PUBLIC HEALTH SERVICE

START-UP EXCLUSIVE EVALUATION OPTION LICENSE AGREEMENT

This Agreement is based on the model Start-Up Exclusive Option License Agreement adopted by the U.S. Public Health Service (“PHS”) Technology Transfer Policy Board for use by components of the National Institutes of Health (“NIH”), the Centers for Disease Control and Prevention (“CDC”), and the Food and Drug Administration (“FDA”), which are agencies of the PHS within the Department of Health and Human Services (“HHS”).

This Cover Page identifies the Parties to this Agreement:

The U.S. Department of Health and Human Services, as represented by

[Insert the full name of the IC]

an Institute or Center (hereinafter referred to as the “IC”) of the

[INSERT as appropriate: NIH, CDC, or FDA]

and

[Insert Company’s official name],

hereinafter referred to as the “Licensee”,

having offices at [Insert Company’s address],

created and operating under the laws of [Insert State of Incorporation].

Tax ID No.:____________________
1. Definitions:

(a) “Government” means the government of the United States of America.

(b) “Initial Commercial Development Plan” means a preliminary business plan, attached as Appendix C, submitted to the IC by the Licensee that outlines the initial stages of development of the Materials, Licensed Products or inventions within the scope of the Licensed Patent Rights and the Licensed Field of Use under the terms of this Agreement.

(c) “Licensed Patent Rights” means PCT or U.S. patent application(s) (including provisional patent application(s)) or patents and all foreign counterparts as follows: U.S. Patent Application Serial No. XX/XXX,XXX or U.S. Provisional Patent Application Serial No. XX/XXX,XXX, filed ______________, entitled ________________________.

(d) “Materials” means ____________________________, including all progeny, subclones, or unmodified derivatives thereof.

(e) “Licensee” means a start-up company having less than fifty (50) employees, in operation less than five (5) years, receiving less than five million dollars ($5,000,000) in funding since incorporation, and is majority owned by individuals, hedge funds, or venture funds or by a company that is majority owned by individuals, hedge funds or venture funds.

(f) “Licensed Products” means ________________________ and Materials made by the Licensee within the scope of the Licensed Patent Rights.

(g) “Licensed Field of Use” means pre-clinical evaluation of human therapeutics/vaccines within the scope of the Licensed Patent Rights.

2. The Licensee desires to obtain an exclusive evaluation option license to evaluate the commercial applications of the Materials, the Licensed Products or any inventions within the scope of the Licensed Patent Rights within the Licensed Field of Use.

3. The Licensee represents that it has the facilities, personnel, and expertise to evaluate the commercial applications of the Materials, the Licensed Products or inventions within the scope of the Licensed Patent Rights within the Licensed Field of Use as outlined in the Initial Commercial Development Plan.

4. The IC hereby grants to the Licensee a start-up exclusive evaluation option license for evaluation purposes only to make and use, but not to sell, the Materials or the Licensed Products or inventions within the scope of the Licensed Patent Rights within the Licensed Field of Use. The Licensee agrees that any commercial or industrial use or sale of any such products or processes, other than for evaluation purposes, shall be made only pursuant to the terms substantially found in the IC’s Start-Up Exclusive Patent License Agreement to be negotiated in good faith by the parties and executed no later than the termination or expiration date of this Agreement. For the sake of clarity, this Agreement will be amended to the terms substantially found in the IC’s Start-Up Exclusive Patent License Agreement. The rights provided herein are provided for the evaluation of commercial applications only and not for commercial use.
5. The IC agrees, after receipt and verification of the license issue royalty, as required by Paragraph 7 of this Agreement, to provide the Licensee with samples of the Materials, as available, and to replace the Materials, as available, and at reasonable cost, in the event of their unintentional destruction. The IC shall provide the Materials to the Licensee at the Licensee's expense and as specified in Appendix A.

6. The Licensee agrees to retain control over the Materials and the Licensed Products, and not to distribute them to third parties, except (a) contractors working directly for the Licensee or (b) academic or non-profit collaborators, who may support the evaluation of Materials, Licensed Products or inventions within the scope of the Licensed Patent Rights within the Licensed Field of Use, without the prior written consent of the IC.

