EXCLUSIVE EXPRESS LICENSE AGREEMENT

BETWEEN

___________________________________________

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

FOR

___________________________________________

UC Case No.________
# UC Davis Express License for Therapeutic Inventions

## TABLE OF CONTENTS

1. DEFINITIONS ...................................................................................................................................... 2
2. GRANT .................................................................................................................................................. 6
3. SUBLICENSES ..................................................................................................................................... 7
4. LICENSE ISSUE FEE/MAINTENANCE FEES ..................................................................................... 9
5. ROYALTIES ........................................................................................................................................ 11
6. DILIGENCE ......................................................................................................................................... 14
7. PROGRESS AND ROYALTY REPORTS ........................................................................................... 18
8. BOOKS AND RECORDS .................................................................................................................... 20
9. LIFE OF THE AGREEMENT ............................................................................................................... 21
10. TERMINATION BY THE REGENTS ............................................................................................... 21
11. TERMINATION BY LICENSEE ....................................................................................................... 22
12. DISPOSITION OF LICENSED PRODUCTS UPON TERMINATION ............................................. 23
13. PATENT PROSECUTION AND MAINTENANCE ........................................................................... 23
14. MARKING ........................................................................................................................................ 25
15. USE OF NAMES AND TRADEMARKS .......................................................................................... 25
16. LIMITED WARRANTIES ................................................................................................................. 25
17. PATENT INFRINGEMENT .............................................................................................................. 27
18. INDEMNIFICATION ........................................................................................................................ 28
19. COMPLIANCE WITH LAWS/EXPORT CONTROLS ...................................................................... 30
20. GOVERNMENT APPROVAL OR REGISTRATION ....................................................................... 31
21. ASSIGNMENT ................................................................................................................................. 31
22. NOTICES ........................................................................................................................................ 32
23. PAYMENTS ..................................................................................................................................... 32
24. WAIVER .......................................................................................................................................... 33
25. CONFIDENTIALITY ........................................................................................................................ 33
26. SEVERABILITY ................................................................................................................................ 35
27. APPLICABLE LAW; VENUE; ATTORNEYS' FEES ........................................................................ 35
28. SCOPE OF AGREEMENT .............................................................................................................. 36

Appendix A, Shareholders’ Agreement
Appendix B, Stock Subscription Agreement
Appendix C, Observer Rights Letter
EXCLUSIVE EXPRESS LICENSE AGREEMENT FOR

UC Case No.__________

This exclusive express license agreement ("Agreement") is effective _______________ ("Effective Date"), by and between (a) The Regents of the University of California ("The Regents"), a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200, acting through UC Davis InnovationAccess, with an address at 1850 Research Park Drive, Suite 100, Davis, California 95618-6153 and (b) ___________________________ ("Licensee"), a __________________ corporation having a principal place of business at ______________________________. The Regents and Licensee will be referred to herein, on occasion, individually as “Party” or collectively as “Parties”.

RECITALS

Whereas, The Regents has an assignment of title to the invention entitled “_________________________” (the “Invention”), as described in The Regents’ Case No. _____, invented by ____________________, Ph.D., employed by the University of California, Davis and to the patents and patent applications under Patent Rights as defined below, which are directed to the Invention;

Whereas, The Regents and Licensee entered into a Confidential Disclosure Agreement (UC Agreement Control No. ________) effective _____________ ("Confidentiality Agreement"), for the purpose of allowing Licensee to evaluate its interest in a license agreement covering the Invention;

Whereas, The Regents and Licensee entered into a Letter Agreement (UC Agreement Control No. ________) effective _____________ and extension thereof effective ___________ ("Letter Agreement"), for the purpose of granting Licensee an exclusive right to negotiate an exclusive license under Patent Rights;
UC Davis Express License for Therapeutic Inventions

Whereas, Licensee has provided The Regents with a commercialization plan for
the Invention in order to allow The Regents to evaluate Licensee’s capabilities;

Whereas, the development of the Invention was sponsored in part by one or
more agencies of the United States Government; The Regents elected to retain title to
the Invention subject to the rights of the United States Government under 35 U.S.C.
200-212 and implementing regulations; and The Regents has granted to the United
States Government a non-exclusive, non-transferable, irrevocable, paid-up license to
practice or have practiced the Invention for or on behalf of the United States
Government throughout the world;

Whereas, Licensee is a “small entity” as defined in 37 C.F.R. 1.27;

Whereas, The Regents and Licensee desire to have the Invention developed and
commercialized so that products resulting therefrom may be available for public use and
benefit;

Whereas, Licensee desires to acquire, and The Regents desires to grant, a
license under Patent Rights to make, use, Sell, offer for Sale, and import products,
methods, and services in accordance with the terms herein; and

Whereas, The Regents has prepared this Agreement between Licensee and The
Regents, and the terms of this Agreement are non-negotiable by the Licensee
(however, The Regents may delete inapplicable provisions and insert fill-in-the-blank
information, at The Regents sole discretion).

Now, therefore, the Parties agree as follows:

1. DEFINITIONS

1.1 “Affiliate” of Licensee (or of a Sublicensee, respectively) means any entity that,
as of the applicable point in time during the term of this Agreement, directly or
indirectly Controls Licensee (or a Sublicensee, respectively), is Controlled by
Licensee (or a Sublicensee, respectively), or is under common Control with
UC Davis Express License for Therapeutic Inventions

Licensee (or a Sublicensee, respectively). “Control” means (a) having the actual, present capacity to elect a majority of the directors of such entity, (b) having the power to direct at least fifty percent (50%) of the voting rights entitled to elect directors of such entity, or (c) in any country where the local law will not permit foreign equity participation of a majority of the outstanding stock or voting rights of such entity, the ownership or control, directly or indirectly, of the maximum percentage of such outstanding stock or voting rights permitted by local law.

1.2 “Compassionate Use” (expanded access) means the use of an investigational drug outside of a clinical trial to treat a patient with a serious or immediately life-threatening disease or condition who has no comparable or satisfactory alternative treatment options.

1.3 “Combination Product” means any product which is a Licensed Product (as defined below) and contains other product(s) that is not an excipient, diluent, adjuvant, buffer and the like and (i) does not use Invention or Patent Rights (as defined below); (ii) the Sale, use, or import by itself does not contribute to or induce the infringement of Patent Rights; (iii) is Sold separately by Licensee, its Sublicensee (as defined below) or an Affiliate; and (iv) enhances the market price of the final product(s) Sold, used, or imported by Licensee, its Sublicensee, or an Affiliate.

1.4 “Cost Based Price” means, in respect of each Licensed Product, a price not exceeding that which fairly reflects the direct cost of manufacture of such Licensed Product plus a typical margin for a generic pharmaceutical product for the respective market.

1.5 “Developing Countries” means, within the Licensed Territory, the countries designated by the United Nations as Least Developed Countries, as such list may change from time to time, or any subsequent list that may be mutually agreed to by The Regents and Licensee. For example, attached hereto as Appendix A is a list of Least Developed Countries as of the Effective Date.

1.6 “Humanitarian Purposes” means (a) the use of Licensed Products, Licensed Methods, or Licensed Services for research and development purposes by any
organization or other third party, anywhere in the world that has the express purpose of developing the Licensed Products for use in a Developing Country, and (b) the use of the Licensed Products, Licensed Methods, or Licensed Services by any organization or other third party for commercial purposes in a Developing Country.

1.7 “Indication” means a clinical condition for a particular mammal for which use of a Licensed Product is being investigated for regulatory approval by the United States Food and Drug Administration (“FDA”) (via, for example, NDA, BLA, NADA, etc.), equivalent U.S. agency for testing and approving veterinary products, or the foreign equivalent of such applications. Each Indication under development herein shall be sequentially identified as a “First Indication”, “Second Indication”, and so on, with the understanding that each Indication so identified is distinct from every other Indication under development or developed.

