LICENSEE, or pursuant to Paragraph 8.3 hereof, as of the receipt by LICENSEE of notice of such termination, LICENSEE shall immediately cease using any of the Subject Technology and return all copies of the same to the College; provided, however, that LICENSEE may dispose of any Licensed Products actually in the possession of LICENSEE prior to the Agreement Date of termination, subject to LICENSEE's paying to the College running royalties in accordance with Paragraph 4.2 with respect thereto and otherwise complying with the terms of this Agreement.

8.5 No termination of this Agreement shall constitute a termination or a waiver of any rights of either Party against the other Party accruing at or prior to the

time of such termination. The obligations of Sections 5 and 13 shall survive termination of this Agreement.

9. ASSIGNABILITY

This Agreement shall be binding upon and shall inure to the benefit of the College and its assigns and successors in interest, and shall be binding upon and shall inure to the benefit of LICENSEE and the successor to all or substantially all of its assets or business to which this Agreement relates, but shall not otherwise be assignable or assigned by LICENSEE without prior written approval by the College being first obtained, which approval shall not be unreasonably withheld.

10. GOVERNMENTAL COMPLIANCE

LICENSEE shall at all times during the term of this Agreement and for so long as it shall sell Licensed Products comply and cause its sublicensees to comply with all laws that may control the import, export, manufacture, use, sale, marketing, distribution and other commercial exploitation of Licensed Products or any other activity undertaken pursuant to this Agreement.

11. GOVERNING LAW

This Agreement shall be deemed to be subject to, and have been made under, and shall be construed and interpreted in accordance with the laws of the State of []. This Agreement is expressly acknowledged to be subject to all federal laws including but not limited to the Export Administration Act of India. No conflict-of-laws rule or law that might refer such construction and interpretation to the laws of another state, republic, or country shall be considered.

This Agreement is performable in part in [] County, [], and the Parties mutually agree that personal jurisdiction and venue shall be proper in the state and federal courts situated in []

County, [], and agree that any litigated dispute will be conducted solely in such courts.

12. ADDRESSES

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such Party by first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other Party:

In the case of the College with a copy to:

NAME	NAME
TITLE	TITLE
ADDRESS	ADDRESS

In the case of LICENSEE: With a copy to:

NAME	NAME
TITLE	TITLE
ADDRESS	ADDRESS

13. ADDITIONAL PROVISIONS

13.1 Use of the Institution's Name. LICENSEE agrees that it may not use in any way the name [the "name of Institution"] or any logotypes or symbols associated with the College or the names of any of the scientists or other researchers at the College without the prior written consent of the College.

13.2 Confidentiality. LICENSEE agrees to maintain the Subject Technology in confidence, and to use the same only in accordance with this Agreement. Such obligation of confidentiality shall not apply to information which LICENSEE can demonstrate: (i) was at the time of disclosure in the public domain; (ii) has come into the public domain after disclosure through no fault of LICENSEE; (iii) was known to LICENSEE prior to disclosure thereof by the College; (iv) was lawfully disclosed to LICENSEE by a third party which was not under an obligation of confidence to the College with respect thereto; (v) which LICENSEE can reasonably demonstrate was independently developed by LICENSEE without use of the Subject Technology; or (vi) which LICENSEE shall be compelled to disclose by law or legal process. The foregoing obligation of confidentiality shall survive termination of this Agreement.

13.3 Indemnity. Each Party shall notify the other of any claim, lawsuit or other proceeding related to the Subject Technology. Subject to the following sentence, LICENSEE agrees that it will defend, indemnify and hold harmless the College, its faculty members, scientists, researchers, employees, officers, trustees, directors, and agents and each of them (the "Indemnified Parties"), from and against any and all claims, causes of action, lawsuits or other proceedings filed or otherwise instituted against any of the Indemnified Parties related directly or indirectly to or arising out of the design, process, manufacture, or use by any person or party of the Subject Technology, the Licensed Products or any other embodiment of the Subject Technology even though such claims, causes of action, lawsuits or other proceedings and the costs (including attorney's fees) related thereto result in whole or in part from the negligence of any of the Indemnified Parties. Notwithstanding any provisions herein to the contrary, the College shall indemnify LICENSEE for any claims for injuries to persons or property damage which occur on the College premises or premises under the exclusive control of the College.

