

## LICENSE AGREEMENT

Effective as of \_\_\_\_\_ (“Effective Date”), THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“STANFORD”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, having a principal place of business at \_\_\_\_\_ (“LICENSEE”), agree as follows:

### 1. BACKGROUND

- 1.1 STANFORD has certain rights to biological material known as 1D6, Monoclonal Antibody Reacting with Human CD91 (“Biological Material[s]”) developed in the laboratory of Dr. Shoshana Levy and described in Stanford Docket S98-059.
- 1.2 STANFORD desires to have the Biological Material(s) marketed at the earliest possible time in order that products resulting therefrom may be available for public use and benefit.
- 1.3 LICENSEE wishes to acquire a license to said Biological Material(s) to make, use, and sell Licensed Product(s) in the Licensed Field of Use.
- 1.4 Biological Material(s) was developed in the course of research supported by the National Institutes of Health.

### 2. DEFINITIONS

- 2.1 “Biological Material(s)” means the cell line producing monoclonal antibody 1D6 reacting with human CD81, provided to LICENSEE pursuant to this Agreement.
- 2.2 “Licensed Field of Use” means any use of the Biological Material(s) for research purposes. The Licensed Field of Use specifically excludes any use of Biological Material(s) which requires regulatory approval, including any in vitro and in vivo diagnostic or therapeutic applications, and any in vivo use for whatever purpose.
- 2.3 “Licensed Territory” means worldwide.
- 2.4 “Licensed Product(s)” means any product in the Licensed Field of Use containing, derived from, or made using Biological Material(s).
- 2.5 “Net Sales” means the gross revenue derived by LICENSEE from Licensed Product(s), less the following items but only insofar as they actually pertain to the disposition of such Licensed Product(s) by LICENSEE, are included in such gross revenue, and are separately billed:
  - (a) Import, export, excise and sales taxes, and custom duties, and
  - (b) Credit for returns, allowances, or trades.

### 3. GRANT

- 3.1 STANFORD hereby grants, and LICENSEE accepts, a nonexclusive license in the Licensed Field of Use and Licensed Territory to make, use, and sell Licensed

Product(s). Said license does not include the right to grant sublicense(s).

3.2 The term of said license shall commence as of the Effective Date of this Agreement and shall expire **fifteen (15) years from Effective Date**, unless sooner terminated according to Article 9 hereunder.

3.3 STANFORD retains title to all Biological Material(s).

#### **4. GOVERNMENT RIGHTS**

This Agreement is subject to all of the terms and conditions of Title 35 United States Code Sections 200 through 204, including an obligation that Licensed Product(s) sold or produced in the United States be “manufactured substantially in the United States,” and LICENSEE agrees to take all reasonable action necessary on its part as licensee to enable STANFORD to satisfy its obligation thereunder, relating to Biological Material(s).

#### **5. ROYALTIES**

5.1 LICENSEE agrees to pay to STANFORD a noncreditable, nonrefundable license issue royalty of Two Thousand Dollars (\$2,000). Upon receipt of payment, STANFORD shall send Biological Material(s) to LICENSEE. LICENSEE shall not transfer Biological Material(s) to any third party without prior written consent from STANFORD.

5.2 All payments to STANFORD shall be in U.S. Dollars, net of any non-U.S. taxes.

5.3 In addition, LICENSEE shall pay STANFORD an earned royalty of six percent (6%) on Net Sales. Earned royalty payments shall be made as follows:

- (a) Annually, for the preceding year ending on (anniversary date) until annual volume of Net Sales reaches Five Hundred Thousand Dollars (\$500,000); and
- (b) Quarterly thereafter.

5.4 LICENSEE agrees to make written reports and royalty payments within thirty (30) days of the reporting period of Paragraph 5.3 herein.