1.8 “Licensed Field of Use” means vaccines, drugs, therapeutics, and prophylactic to prevent or treat disease in humans and/or in non-human animals.

1.9 “Licensed Method” means any process or method the use or practice of which, (a) but for the license granted pursuant to this Agreement, would infringe, or contribute to or induce the infringement of a Valid Claim of any issued, unexpired patent under Patent Rights, or (b) is covered by a claim in a pending patent application under Patent Rights. As used in Subparagraph (b) of this Paragraph 1.9, “covered by a claim in a pending patent application” means that such use or practice would, but for the license granted pursuant to this Agreement, constitute contributory infringement, or inducement of infringement, of such claim if such claim were issued.

1.10 “Licensed Product” means any product, material, kit, or other article of manufacture or composition of matter, the making, use, Sale, offer for Sale, or import of which (a) but for the license granted pursuant to this Agreement, would infringe, or contribute to or induce the infringement of, a Valid Claim of any issued, unexpired patent under Patent Rights, or (b) is covered by a claim in a pending patent application under Patent Rights. As used in Subparagraph (b) of this Paragraph 1.10, “covered by a claim in a pending patent application” means that such making, use, Sale, offer for Sale, or import would, but for the license
granted pursuant to this Agreement, constitute infringement, contributory infringement, or inducement of infringement, of such claim if such claim were issued.

1.11 “Licensed Service” means a service provided using Licensed Products or Licensed Methods, including, without limitation, any such service provided in the form of contract research or other research performed by Licensee on behalf of a third party.

1.12 “Licensed Territory” means the United States and its territories and possessions, and any foreign countries where Patent Rights exist.

1.13 “Net Sales” means the gross invoice price charged by, and the value of non-cash consideration owed to, Licensee or a Sublicensee for Sales of Licensed Method, Licensed Products and Licensed Services, less the sum of the following actual and customary deductions to the extent applicable: (a) cash, trade or quantity discounts; (b) sales, use, tariff, import or export duties, or other excise taxes, when included in Sales, but not value-added taxes assessed on (or income taxes derived from) such Sales; and (c) allowances or credits to customers because of rejections or returns. For purposes of calculating Net Sales, a Sale by Licensee to a Sublicensee for end use by the Sublicensee will be treated as a Sale at Licensee’s list price.

1.14 “Patent Rights” means The Regents' rights in the claims of the following:
______________________, entitled “_______________________________,”
and “____________________________,” filed on ______________________
and __________________, respectively, by Drs.
___________________________ and assigned to The Regents; continuing applications thereof, including divisions, substitutions, extensions and continuation-in-part applications (only to the extent, however, that claims in the continuation-in-part applications are entitled to the priority filing date of the applicable above-listed parent patent application); patents issuing on said applications or continuing applications; reissues of such patents; and corresponding foreign patents or applications of any of the foregoing.
UC Davis Express License for Therapeutic Inventions

1.15 “Public Sector” shall mean (A) agencies of the United Nations and the World Health Organization; (B) organizations which comprise the International Committee of the Red Cross and Red Crescent; (C) the following international charitable and funding agencies (also known as Non-Governmental Agencies): Oxfam, Medecins Sans Frontieres, the Bill and Melinda Gates Foundation, and the Rockefeller Foundation; and (D) any other accredited charitable or philanthropic organization that both The Regents and Licensee may agree to in writing.

1.16 “Sale” means the act of selling, leasing, or otherwise transferring or providing Licensed Products and Licensed Services for any consideration. Correspondingly, “Sell” means to make or cause to be made a Sale, and “Sold” means to have made or caused to be made a Sale.

1.17 “Sublicense” means a sublicense under this Agreement.

1.18 “Sublicensee” means a sublicensee under this Agreement.

1.19 “Sublicense Agreement” means a sublicense agreement under this Agreement.

1.20 “Therapeutic Candidate” is a Licensed Product designated by Licensee for clinical development for an Indication within the Licensed Field of Use, for which preliminary pharmacology studies, including art-accepted in vivo experimental models of the specified condition, have been completed. For clarification, a Therapeutic Candidate may be a vaccine, drug, therapeutic, or prophylactic.

1.21 “Valid Claim” means a claim of a patent in any country, which claim (a) has not expired and (b) has not been held to be invalid by a final judgment of a court of competent jurisdiction from which no appeal can be or is taken.

2. GRANT

2.1 Subject to the limitations set forth in this Agreement, including, without limitation, the license granted to the United States Government referred to in the Recitals above and the rights reserved in Paragraph 2.2, The Regents hereby grants to
Licensee an exclusive license under Patent Rights, in the Licensed Field of Use in the Licensed Territory, (a) to make, use, offer for Sale, import, and Sell Licensed Products and Licensed Services, and (b) to practice Licensed Methods.

2.2 The Regents reserves the right to do any one or more of the following:

(a) publish any technical data resulting from research performed by The Regents relating to the Invention;

(b) make, use, and import the Invention and associated technology for educational and research purposes;

(c) practice Patent Rights for educational and research purposes, including in order to make, use, and import products, and in order to use and practice methods;

(d) make, use, and import the Invention and associated technology for Compassionate Use; and

(e) allow other educational and non-profit institutions to do any one or more of the activities of Subparagraphs (a), (b), (c), and (d) of this Paragraph 2.2, for educational and research purposes.

2.3 Licensee will promptly inform The Regents (a) of any change in Licensee’s small entity status, as defined in 37 C.F.R. 1.27, and (b) of any Sublicense to an entity which does not have small entity status, as defined in 37 C.F.R. 1.27.

2.4 To the extent required by 35 U.S.C. 204 and implementing regulations, any Licensed Products which are sold in the United States will be substantially manufactured in the United States.

3. SUBLICENSES

3.1 The Regents hereby further grants to Licensee the right to grant to Affiliates of Licensee, to Affiliates of Sublicensees, and to third parties a Sublicense under the rights granted to Licensee hereunder, provided that Licensee has exclusive rights under this Agreement at the time of the grant of the Sublicense. Every Sublicense will include:
(a) a statement setting forth the date upon which Licensee's exclusive license rights hereunder will expire;

(b) a provision requiring the performance by the Sublicensee of all the obligations owed by Licensee to The Regents (and, if applicable, the United States Government) under this Agreement other than those rights and obligations specified in Article 4 (Fees/Equity) and Paragraph 5.4 (Minimum Annual Royalty);

(c) a provision requiring payment of royalties to Licensee in an amount sufficient to permit Licensee to meet Licensee's royalty obligations to The Regents at the rates and bases set forth in this Agreement;

(d) a prohibition on the grant of further Sublicenses; and

(e) a provision imposing on the Sublicensee the same obligation of indemnification which Licensee has under Article 18 (Indemnification).

3.2 Licensee will pay to The Regents fifteen percent (15%) of any cash consideration, and of the cash equivalent of all other consideration, which is due to Licensee for the grant of rights under a Sublicense, excluding payments due to Licensee as a royalty based on Sales by the Sublicensee. Payment owed to The Regents under this Paragraph 3.2 is in addition to payments owed by Licensee to The Regents as Earned Royalties under Paragraphs 5.1 and 5.2 below based on Sales by the Sublicensee.

3.3 Licensee shall not receive, or agree to receive, anything of value in lieu of cash as consideration from a third party under a Sublicense granted pursuant to Paragraph 3.1 without the express written consent of The Regents.

3.3 Within thirty (30) days of execution of each Sublicense Agreement, or amendment thereof, Licensee will inform The Regents of such executed Sublicense Agreement or amendment, and Licensee will furnish to The Regents a copy of such Sublicense Agreement or amendment.