LICENSEE will also assume responsibility for all costs and expenses related to such claims and lawsuits for which it is obligated to indemnify the Indemnified Parties pursuant to this Paragraph 13.3, including, but not limited to, the payment of all reasonable attorneys' fees and costs of litigation or other defense.

13.4 Insurance. LICENSEE shall for so long as LICENSEE manufactures, uses or sells any Licensed Product(s), maintain in full force and effect policies of (i) worker's compensation and/or employers' liability insurance within statutory limits, (ii) general liability insurance (with broad form general liability endorsement) with limits of not less than five million rupees (Rs.5,000,000) per occurrence with no annual aggregate and (iii) products liability insurance, with limits of not less than five million rupees (Rs.5,000,000) per occurrence with no annual aggregate. Such coverage(s) shall be purchased from a carrier or carriers deemed acceptable to the College with no annual aggregate and shall name the College as an additional insured. Upon request by the College, LICENSEE shall provide to the College copies of said policies of insurance.

13.5 The College's Disclaimers. Neither The College, nor any of its faculty members, researchers, trustees, officers, employees, directors, or agents assume any responsibility for the manufacture, product specifications, sale or use of the Subject Technology or the Licensed Products which are manufactured by or sold by LICENSEE.

13.6 Independent Contractors. The Parties hereby acknowledge and agree that each is an independent contractor and that neither Party shall be considered to be the agent, representative, master or servant of the other Party for any purpose whatsoever, and that neither Party has any authority to enter into a contract, to assume any obligation or to give warranties or representations on behalf of the other Party. Nothing in this relationship shall be construed to create a relationship of joint venture, partnership, fiduciary or other similar relationship between the Parties.

13.7 DISCLAIMER OF WARRANTY. THE COLLEGE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS OR MERCHANTABILITY, REGARDING OR WITH RESPECT TO THE SUBJECT TECHNOLOGY OR LICENSED PRODUCTS AND THE COLLEGE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, OF THE PATENTABILITY OF THE SUBJECT TECHNOLOGY OR LICENSED PRODUCTS OR OF THE ENFORCEABILITY OF ANY PATENTS ISSUING THEREUPON , IF ANY, OR THAT THE SUBJECT TECHNOLOGY OR LICENSED PRODUCTS ARE OR SHALL BE FREE FROM INFRINGEMENT OF ANY PATENT OR OTHER RIGHTS OF THIRD PARTIES.

13.8 Non-Waiver. The Parties covenant and agree that if a Party fails or neglects for any reason to take advantage of any of the terms provided for the termination of this Agreement or if a Party, having the right to declare this Agreement terminated, shall fail to do so, any such failure or neglect by such Party shall not be a waiver or be deemed or be construed to be a waiver of any cause for the termination of this Agreement subsequently arising, or as a waiver of any of the terms, covenants or conditions of this Agreement or of the performance thereof. None of the terms, covenants and conditions of this Agreement may be waived by a Party except by its written consent.

13.9 Reformation. All Parties hereby agree that neither Party intends to violate any public policy, statutory or common law, rule, regulation, treaty or decision of any government agency or executive body thereof of any country or community or association of countries; that if any word, sentence, paragraph or clause or combination thereof of this Agreement is found, by a court or executive body with judicial powers having jurisdiction over this Agreement or any of its Parties hereto, in a final unappealed order to be in violation of any

such provision in any country or community or association of countries, such words, sentences, paragraphs or clauses or combination shall be inoperative in such country or community or association of countries, and the remainder of this Agreement shall remain binding upon the Parties hereto.

13.10 Force Majeure. No liability hereunder shall result to a Party by reason of delay in performance caused by force majeure, that is circumstances beyond the reasonable control of the Party, including, without limitation, acts of God, fire, flood, war, civil unrest, labor unrest, or shortage of or inability to obtain material as equipment.

13.11 Entire Agreement. The terms and conditions herein constitute the entire agreement between the Parties and shall supersede all previous agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof. No agreement of understanding bearing on this Agreement shall be binding upon either Party hereto unless it shall be in writing and signed by the duly authorized officer or representative of each of the Parties and shall expressly refer to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement in multiple originals by their duly authorized officers and representatives on the respective dates shown below, but effective as of the Agreement Date.

LICENSEE[Name of the Institution]

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____