7. In consideration of the grant in Paragraph 4, the Licensee hereby agrees to pay the IC a license issue royalty of two—thousand dollars ($2,000) and payment is due within sixty (60) days of the effective date of this Agreement. This license issue royalty shall be paid in U.S. dollars and payment options are listed in Appendix B. For conversion of foreign currency to U.S. dollars, the conversion rate shall be the New York foreign exchange rate quoted in *The Wall Street Journal* on the day that the payment is due. Any loss of exchange, value, taxes, or other expenses incurred in the transfer or conversion to U.S. dollars shall be paid entirely by the Licensee.

8. This Agreement shall become effective on the date when the last party to sign has executed this Agreement, unless the provisions of Paragraph 20 are not fulfilled, and shall expire twelve (12) months from its effective date. Within sixty (60) days of the termination or expiration of this Agreement, unless a IC Start-Up Exclusive Patent License has been executed for the Licensed Patent Rights in the Licensed Field of Use as stipulated in Paragraph 4 of this Agreement, the Licensee shall return all Materials and Licensed Products to the IC or provide the IC with written certification of their destruction.

9. In the event that the Licensee is in default in the performance of any material obligation under this Agreement, and if the default has not been remedied within ninety (90) days after the date of written notice of the default, the IC may terminate this Agreement by written notice.

10. The Licensee is encouraged to publish the results of its research projects using the Licensed Products or the Materials. In all oral presentations or written publications concerning the Licensed Products or the Materials, the Licensee shall acknowledge the contribution by the named inventors to the Licensed Products or the Materials, unless requested otherwise by the IC or the named inventors.

11. The Licensee agrees to submit in confidence a final report to the IC within sixty (60) days of termination or expiration of this Agreement, unless a IC Start-Up Exclusive Patent License has been executed for the Licensed Patent Rights in the Licensed Field of Use, outlining, in general, its results of commercial evaluation of the Licensed Patent Rights, the Licensed Products, or the Materials provided by this Agreement. The Licensee shall submit the report to the IC at the Mailing Address for Agreement notices indicated on the Signature Page.

12. The IC agrees, to the extent permitted by law, to treat in confidence for a period of three (3) years from the date of disclosure, any of the Licensee's written information about the Licensed Patent Rights, the Licensed Products, or the Materials that is stamped “CONFIDENTIAL” except for information that was previously known to the IC, that is or becomes publicly available, or that is disclosed to the IC by a third party without an obligation of confidentiality.
13. NO WARRANTIES, EXPRESS OR IMPLIED, ARE OFFERED AS TO THE FITNESS FOR ANY PURPOSE OF THE MATERIALS OR THE LICENSED PRODUCTS PROVIDED TO THE LICENSEE UNDER THIS AGREEMENT, OR THAT THE LICENSED PATENT RIGHTS MAY BE EXPLOITED WITHOUT INFRINGING OTHER PATENT RIGHTS. The Licensee accepts license rights to the Licensed Patent Rights, the Licensed Products, and the Materials “as is”, and the IC does not offer any guarantee of any kind.

14. The Licensee agrees to indemnify and hold harmless the IC and the Government from any claims, costs, damages, or losses that may arise from the practice of the Licensed Patent Rights or through the use of the Licensed Products or the Materials.

15. Neither party shall have any obligation to take any action with regard to an infringement of Licensed Patent Rights by a third party.

16. This Agreement shall be construed in accordance with U.S. Federal law, as interpreted and applied by the U.S. Federal courts in the District of Columbia. Federal law and regulations shall preempt any conflicting or inconsistent provisions in this Agreement. The Licensee agrees to be subject to the jurisdiction of U.S. courts.

17. This Agreement constitutes the entire understanding of the IC and the Licensee and supersedes all prior agreements and understandings with respect to the Licensed Patent Rights, the Materials and the Licensed Products.

18. The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, the invalidity or unenforceability of any provision of this Agreement, shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.

19. Paragraphs 7, 8, 10, 11, 12, 13, 14 and 19 of this Agreement shall survive termination of this Agreement.

20. The terms and conditions of this Agreement shall, at the IC’s sole option, be considered by the IC to be withdrawn from the Licensee’s consideration and the terms and conditions of this Agreement, and the Agreement itself to be null and void, unless this Agreement is executed by the Licensee and a fully executed original is received by the IC within sixty (60) days from the date of the IC signature found at the Signature Page.

SIGNATURES BEGIN ON NEXT PAGE
NIH START-UP EXCLUSIVE EVALUATION OPTION LICENSE AGREEMENT

SIGNATURE PAGE

In Witness Whereof, the parties have executed this Agreement on the dates set forth below. Any communication or notice to be given shall be forwarded to the respective addresses listed below.