3.4 Affiliates of Licensee and Affiliates of Sublicensees will have no licenses under Patent Rights except as granted by Licensee in a Sublicense pursuant to this Agreement.
3.5 For the purposes of this Agreement, the operations of Sublicensees under their respective Sublicense Agreements will be deemed to be the operations of Licensee, for which Licensee will be responsible.

3.6 Licensee will collect and guarantee payment of all monies and other consideration due The Regents under this Agreement from Sublicensees.

3.7 Upon termination of this Agreement for any reason, at The Regents' discretion, all Sublicenses that are granted by Licensee pursuant to this Agreement, where the Sublicensee is in compliance with its Sublicense Agreement as of the date of such termination, will remain in effect and will be assigned to The Regents, except that The Regents will not be bound to perform any obligations set forth in any Sublicenses that extend beyond the obligations of The Regents set forth in this Agreement. Any assignment of a Sublicense is subject to the Sublicensee promptly agreeing in writing to be bound by the terms of this Agreement, including, in lieu of the payment obligations under the applicable Sublicense, but not necessarily limited to, payment to The Regents of fees, royalties, and reimbursements required under this Agreement.

4. FEES/EQUITY

4.1 Licensee will pay to The Regents a non-creditable, non-refundable license issue fee ("License Issue Fee") in accordance with the following schedule due within thirty (30) days after the Effective Date:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Data Possessed at Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) $50,000</td>
<td>The Regents possesses no more than <em>in vitro</em> data;</td>
</tr>
<tr>
<td>(b) $75,000</td>
<td>The Regents possesses no more than <em>in vivo</em> data; or</td>
</tr>
<tr>
<td>(c) $100,000</td>
<td>The Regents possesses human data.</td>
</tr>
</tbody>
</table>

The License Issue Fee is non-refundable and not an advance against royalties or other payments due under this Agreement. The duty to pay the License Issue Fee will survive any expiration or termination of this Agreement.
4.2 However, partially in lieu of cash payment for the License Issue Fee, as partial consideration for all the rights and licenses granted to the Licensee, the Licensee will provide and deliver directly to The Regents ______________ (__________) shares of its stock, the total of shares delivered to The Regents which represents percent (____%) of all shares of Licensee’s capital stock as of the Effective Date (the “Equity”). Licensee will report payment of its capital stock pursuant to this section to the applicable taxing authorities as required by applicable law stating that capital stock of the Licensee was paid to The Regents and only The Regents. The Regents agree that any obligation of The Regents to compensate or otherwise share consideration received for grants of rights and/or licenses of the Inventions (the “Inventor’s Share”) will be and remain the sole obligation of The Regents. The Regents’ receipt of Equity is subject to The Regents’ Office of the President approval. If such approval is not obtained, Licensee and The Regents will negotiate alternate consideration.

4.3 The Regents ownership of the Equity shall be in accordance with and subject to the terms of the Shareholders’ Agreement made by and between Licensee and The Regents and Stock Subscription Agreement by and between Licensee and The Regents, which are attached hereto as Appendix B and Appendix C, respectively, and incorporated herein.

4.4 Licensee will deliver the Equity to The Regents within thirty (30) days of the Effective Date. Licensee will grant The Regents, so long as The Regents holds any Equity, Observer Rights as defined in Licensee’s letter to The Regents attached hereto as Appendix D, and incorporated herein. The Equity is non-refundable and not an advance against royalties or other payments due under this Agreement. Licensee and The Regents have entered into a shareholder agreement outlining the rights of The Regents as a shareholder that is no less favorable than to the founders of Licensee and is acceptable to The Regents, and such rights include a “piggyback registration” right and other customary rights of a shareholder.

4.5 Licensee will pay to The Regents the following milestone fees according to the following schedule:
(a) Twenty-five Thousand Dollars ($25,000) due upon submission of an IND application to the FDA pursuant to Paragraph 6.2 of Article 6 (Diligence);

(b) One Hundred Thousand Dollars ($100,000) due upon initiation of Phase II clinical trial pursuant to Paragraph 6.2 of Article 6 (Diligence);

(c) Five Hundred Thousand Dollars ($500,000) due upon initiation of Phase III clinical trial pursuant to Paragraph 6.2 of Article 6 (Diligence);

(d) Two Million Dollars ($2,000,000) due upon receiving FDA approval pursuant to Paragraph 6.2 of Article 6 (Diligence);

(e) One Million Dollars ($1,000,000) due upon receiving EMEA approval pursuant to Paragraph 6.2 of Article 6 (Diligence), if applicable; and

(f) One Million Dollars ($1,000,000) due upon receiving regulatory approval in Japan pursuant to Paragraph 6.2 of Article 6 (Diligence), if applicable.

For the sake of clarity, should two phases of clinical trials, each of which would individually trigger a milestone payment, be combined, then both payments are due no later than the initiation of the combined trial. For example, if Phase I and Phase II trials are combined, then both (b) and (c) above are due no later than initiation of the combined trial. Also, should accelerated approval occur, then milestone payments associated with Phase I or Phase II clinical trials that are not yet paid are due no later than FDA approval. For avoidance of doubt, these amounts are due for each Therapeutic Candidate.

5. ROYALTIES

5.1 Licensee will pay to The Regents earned royalties (“Earned Royalties”) at the rate of one and one-half percent (1.5%) of the Net Sales of all Licensed Products, Licensed Methods, and Licensed Services, except that Earned Royalties shall not be due to The Regents on Net Sales of (i) Licensed Products in Developing Countries, or (ii) Licensed Products to the Public Sector that are providing Licensed Products at a Cost Based Price in Developing Countries; and provided however, that the Earned Royalties due on Net Sales of Combination Product by Licensee and/or its Affiliate(s) shall be calculated as below:
• Earned Royalties due The Regents = \([A/(A+B)] \times \text{royalty rate on Net Sales of the Licensed Products} \times \text{Net Sales of Combination Product}\), where:

(a) \(A\) is the separately listed Sale price of the Licensed Product; and

(b) \(B\) is the separately listed Sale prices of the individual products, respectively, that satisfied the requirements outlined in Paragraph 1.3 (“Combination Product”). For any products in \(B\) for which Licensee has reduced its Earned Royalties payable to The Regents under Paragraph 5.2, this provision shall not apply.

5.2 In the event Licensee is required to pay royalties to one or more third parties for patent rights necessary to make, use, or Sell Licensed Products, Licensee may deduct $0.50 from the Earned Royalties payable to The Regents for every $1.00 Licensee actually pays to said third parties; provided, however, in no event shall the amount payable to The Regents be less than 50% of the amount otherwise due.

5.3 Earned Royalties accruing to The Regents will be paid to The Regents, to be accompanied by the corresponding royalty report as required in Paragraph 7.4, quarterly within sixty (60) days after the end of each calendar quarter as follows: May 31 (for first quarter), August 31 (for second quarter), November 30 (for third quarter), and February 28 (for fourth quarter).

5.4 Beginning in the calendar year of the third anniversary of the Effective Date and if the total Earned Royalties paid by Licensee to The Regents on Net Sales of Licensed Products, Licensed Methods, or Licensed Services under Paragraphs 3.2, 5.1, and 5.2 in any such year cumulatively amounts to less than the following schedule:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Effective Date Anniversary</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15,000</td>
<td>beginning the calendar year of the third anniversary of the Effective Date;</td>
</tr>
<tr>
<td>$30,000</td>
<td>beginning the calendar year of the sixth anniversary of the Effective Date; and</td>
</tr>
</tbody>
</table>
(c) $150,000 beginning the calendar year of the ninth anniversary of the Effective Date;

(“Minimum Annual Royalty”), Licensee will pay to The Regents a Minimum Annual Royalty on or before February 28 following the last quarter of such year the difference between amount noted above and the total Earned Royalties paid by Licensee for such year under Paragraphs 3.2, 5.1, and 5.2.