#### **6. NEGATION OF WARRANTIES**

6.1 Nothing in this Agreement shall be construed as:

- (a) A warranty or representation that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents, copyrights, and trademarks of third parties;
- (b) Conferring rights to use in advertising, publicity, or otherwise any trademark or the name of “STANFORD”; or
- (c) Granting by implication, estoppel, or otherwise any licenses or rights under patents of STANFORD.

6.2 Except as expressly set forth in this Agreement, STANFORD MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED PRODUCT(S) WILL NOT

INFRINGE ANY PATENT, COPYRIGHT, OR TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

6.3 LICENSEE agrees that nothing in this Agreement grants LICENSEE any express or implied license or right under or to U.S. Patent 4,656,134, "Amplification of Eucaryotic Genes," or any patent application corresponding thereto.

## **7. INDEMNITY**

7.1 LICENSEE agrees to indemnify, hold harmless, and defend STANFORD and Stanford Hospital and Clinics and their respective trustees, officers, employees, students, and agents against any and all claims for death, illness, personal injury, property damage, and improper business practices arising out of the use of Biological Material(s) by LICENSEE.

7.2 STANFORD shall not be liable for any indirect, special, consequential, or other damages whatsoever, whether grounded in tort (including negligence), strict liability, contract, or otherwise.

7.3 LICENSEE shall at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.

## **8. STANFORD NAMES AND MARKS**

LICENSEE agrees not to identify STANFORD in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or to use the name of any STANFORD faculty member, employee, or student or any trademark, service mark, trade name, or symbol of STANFORD or Stanford Hospital and Clinics, or that is associated with either of them, without STANFORD's prior written consent. Any use of STANFORD's name shall be limited to statements of fact and shall not imply endorsement of LICENSEE's products or services.

## **9. TERMINATION**

9.1 LICENSEE may terminate this Agreement by giving STANFORD notice in writing at least ninety (90) days in advance of the Effective Date of termination provided that LICENSEE shall thereupon cease use and sale of Biological Material(s) and any Licensed Product(s).

9.2 STANFORD may terminate this Agreement if LICENSEE is in breach of any provision hereof; and LICENSEE fails to remedy any such breach within thirty (30) days after written notice thereof by STANFORD.

9.3 Surviving any termination are:

- (a) Any cause of action or claim of LICENSEE or STANFORD, accrued or to accrue, because of any breach by the other party;
- (b) Payment of accrued royalties; and
- (c) The provisions of Articles 6 and 7.

9.4 Concurrent with notice of termination by either LICENSEE or STANFORD, LICENSEE shall destroy all Biological Material(s) and Licensed Product(s) in its possession, and shall provide written evidence of said destruction.

**10. ASSIGNMENT**

This Agreement may not be assigned.

**11. MISCELLANEOUS**

11.1 Arbitration - Any controversy arising under or related to this Agreement, and any disputed claim by either party against the other under this Agreement shall be settled by arbitration in accordance with the Licensing Agreement Arbitration Rules of the American Arbitration Association.

11.2 Termination Report - LICENSEE also agrees to make a written report to STANFORD within ninety (90) days after the date of termination of this Agreement, stating in such report the number, description, and Net Sales of all products made, sold, or otherwise disposed of and upon which royalties are payable hereunder but which were not previously reported to STANFORD.

11.3 Notices - All notices under this Agreement shall be deemed to have been fully given when done in writing and deposited in the United States mail, registered or certified, and addressed as follows:

To STANFORD: Office of Technology Licensing  
Stanford University  
1705 El Camino Real  
Palo Alto, CA 94306  
Attention: Director

To LICENSEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

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

11.4 None of the terms of this Agreement can be waived except by the written consent of the party waiving compliance.

11.5 This Agreement shall be governed by the laws of the State of California applicable to agreements negotiated, executed, and performed wholly within California.

11.6 Electronic Copy. The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

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

THE BOARD OF TRUSTEES OF THE LELAND  
STANFORD JUNIOR UNIVERSITY

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

LICENSEE

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Name \_\_\_\_\_  
Title \_\_\_\_\_  
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