For the IC:

_________________________ _______________
Name Date

Title
National Institutes of Health

Mailing Address or E-mail Address for Agreement notices and reports:

License Compliance and Administration
Monitoring & Enforcement
Office of Technology Transfer
National Institutes of Health
6011 Executive Boulevard, Suite 325
Rockville, Maryland 20852-3804 U.S.A.

E-mail: LicenseNotices_Reports@mail.IC.gov

For the Licensee (Upon, information and belief, the undersigned expressly certifies or affirms that the contents of any statements of the Licensee made or referred to in this document are truthful and accurate.):

by:

_________________________ _______________
Signature of Authorized Official Date

Printed Name

Title

I. Official and Mailing Address for Agreement notices:

Name

Title

Mailing Address
II. Official and Mailing Address for Financial notices (the Licensee’s contact person for royalty payments)

Name

Title

Mailing Address:

Email Address: _____________________________________________

Phone: _____________________________________________

Fax: _____________________________________________

Any false or misleading statements made, presented, or submitted to the Government, including any relevant omissions, under this Agreement and during the course of negotiation of this Agreement are subject to all applicable civil and criminal statutes including Federal statutes 31 U.S.C. §§3801-3812 (civil liability) and 18 U.S.C. §1001 (criminal liability including fine(s) and/or imprisonment).
APPENDIX A – SHIPPING INFORMATION

The Licensee’s Shipping Contact: information or questions regarding shipping should be directed to the Licensee’s Shipping Contact at:

______________________________  ______________________________
Shipping Contact’s Name  Title

Phone: ()  Fax: ()  E-mail: __________________________

Shipping Address: Name & Address to which Materials should be shipped (please be specific):

Company Name & Department
Address:

The Licensee’s shipping carrier and account number to be used for shipping purposes:

__________________________________________________________________
APPENDIX B – ROYALTY PAYMENT OPTIONS

The License Number MUST appear on payments, reports and correspondence.

Credit and Debit Card Payments

Credit and debit card payments can be submitted for amounts up to $29,999. Submit your payment through the U.S. Treasury web site located at:  https://www.pay.gov/public/form/start/28680443.

Automated Clearing House (ACH) for payments through U.S. banks only

The IC encourages its licensees to submit electronic funds transfer payments through the Automated Clearing House (ACH). Submit your ACH payment through the U.S. Treasury web site located at: https://www.pay.gov/public/form/start/28680443. Please note that the IC “only” accepts ACH payments through this U.S. Treasury web site.

Electronic Funds Wire Transfers

The following account information is provided for wire payments. In order to process payment via Electronic Funds Wire Transfer sender MUST supply the following information within the transmission:

Drawn on a U.S. bank account via FEDWIRE should be sent directly to the following account:

- Beneficiary Account: Federal Reserve Bank of New York or TREAS NYC
- Bank: Federal Reserve Bank of New York
- ABA#: 021030004
- Account Number: 75080031
- Bank Address: 33 Liberty Street, New York, NY 10045
- Payment Details: License Number (L-XXX-XXXX)
  Name of the Licensee

Drawn on a foreign bank account should be sent directly to the following account. Payment must be sent in U.S. Dollars (USD) using the following instructions:

- Beneficiary Account: Federal Reserve Bank of New York/ITS or FRBNY/ITS
- Bank: Citibank N.A. (New York)
- SWIFT Code: CITIUS33
- Account Number: 36838868
- Bank Address: 388 Greenwich Street, New York, NY 10013
- Payment Details (Line 70): NIH 75080031
  License Number (L-XXX-XXXX)
  Name of the Licensee
- Detail of Charges (line 71a): Charge Our

Checks

All checks should be made payable to “NIH Patent Licensing”

Checks drawn on a U.S. bank account and sent by US Postal Service should be sent directly to the following address:

A-XXX-201X

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NIH START-UP EXCLUSIVE EVALUATION OPTION LICENSE
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 Checks drawn on a U.S. bank account and sent by **overnight or courier** should be sent to the following address:

US Bank  
Government Lockbox SL-MO-C2GL  
1005 Convention Plaza  
St. Louis, MO 63101  
Phone: 314-418-4087

 Checks drawn on a **foreign bank account** should be sent directly to the following address:

National Institutes of Health  
Office of Technology Transfer  
License Compliance and Administration  
Royalty Administration  
6011 Executive Boulevard  
Suite 325, MSC 7660  
Rockville, Maryland 20852
APPENDIX C – INITIAL COMMERCIAL DEVELOPMENT PLAN