5.5 All payments due The Regents will be payable in United States dollars. When Licensed Products and Licensed Services are Sold for monies other than United States dollars, Earned Royalties will first be determined in the foreign currency of the country in which the Sale was made and then converted into equivalent United States dollars. The exchange rate will be that rate quoted in the Wall Street Journal on the last business day of the reporting period.

5.6 Earned Royalty payments due to The Regents for Sales occurring in any country outside the United States will not be reduced by any taxes, fees, or other charges imposed by the government of such country on the remittance of royalty income. Licensee will also be responsible for all bank transfer charges for payments to The Regents.

5.7 Licensee will make all payments under this Agreement either by check or electronic transfer, payable to “The Regents of the University of California” and Licensee will forward such payments to The Regents at the address shown in Paragraph 23.1.

5.8 If any patent or patent application, or any claim thereof, included within Patent Rights expires, or is held invalid or unpatentable in a final decision by a court of competent jurisdiction and last resort and from which no appeal has been or can be taken, all obligations to pay Earned Royalties based on such patent, patent application, or claim will cease as of the date of such expiration or final decision. Licensee will not, however, be relieved from paying any Earned Royalties that accrued before such expiration or final decision or that are based on another patent, patent application, or claim within Patent Rights which is not expired, or which is not held invalid or unpatentable in such final decision.
UC Davis Express License for Therapeutic Inventions

5.9 No Earned Royalties will be collected or paid hereunder on Sales to, or Sales for use by, the United States Government. Licensee will reduce the amount charged for such Sales by an amount equal to the Earned Royalties otherwise due The Regents as provided herein.

6. DILIGENCE

6.1 Licensee will diligently proceed with the development, manufacture, marketing, and Sale of Licensed Products, Licensed Methods, and Licensed Services in quantities sufficient to meet the market demand.

6.2 In addition to Licensee’s obligations under Paragraph 6.1, Licensee will accomplish the following milestones in Licensee’s activities under this Agreement:

(a) diligently proceed with the development, manufacture and Sale of Licensed Products;

(b) provide to The Regents a schedule for the recruitment of key management positions by ________________;

(c) have a corporate management team in place by ________;

(d) Licensee will have $X,000,000 of available non-contingent, operating capital to proceed with the exploration and development of Licensed Product by ________________. Capital will be from a third party who may or may not be an investor in Licensee and unused capital will be on deposit in a financial institutional acceptable to both The Regents and Licensee;

(e) annually spend not less than ______ Dollars (US$_______) for the development of Licensed Products for humans during the first ___ years of this Agreement. Licensee may, at its sole option, fund the research of any one of the Inventors and credit the amount of such funding actually paid to The Regents against its obligation under this paragraph;

(f) annually spend not less than ______ Dollars (US$_______) for the development of Licensed Products for mammals other than humans during the first ___ years of this Agreement. Licensee may, at its sole option, fund the research of any one of the Inventors and credit the amount of such funding actually paid to The Regents against its obligation under this paragraph;
(g) if the Licensed Field of Use includes veterinary Therapeutic Candidate, for one (1) non-human therapeutic Licensed Product:

(i) submit to the appropriate U.S. regulatory agency the proper forms, documentation, and protocols necessary to open a file for a product license for a Licensed Product in the form of an investigational new animal drug ("INAD") by ________________;

(ii) submit a new animal drug application ("NADA") for a Licensed Product to the appropriate U.S. regulatory agency for approval by ________________; and

(iii) within six (6) months of receiving formal, written regulatory approval, but no later than _______________, commence marketing of a Licensed Product in the United States;

And

(h) if the Licensed Field of Use includes human Therapeutic Candidate, for one (1) human therapeutic Licensed Product:

(i) submit an investigational new drug ("IND") application covering a Licensed Product to the FDA by ________________;

(ii) commence Phase I clinical trials for a Licensed Product within twelve (12) months of IND submission, but no later than ________________;

(iii) commence FDA-approved Phase II clinical trials for a Licensed Product by ________________;

(iv) receive marketing approval from the FDA for a Licensed Product by ________________; and

(v) fill the market demand for Licensed Products following commencement of marketing at any time during the exclusive period of this Agreement beginning no later than ________________; and

(i) first commercial Sale of human therapeutic Licensed Product by ____________;

(j) first commercial Sale of veterinary non-human therapeutic Licensed Product by ____________;
(k) Licensee, Affiliate, or a Sublicensee must Sell at least ______ (___) Licensed Product every six (6) months after the date of first Sale of a Licensed Product;

(l) obtain all necessary governmental approvals for the manufacture, use and Sale of Licensed Products; and

(m) Licensee agrees to consider, at its sole option, means to address third world access to Licensed Products on a compassionate basis. In the event that, during the term of this Agreement, any U.S. law or regulation is passed in the U.S. which obliges The Regents and/or the Licensee to supply Licensed Products to third world countries on a compassionate use or similar basis as a result of the funding of the Patent Rights by U.S. governmental agencies or foundations, The Regents and Licensee will negotiate in good faith how to comply with such requirement in the most effective way.

6.3 If Licensee is unable to meet any of its diligence obligations set forth in Paragraphs 6.1 and 6.2, then The Regents will so notify Licensee of failure to perform. Licensee will have the right and option to extend the target date of any such diligence obligation for a period of six (6) months upon the payment of five thousand dollars ($5,000) within the thirty (30)-day period prior to the date to be extended, for each such extension option exercised by Licensee. Licensee may further extend the target date of any diligence obligation for an additional six (6) months upon payment of an additional five thousand dollars ($5,000). Additional extensions may be granted only by written agreement of the Parties. These payments are in addition to any other payments owed under this Agreement. Should Licensee opt not to extend the obligation or fail to meet the obligation by the extended target date, then The Regents will have the right and option either to terminate this Agreement or to reduce Licensee’s exclusive license to a non-exclusive license. This right, if exercised by The Regents, supersedes the rights granted in Article 2 (Grant).

6.4 To exercise either the right to terminate this Agreement or to reduce the license to a non-exclusive license for lack of diligence under Paragraph 6.1 or 6.2, The Regents will give Licensee written notice of the deficiency. Licensee thereafter will have sixty (60) days to cure the deficiency. If The Regents has not received satisfactory written evidence that the deficiency has been cured by the end of the sixty (60)-day period, then The Regents may, at its option, either terminate the Agreement or reduce Licensee's exclusive license to a non-exclusive license by
6.5 At any time after three (3) or more years from the Effective Date, if (1) Licensee fails to show it has initiated and is maintaining an active development program for identifying or developing a Therapeutic Candidate for treating or preventing an Indication in the Licensed Field of Use, (2) Licensee has a competing drug development program for a clinical condition using a proprietary compound in the Licensed Field of Use, and (3) The Regents receives a bona fide inquiry from a third party with a bona fide financial plan that would enable the development of a product for that Indication within the Licensed Field of Use, then The Regents shall give notice to Licensee. Licensee shall, within one hundred eighty (180) days, either (i) complete a Sublicense grant to the third party of a scope that would permit the third party to develop and commercialize a Licensed Product for that Indication of interest to the third party as set forth in the bona fide financial plan, or (ii) shall provide The Regents a detailed plan for the development of a Licensed Product for that Indication and shall begin actual implementation of, and maintain, such plan immediately. If Licensee does not either (i) complete a Sublicense grant or (ii) demonstrate implementation of said development plan within one hundred eighty (180) days of receipt of such notice from The Regents, then The Regents shall have the right to exclude such Indication from the Licensed Field of Use. The provisions of this Article 6 shall not be applicable to any third party that proposes to develop a product for an Indication wherein the proposed product is the same active pharmaceutical ingredient as a Licensed Product or Therapeutic Candidate under active development or commercialization by Licensee for a different Indication.

6.6 Notwithstanding any other provision of this Agreement, Licensee’s commercial use of the Patent Rights to make, use, Sell, offer for Sale, and import Licensed Products in Developing Countries for Humanitarian Purposes will be royalty free and the Licensee will be required to provide to any requesting Developing Country the Licensed Products at either no cost or at cost once Licensee has achieved commercial Sales of the Licensed Products.
Notwithstanding any other provision of this Agreement, should Licensee not be able or willing to provide Licensed Products in a reasonable time to Developing Countries as provided in this Paragraph 6.6, The Regents hereby reserves the right to license the Patent Rights to any third parties for solely Humanitarian Purposes. Such licenses for Humanitarian Purposes will expressly exclude the right of the third party licensee to export or sell Licensed Products from Developing Countries into a market outside of the Developing Countries where Licensee has introduced or will introduce in the immediate future a Licensed Product and where Patent Rights exist. In any such license, the third-party licensee’s commercial use of the Patent Rights to make, use, Sell, offer for Sale, and import Licensed Products in Developing Countries for Humanitarian Purposes will be royalty free and the third party licensee will be required to provide to any requesting Developing Country the Licensed Products at either no cost or at cost. For the avoidance of doubt, the third-party licensee may be permitted to export Licensed Products from the Developing Country of origin to other Developing Countries and all other countries mutually agreed to by The Regents and Licensee.

7. PROGRESS AND ROYALTY REPORTS

7.1 For the six (6)-month period beginning ________________, within sixty (60) days of each June 30 and December 31 following the end of such six (6)-month period, Licensee will submit to The Regents a semi-annual progress report covering Licensee’s activities related to the development and testing of Licensed Products, Licensed Services, and Licensed Methods, including the obtaining of necessary governmental approvals, if any, for marketing in the United States. These progress reports will be made until the first Sale occurs in the United States.

7.2 Each progress report will be a sufficiently detailed summary of activities of Licensee and any Sublicensees so that The Regents may evaluate and determine Licensee’s progress in the development of Licensed Products, Licensed Services, and Licensed Methods, and in meeting Licensee’s diligence obligations under Article 6, and will include (but not be limited to) the following: (a) summary of work completed and in progress; (b) current schedule of
anticipated events and milestones, including diligence milestones under Paragraph 6.2; (c) anticipated market introduction dates for the Licensed Territory; and (d) Sublicensees' activities during the reporting period.

7.3 In Licensee's progress report immediately subsequent to the first Sale of a Licensed Product, Licensed Method, or a Licensed Service by Licensee or by a Sublicensee, Licensee will report the date of such first Sale.

7.4 After the first Sale of a Licensed Product, Licensed Method, or a Licensed Service, Licensee will make quarterly royalty reports to The Regents, to be accompanied by the corresponding Earned Royalty payment as required in Paragraph 5.3, within sixty (60) days after the quarters ending March 31, June 30, September 30, and December 31, of each year. Each such royalty report will include at least the following:

(a) the volume of Licensed Products, Licensed Methods, and Licensed Services Sold, including number of Licensed Products, Licensed Methods, and Licensed Services Sold in Developing Countries and to the Public Sector, described in Paragraph 5.1;

(b) gross revenue from Sale of Licensed Products, Licensed Methods, and Licensed Services;

(c) Net Sales pursuant to Paragraph 1.13, and the calculation of Net Sales, including all deductions taken, so that The Regents can confirm the calculation;

(d) total Earned Royalties due The Regents;

(e) Sublicense fees and Earned Royalties received during the most recently completed calendar quarter in U.S. dollars, payable with respect thereto;

(f) the method used to calculate the Earned Royalties;

(g) names and addresses of Sublicensees for any new Sublicenses entered into during the reporting quarter; and

(h) If Patent Rights includes more than one patent or patent application, and UC inventorship differs on any of such Patent Rights, reports should indicate which patent or patent application covers each Licensed Product and Licensed Service Sold.
7.5 If no Sales of Licensed Products, Licensed Methods, or Licensed Services have occurred during the report period, the royalty report will contain a statement to this effect.

7.6 Licensee acknowledges the important value that timely reporting provides in The Regents’ effective management of its rights under this Agreement. Licensee further acknowledges that failure to render the reports required under this Article 7 may harm The Regents’ ability to manage its rights under this Agreement. As such, reports not submitted by the required due date under this Article 7 will cause to be due by Licensee to The Regents a late reporting fee of Five Hundred Dollars ($500.00) per month until such report, compliant with the requirements of this Article 7, is received by The Regents. Payment of this fee is subject to Articles 5, 7, and 23 herein.

8. BOOKS AND RECORDS

8.1 Licensee will keep full, true, and accurate books of accounts containing all particulars that may be necessary for the purpose of showing (a) the amount of Earned Royalties payable to The Regents, and (b) Licensee’s compliance with obligations under this Agreement. For five (5) years following the end of the calendar year to which they pertain, said books and the supporting data will be open, during normal business hours upon reasonable notice, to the inspection and audit by representatives of The Regents for the purpose of verifying Licensee's royalty reports or compliance in other respects with this Agreement. Such representatives will be required to hold all information in confidence except as necessary to communicate Licensee's non-compliance with this Agreement to The Regents.

8.2 The fees and expenses of The Regents' representatives performing such an examination will be borne by The Regents, provided that if an error in underpaid royalties to The Regents of more than five percent (5%) of the total Earned Royalties due for any year is discovered, then the fees and expenses of these representatives in conducting such examination will be borne by Licensee.
9. LIFE OF THE AGREEMENT

9.1 Unless otherwise terminated by operation of law or by acts of the Parties in accordance with the terms of this Agreement, this Agreement will be in effect from the Effective Date and will remain in effect for the life of the last-to-expire patent or last-to-be-abandoned patent application licensed under this Agreement, whichever is later.

9.2 Any termination of this Agreement will not affect the rights and obligations set forth in the following:

- Article 1 Definitions
- Article 3 Sublicenses
- Paragraph 4.1 License Issue Fee
- Article 8 Books and Records
- Article 9 Life of the Agreement
- Article 12 Disposition of Licensed Products Upon Termination
- Article 15 Use of Names and Trademarks
- Article 16 Limited Warranties
- Article 18 Indemnification
- Article 22 Notices
- Article 23 Payments
- Article 25 Confidentiality
- Article 28 Applicable Law; Venue; Attorneys’ Fees
- Article 29 Scope of Agreement

9.3 Any termination of this Agreement will not relieve Licensee of Licensee’s obligation to pay any payment due or owing at the time of such termination and will not relieve any obligations, owed by either Party to the other Party, established prior to termination.

10. TERMINATION BY THE REGENTS
10.1 If Licensee should violate or fail to perform any term of this Agreement, then The Regents may give written notice of such default (“Notice of Default”) to Licensee. If Licensee should fail to repair such default within sixty (60) days of the effective date of such notice, The Regents will have the right to terminate this Agreement and the licenses herein by a second written notice (“Notice of Termination”) to Licensee. If a Notice of Termination is sent to Licensee, this Agreement will automatically terminate on the effective date of such notice. Such termination will not relieve Licensee of Licensee’s obligation to pay any royalty, license fees, or Patent Costs (as defined below) owing at the time of such termination and will not impair any accrued rights of The Regents. These notices will be subject to Article 22 (Notices).

10.2 Notwithstanding Paragraph 10.1, this Agreement will terminate immediately, if Licensee files a claim including in any way the assertion that any portion of Patent Rights is invalid or unenforceable, where the filing of such claim is by Licensee, by a third party on behalf of Licensee, or by a third party at the urging of Licensee.

10.3 Notwithstanding Paragraph 10.1, this Agreement will terminate immediately in the event of Licensee’s insolvency or the filing of a petition for relief under the United States Bankruptcy Code by or against Licensee as a debtor or alleged debtor.

11. TERMINATION BY LICENSEE

11.1 Licensee will have the right at any time to terminate this Agreement in whole or as to any portion of Patent Rights by giving notice in writing to The Regents. Such notice of termination will be subject to Article 22 (Notices) and such termination of this Agreement in whole or in part will be effective ninety (90) days after the effective date of such notice of termination.

11.2 Any termination pursuant to Paragraph 11.1 will not relieve Licensee of any obligation or liability accrued hereunder prior to such termination or rescind anything done by Licensee or any payments made to The Regents hereunder prior to the time such termination becomes effective, and such termination will
UC Davis Express License for Therapeutic Inventions

not affect in any manner any rights of The Regents arising under this Agreement prior to such termination.

12. DISPOSITION OF LICENSED PRODUCTS UPON TERMINATION

12.1 Upon termination of this Agreement, for a period of one hundred and twenty (120) days after the date of termination, Licensee may complete the making of, and may Sell, any partially made Licensed Products, and Licensee may continue the practice of Licensed Methods only to the extent necessary to do the foregoing; provided that all such Sales will be subject to the terms of this Agreement including, but not limited to, the payment of royalties at the rate and at the time provided herein and the rendering of reports thereon.

13. PATENT PROSECUTION AND MAINTENANCE

13.1 The Regents will prosecute and maintain the patent applications and patents under Patent Rights, subject to Licensee’s reimbursement of The Regents’ out-of-pocket costs under Paragraph 13.3. All patent applications and patents under Patent Rights will be held in the name of The Regents. The Regents will have sole responsibility for retaining and instructing patent counsel. The Regents will promptly provide Licensee with copies of all official patent office correspondence, and Licensee agrees to keep this documentation confidential in accordance with Article 25 (Confidentiality). Licensee may comment upon such documentation, and The Regents will take such comments into account, provided that if Licensee has not commented upon such documentation in reasonable time for The Regents to sufficiently consider Licensee’s comments prior to the deadline for filing a response with the relevant government patent office, The Regents will be free to respond appropriately without consideration of Licensee’s comments.

13.2 The Regents will use reasonable efforts to prepare or amend any patent application within Patent Rights to include claims reasonably requested by Licensee to protect the Licensed Products or Licensed Services contemplated to be Sold or Licensed Methods to be practiced under this Agreement.
13.3 Subject to Paragraph 13.5, all costs for preparing, filing, prosecuting, and maintaining all patent applications and patents under Patent Rights (including, without limitation, the cost of interferences, reexaminations, oppositions, post-grant review, inter partes review, supplemental examinations, and other patent office administrative proceedings, and their appeals) (“Patent Costs”), incurred after the Effective Date, which have not been previously reimbursed to The Regents, will be paid by Licensee, so long as the licenses granted to Licensee herein are exclusive. Such payments by Licensee for Patent Costs are due within thirty (30) days after receipt by Licensee of invoice from The Regents. In The Regents’ discretion, for any anticipated Patent Costs (“Anticipated Patent Costs”), The Regents will inform Licensee no less than thirty (30) days prior to the date when Anticipated Patent Costs are incurred. The Regents may, at its discretion and in accordance with Paragraph 13.5, require full advance payment of Anticipated Patent Costs at least fifteen (15) business days before required filing dates (“Advance Payment Deadline”). In the event The Regents has provided Licensee with a thirty (30) days’ notice of Anticipated Patent Costs, and Licensee does not pay the Anticipated Patent Costs on or before the Advance Payment Deadline, The Regents will act at its sole discretion with regard to filing, prosecution, and maintenance of those Patent Rights associated with the thirty (30) days’ notice. The Regents will have no obligation to incur such costs and Licensee will no longer have rights to the patent application or patent for which Patent Costs are due. In the event that the Anticipated Patent Costs paid by Licensee is greater than the actual cost, the excess amount is creditable against future Patent Costs. In the event that the actual costs exceed the Anticipated Patent Costs paid in advance by Licensee, Licensee shall pay such excess costs within thirty (30) days following the date an itemized invoice is sent. If, however, The Regents reduces the exclusive licenses granted herein to non-exclusive licenses pursuant to Paragraph 6.3 or Paragraph 6.4, and The Regents grants one or more additional licenses, the subsequent Patent Costs will be divided equally among the licensed parties from the effective date of each subsequently granted license agreement.

13.4 Patent Costs incurred prior to the Effective Date (“Past Patent Costs”) are approximately _____________________ ($__________) as of _________.

24
13.5 Licensee’s obligation to pay all Patent Costs, including Anticipated Patent Costs and Past Patent Costs, will continue for so long as this Agreement remains in effect, provided that Licensee may terminate Licensee’s obligations with respect to any given patent application or patent under Patent Rights in any designated country upon three (3) months’ written notice to The Regents. In the event of such notice to The Regents, The Regents will undertake to curtail applicable Patent Costs billable to Licensee. The Regents may continue prosecution and maintenance of such patent applications or patents at The Regents’ sole discretion and expense, provided that Licensee will have no further right or licenses thereunder.

14. **MARKING**

14.1 Licensee will mark all Licensed Products made, used, offered for Sale, imported, or Sold under this Agreement, or their containers, in accordance with applicable patent marking laws.

15. **USE OF NAMES AND TRADEMARKS**

15.1 Nothing contained in this Agreement will be construed as conferring upon either Party any right to use in advertising, publicity, or other promotional activities any name, trademark, trade name, or other designation of the other Party (including any contraction, abbreviation, or simulation of any of the foregoing). Unless required by law or consented to in writing by The Regents, Licensee will not use the name “The Regents of the University of California” or the name of any University of California campus in advertising, publicity, or other promotional activities.

16. **LIMITED WARRANTIES**

16.1 To the extent of the actual knowledge of the Executive Director of UC Davis InnovationAccess as of the Effective Date, The Regents warrants to Licensee that The Regents has the lawful right to grant this license.
16.2 This license and the associated rights to the Invention are provided to Licensee WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT THE INVENTIONS, LICENSED PATENT RIGHTS, LICENSED PRODUCT, LICENSED SERVICE, OR LICENSED METHOD WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

16.3 IN NO EVENT WILL THE REGENTS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM EXERCISE OF THIS LICENSE OR A SUBLICENSE, OR THE USE OF THE INVENTION, PATENT RIGHTS, LICENSED METHODS, LICENSED SERVICES, OR LICENSED PRODUCTS. THE REGENTS WILL NOT BE LIABLE FOR ANY DIRECT DAMAGES SUFFERED BY LICENSEE, SUBLICENSEES, JOINT VENTURES, OR AFFILIATES ARISING OUT OF OR RELATED PATENT RIGHTS TO THE EXTENT ASSIGNED OR LICENSED BY THE REGENTS’ INVENTORS TO THIRD PARTIES.

16.4 Nothing in this Agreement is or will be construed as:

(a) a warranty or representation by The Regents as to the patentability, validity, enforceability, or scope of Patent Rights;

(b) a warranty or representation that anything made, used, Sold, offered for Sale, or imported under any license granted in this Agreement is or will be free from infringement of patents of third parties;

(c) an obligation to bring or prosecute actions or suits against third parties for patent infringement;

(d) conferring by implication, estoppel, or otherwise any license or rights under any patent applications or patents of The Regents other than Patent Rights, regardless of whether such patent applications or patents are dominant or subordinate to Patent Rights; or

(e) an obligation to furnish any know-how not provided in the patents and patent applications under Patent Rights.
17. PATENT INFRINGEMENT

17.1 In the event that Licensee learns of the substantial infringement of any Patent Rights, Licensee will promptly provide The Regents with notice and reasonable evidence of such infringement ("Infringement Notice"). During the time period and in a jurisdiction where Licensee has exclusive rights under this Agreement, neither Party will notify a third party, including the infringer, of the infringement without first obtaining consent of the other Party, which consent will not be unreasonably withheld. The Parties will use diligent efforts, in cooperation with each other, to terminate such infringement without litigation.

17.2 (a) If such infringing activity has not been abated within ninety (90) days following the effective date of the Infringement Notice, Licensee may initiate suit for patent infringement against the infringer. The Regents may voluntarily join as a party in such suit at The Regents’ expense, but The Regents may not thereafter separately initiate suit against the infringer for the acts of infringement that are the subject of Licensee’s suit or any judgment rendered in that suit. Licensee may not cause The Regents to be joined as a party in a suit initiated by Licensee without The Regents’ prior written consent. If, in a suit initiated by Licensee, The Regents is involuntarily caused to be joined as a party, Licensee will pay any costs incurred by The Regents arising out of such suit, including, but not limited to, any legal fees of counsel that The Regents selects and retains to represent it in the suit.

(b) If, within a hundred and twenty (120) days following the effective date of the Infringement Notice, the infringing activity has not been abated and if Licensee has not initiated suit against the infringer, The Regents may in its sole discretion initiate suit for patent infringement against the infringer. If The Regents initiates such suit, Licensee may not join such suit without The Regents’ consent, and Licensee may not thereafter separately initiate suit against the infringer for the acts of infringement that are the subject of The Regents’ suit or any judgment rendered in that suit.
17.3 Such suit initiated under Paragraph 17.2 will be at the expense of the initiating Party and all recoveries recovered thereby will belong to such Party, provided that suits initiated jointly by The Regents and Licensee will be at the joint expense of the Parties and all recoveries will be allocated in the following order: (a) to each Party reimbursement for its attorneys' costs, fees, and other related out-of-pocket expenses, to the extent such Party paid for such costs, fees, and expenses until all such costs, fees, and expenses are consumed for such Party; and (b) any remaining amount shared jointly by the Parties in proportion to the share of expenses paid by each Party, but in no event will The Regents’ share be less than twenty-five percent (25%) of such remaining amount. The foregoing notwithstanding, if such suit is initiated by Licensee and The Regents is not a party, The Regents’ share of any recoveries will be twenty-five percent (25%) of the amount of such recoveries remaining after reimbursement to Licensee of Licensee’s attorneys’ costs, fees and other related out-of-pocket expenses. In any suit initiated by The Regents, any recovery will belong to The Regents.

17.4 Each Party will cooperate with the other Party in litigation initiated hereunder but at the expense of the initiating Party. Such litigation will be controlled by the initiating Party bringing the action, except that The Regents may be represented by counsel of its choice in any suit initiated by Licensee.

17.5 Any agreement made by Licensee for the purposes of settling litigation initiated hereunder or other related dispute will comply with the requirements of Article 3 (Sublicenses). In no event may Licensee admit liability or wrongdoing on behalf of The Regents without The Regents’ prior written consent.

18. INDEMNIFICATION

18.1 Licensee will, and will require Sublicensees to, indemnify, hold harmless, and defend The Regents and its officers, employees, and agents; sponsors of the research that led to the Invention; and the inventors of any patents and patent applications under Patent Rights and their employers; against any and all claims, suits, losses, damages, costs, fees, and expenses resulting from or arising out of exercise of this license or any Sublicense. This indemnification will include, but not be limited to, any product liability.
18.2 Licensee, at its sole cost and expense, will insure its activities in connection with any work performed hereunder and will obtain, keep in force, and maintain the following insurance:

(a) Prior to the first use of Licensed Product or Licensed Method in humans (including clinical trials) and with no Licensed Product or use of Licensed Method on the market, the Commercial Form General Liability Insurance (contractual liability included) with limits will be as follows:

- Each Occurrence ................................................................. $500,000
- Products/Completed Operations Aggregate .................. $1,000,000
- Personal and Advertising Injury ................................. $500,000
- General Aggregate ........................................................ $1,000,000

(b) Upon first use of Licensed Product or Licensed Method in humans (including clinical trials) and with no Licensed Product or use of Licensed Method on the market, the Commercial Form General Liability Insurance (contractual liability included) with limits will be as follows:

- Each Occurrence ................................................................. $5,000,000
- Products/Completed Operations Aggregate .................. $10,000,000
- Personal and Advertising Injury ................................. $5,000,000
- General Aggregate ........................................................ $10,000,000

(c) Human clinical trial insurance for each clinical trial using Licensed Product or Licensed Method in humans;

(d) Veterinarian clinical trial insurance for each clinical trial using Licensed Product or Licensed Method in non-humans;

(e) Upon first commercial Sale of a Licensed Product or Licensed Method, the Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

- Each Occurrence ................................................................. $5,000,000
- Products/Completed Operations Aggregate .................. $10,000,000
- Personal and Advertising Injury ................................. $5,000,000
- General Aggregate ........................................................ $10,000,000
If the above insurance is written on a claims-made form, it will continue for three (3) years following termination or expiration of this Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the Effective Date of this Agreement; and

(f) Worker’s Compensation as legally required in the jurisdiction in which Licensee is doing business.

18.3 The coverage and limits referred to in Subparagraphs 18.2(a), 18.2(b), 18.2(c), 18.2(d), 18.2(e), and 18.2(f) will not in any way limit the liability of Licensee under this Article 18 (Indemnification). Upon the execution of this Agreement, Licensee will furnish The Regents with certificates of insurance evidencing compliance with all requirements, and Licensee will promptly notify The Regents of any material modification of the insurance coverages. Such certificates will:

(a) provide for thirty (30) days’ (ten (10) days for non-payment of premium) advance written notice to The Regents of any cancellation of insurance coverages;

(b) indicate that The Regents has been endorsed as an additional insured under the coverage described in Subparagraphs 18.2(a), 18.2(b), 18.2(c), 18.2(d), and 18.2(e); and

(c) include a provision that the coverage will be primary and will not participate with, nor will be excess over, any valid and collectable insurance or program of self-insurance maintained by The Regents.

18.4 The Regents will promptly notify Licensee in writing of any claim or suit brought against The Regents for which The Regents intends to invoke the provisions of this Article 18 (Indemnification). In no event may Licensee admit liability or wrongdoing on behalf of The Regents or any other indemnitee without The Regents’ prior written consent. Licensee will keep The Regents informed of Licensee’s defense of any claims pursuant to this Article 18 (Indemnification).

19. COMPLIANCE WITH LAWS/EXPORT CONTROLS

19.1 Licensee will comply with all applicable international, national, state, regional, and local laws and regulations in performing its obligations hereunder and in
UC Davis Express License for Therapeutic Inventions

Licensee's use, manufacture, Sale, offer for Sale, or import of the Licensed Products or Licensed Services, or in Licensee’s practice of Licensed Methods. Without limitation, Licensee will observe all applicable United States and foreign laws and regulations governing the transfer to other countries of technical data related to Licensed Products, Licensed Services, or Licensed Methods, including, without limitation, with respect to the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

19.2 Licensee understands that The Regents is subject to United States laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979) controlling the export of technical data, computer software, laboratory prototypes, and other commodities, and The Regents’ obligations to Licensee under this Agreement are contingent on and subject to compliance with such laws and regulations. The transfer of certain technical data or commodities may require a license from an agency of the United States Government or written assurances by Licensee or a Sublicensee that Licensee or a Sublicensee will not export such technical data or commodities to certain foreign countries without prior approval of such agency. The Regents neither represents that such a license will not be required nor that, if required, it will be issued.

20.  GOVERNMENT APPROVAL OR REGISTRATION

20.1 If this Agreement or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, Licensee will assume all legal obligations to do so. Licensee will notify The Regents if Licensee becomes aware that this Agreement is subject to a United States or foreign government reporting or approval requirement. Licensee will make all necessary filings and pay all costs, including fees, penalties, and all other out-of-pocket costs, associated with such reporting or approval process.

21.  ASSIGNMENT

21.1 This Agreement is binding upon and will inure to the benefit of The Regents and to The Regents’ successors and assigns. This Agreement is personal to
UC Davis Express License for Therapeutic Inventions

Licensee and assignable by Licensee only with the written consent of The Regents, provided that Licensee may, on written notice to The Regents, assign this Agreement, including, without limitation, all obligations owed to The Regents hereunder, to an acquiror of all or substantially all of Licensee's stock or assets.

22. NOTICES

22.1 All notices under this Agreement will be deemed to have been fully given and effective when done in writing and (a) delivered in person, (b) mailed by registered or certified United States mail, or (c) deposited with a carrier service requiring signature by recipient, and addressed as follows:

To The Regents:  UC Davis InnovationAccess
1850 Research Park Drive, Suite 100
Davis, CA 95618-6153
Attn.:  Executive Director
Ref:  UC Case No.: _____

To Licensee:  _______________________________
_______________________________
Attn.:  __________________________

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

23. PAYMENTS

23.1 Payments to The Regents will be made by check or bank wire transfer, to the following address:

Checks:  The Regents of the University of California
Innovation Alliances and Services
1111 Franklin Street, 5th Floor
Oakland, CA  94607-5200
Attention:  Chief Financial Officer
Referencing UC Case No. _______

Bank wire (Licensee is responsible for all wire transfer fees):
UC Davis Express License for Therapeutic Inventions

Bank wire: ACH/EFT:
Bank of America Bank of America CA4-704-05-41
100 West 33rd Street 2000 Clayton Road
New York, NY 10001 Concord, CA 94520

Attn: OTT Depository Account No. 12337-17062
ABA Transit Routing No. 121000358
Beneficiary Name: Regents of the University of California
Domestic Wire ABA: 026009593 (within U.S. only)
Foreign Wire SWIFT: BOFAUS3N

Fax remittance advice to: (510) 835-3705
University of California
Innovation Alliances and Services (IAS)
Referencing: UC Case No. _________

23.2 If monies owed to The Regents under this Agreement are not received by The Regents when due, Licensee will pay to The Regents interest charges at a rate of ten percent (10%) per annum. Such interest will be calculated from the date payment was due until actually received by The Regents. Such accrual of interest will be in addition to, and not in lieu of, enforcement of any other rights of The Regents related to such late payment. Acceptance of any late payment will not constitute a waiver under Article 24 (Waiver).

24. WAIVER

24.1 The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party. None of the terms and conditions of this Agreement can be waived except by the written consent of the Party waiving compliance.

25. CONFIDENTIALITY

25.1 With respect to disclosures by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) under this Agreement, the Receiving Party will, subject to Paragraphs 25.2 and 25.3, hold the Disclosing Party's proprietary business and technical information, patent prosecution material, and other proprietary
information, including the negotiated terms of this Agreement (all such proprietary information referred to collectively herein as “Proprietary Information”), in confidence and against disclosure to third parties, with at least the same degree of care as the Disclosing Party exercises to protect the Disclosing Party’s own data and information of a similar nature. This obligation will expire five (5) years after the termination or expiration of this Agreement.

25.2 With respect to Proprietary Information disclosed by the Disclosing Party to the Receiving Party, nothing contained herein will in any way restrict or impair the right of the Receiving Party to use, disclose, or otherwise deal with any information or data which:

(a) at the time of disclosure to the Receiving Party by the Disclosing Party is available to the public by publication or otherwise, or thereafter becomes available to the public by publication or otherwise through no act of the Receiving Party;

(b) the Receiving Party can show by written record was in the Receiving Party’s possession prior to the time of disclosure to the Receiving Party hereunder and was not acquired by the Receiving Party from the Disclosing Party;

(c) is independently made available to the Receiving Party without restrictions as a matter of right by a third party, as demonstrated by written record;

(d) is independently developed by employees or agents of the Receiving Party who did not have access to the information disclosed by the Disclosing Party, as demonstrated by written record; or

(e) is subject to disclosure under the California Public Records Act or other requirements of law.

25.3 The Regents will be free to release to the inventors, The Regents’ senior administrators, and individual Regents the terms and conditions of this Agreement upon their request. If such release is made, The Regents will inform such individuals of the confidentiality obligations set forth above and will request that such individuals not disclose such terms and conditions to others. Should a third party inquire whether a license to Patent Rights is available, The Regents may disclose the existence of this Agreement and the extent of the grant in
UC Davis Express License for Therapeutic Inventions

Articles 2 (Grant) and 3 (Sublicenses) to such third party but, unless Licensee so consents, The Regents will not otherwise disclose the name of Licensee (or other negotiated terms of this Agreement) unless (a) Licensee or a third party has already made such disclosure publicly, or (b) such disclosure is required under the California Public Records Act or other requirements of law.

25.4 Within fifteen (15) days following the effective date of termination or expiration of this Agreement, each Receiving Party agrees to destroy or return to the Disclosing Party Proprietary Information received from the Disclosing Party which is in the possession of the Receiving Party. However, each Receiving Party may retain one copy of Proprietary Information received from the Disclosing Party for archival purposes in non-working files for the sole purpose of verifying the ownership of the Proprietary Information, provided such Proprietary Information will be subject to the confidentiality provisions set forth in this Article 25 (Confidentiality). Subject to such right to retain for archival purposes, each Receiving Party agrees to provide to the Disclosing Party, within thirty (30) days following termination of this Agreement, a written notice that Proprietary Information received from the Disclosing Party has been returned or destroyed.

26. SEVERABILITY

26.1 The provisions of this Agreement are severable, and in the event that any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, such invalidity or enforceability will not in any way affect the validity or enforceability of the remaining provisions hereof.

27. APPLICABLE LAW; VENUE; ATTORNEYS’ FEES

27.1 This Agreement will be construed, interpreted, and applied in accordance with the laws of the State of California, excluding any choice-of-law rules that would direct the application of the laws of another jurisdiction, except that the scope and validity of any patent or patent application under Patent Rights will be determined by the applicable law of the country of such patent or patent application. Any legal action brought by one Party against the other Party relating to this Agreement will be conducted in San Francisco, California. The
prevailing Party in any such legal action under this Agreement will be entitled to recover its reasonable attorneys’ fees in addition to its costs and necessary disbursements.

28. SCOPE OF AGREEMENT

28.1 Neither Party will use this Agreement as a basis to invoke the CREATE Act, 35 U.S.C. 102(c), without the written consent of the other Party.

28.2 This Agreement incorporates the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous communications, representations, or understandings, whether oral or written, between the Parties relating to the subject matter hereof. The Confidentiality Agreement specified in the Recitals above, effective _____________, is hereby superseded.

28.3 This Agreement may be modified only by written amendment duly executed by the Parties.

In witness whereof, the Parties have executed this Agreement in duplicate originals by their respective authorized officers or representatives on the respective dates below.

**LICENSEE NAME**

By: ___________ DRAFT – DO NOT SIGN ___________

Signature

Name: ________________

Title: ________________

Date: ________________

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

By: __________________

Signature

Name: David R. McGee

Executive Director

UC Davis InnovationAccess

Date: ________________
UC Davis Express License for Therapeutic Inventions

APPENDIX A

List of Least Developed Countries
APPENDIX B

Shareholders’ Agreement
Stock Subscription Agreement
Observer Rights Letter