

## NONEXCLUSIVE AGREEMENT

This Agreement between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY ("Stanford"), an institution of higher education having powers under the laws of the State of California, and \_\_\_\_\_ ("Licensee"), a corporation having a principal place of business at \_\_\_\_\_, is effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date").

### 1 BACKGROUND

Stanford has an assignment of biological material entitled "Mitochondrial aldehyde dehydrogenase 2\*2 (ALDH2\*2) knock-in gene targeting mice-an experimental model for a prevalent human genetic disorder in East Asians," was developed in the laboratory of Dr. Daria Mochly-Rosen, and is described in Stanford Docket S08-154. The invention was made in the course of research supported by the National Institutes of Health. Stanford wants to have the invention perfected and marketed as soon as possible so that resulting products may be available for public use and benefit.

### 2 DEFINITIONS

- 2.1 "Biological Material" means the Mitochondrial adlehyde dehydrogenase 2\*2 (ALDH2\*2) knock-in gene targeting mice, provided to Licensee per this Agreement.
- 2.2 "Licensed Field of Use" means any use of the Biological Material for research purposes. The Licenses Field of Use specifically excludes any use of Biological Material which requires regulatory approval, including any in vitro and in vivo diagnostic or therapeutic applications, and in vivo use for whatever purpose.
- 2.3 "Licensed Territory" means worldwide.
- 2.4 "Stanford Indemnitees" means Stanford and Stanford Hospitals and Clinics, and their respective trustees, officers, employees, students, and agents.

### 3 GRANT

- 3.1 **Grant.** Subject to the terms and conditions of this Agreement, Stanford grants Licensee a license in the Licensed Field of Use and Licensed Territory to breed, have bred, use and have used the Biological Material. License does not include the right to grant sublicense(s).
- 3.2 **Nonexclusivity.** The license is nonexclusive in the Licensed Field of Use beginning on the Effective Date of this Agreement and ending fifteen (15) years from Effective Date, unless sooner terminated according to Section 9 hereunder.
- 3.3 **Retained Rights.** Stanford retains title to all Biological Material.

#### 4 GOVERNMENT RIGHTS

This Agreement is subject to Title 35 Sections 200-204 of the United States Code. Among other things, these provisions provide the United States Government with nonexclusive rights to the Biological Material. Licensee will ensure all obligations of these provisions are met.

#### 5 ROYALTIES

- 5.1 **Issue Royalty.** Licensee will pay to Stanford a noncreditable, nonrefundable license issue royalty of \$25,000.00 upon signing this Agreement.
- 5.2 **License Maintenance Fee.** Beginning on the first anniversary of the Effective Date, and each anniversary of the Effective Date thereafter, Licensee will pay Stanford a yearly license maintenance fee of \$10,000.00. Yearly maintenance payments are nonrefundable.
- 5.3 **Currency.** Licensee will calculate the royalty on sales in currencies other than U.S. Dollars using the appropriate foreign exchange rate for the currency quoted by the Bank of America (San Francisco) foreign exchange desk, on the close of business on the last banking day of each calendar quarter. Licensee will make royalty payments to Stanford in U.S. Dollars.
- 5.4 **Non-U.S. Taxes.** Licensees will pay all non-U.S. taxes related to royalty payments. These payments are not deductible from any payments due to Stanford.
- 5.5 **Interest.** Any payments not made when due will bear interest at the lower of (a) the Prime Rate published in the Wall Street Journal plus 200 basis points or (b) the maximum rate permitted by law.

#### 6 EXCLUSIONS AND NEGATION OF WARRANTIES

- 6.1 **Negation of Warranties.** Stanford provides Licensee the rights granted in this Agreement AS IS and WITH ALL FAULTS. Stanford makes no representations and extends no warranties of any kind, either express or implied. Among other things, Stanford disclaims any express or implied warranty:
- (A) of merchantability, of fitness for a particular purpose;
  - (B) of non-infringement; or
  - (C) arising out of any course of dealing.

#### 7 INDEMNITY

- 7.1 **Indemnification.** Licensee will indemnify, hold harmless, and defend all Stanford Indemnitees against any claim of any kind arising out of or related to the exercise of any rights granted Licensee under this Agreement or the breach of this Agreement by Licensee.

- 7.2 **No Indirect Liability.** Stanford is not liable for any special, consequential, lost profit, expectation, punitive or other indirect damages in connection with any claim arising out of or related to this Agreement, whether grounded in tort (including negligence), strict liability, contract, or otherwise.
- 7.3 **Workers' Compensation.** Licensee will comply with all statutory workers' compensation and employers' liability requirements for activities performed under this Agreement.
- 7.4 **Insurance.** During the term of this Agreement, Licensee will maintain Comprehensive General Liability Insurance, including Product Liability Insurance, with a reputable and financially secure insurance carrier to cover the activities of Licensee. Such insurance will include all Stanford Indemnitees as additional insureds. Insurance must cover claims incurred, discovered, manifested, or made during or after the expiration of this Agreement and must be placed with carriers with ratings of at least A- as rated by A.M. Best. At Stanford's request, Licensee will furnish a Certificate of Insurance evidencing primary coverage and additional insured requirements. Licensee will provide to Stanford 30 days prior written notice of cancellation or material change to this insurance coverage. Licensee will advise Stanford in writing that it maintains excess liability coverage over primary insurance for at least the minimum limits set forth above. All insurance of Licensee will be primary coverage; insurance of Stanford and Stanford Hospitals and Clinics will be excess and noncontributory.
- 7.5 If Licensee's assets are greater than One Billion Dollars (\$1,000,000,000), Licensee is not required to maintain the insurance under Section 7.4.

## 8 STANFORD NAMES AND MARKS

Licensee will not identify Stanford in any promotional statement, or otherwise use the name of any Stanford faculty member, employee, or student, or any trademark, service mark, trade name, or symbol of Stanford or Stanford Hospitals and Clinics, including the Stanford name, unless Licensee has received Stanford's prior written consent. Permission may be withheld at Stanford's sole discretion.

## 9 TERMINATION

- 9.1 **Termination by Licensee.** Licensee may terminate this Agreement by giving Stanford written notice at least 30 days in advance of the effective date of termination selected by Licensee. Licensee will thereupon cease use of the Biological Material and destroy all Biological Material in its possession, and will provide written evidence of destruction.
- 9.2 **Termination by Stanford.** 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 Provisions.** Surviving any termination or expiration are:
- (A) Licensee's obligation to pay royalties accrued;

- (B) any claim of Licensee or Stanford, accrued or to accrue, because of any breach or default by the other party; and
- (C) the provisions of Articles 6, 7, and 8 and any other provision that by its nature is intended to survive.

**10 ASSIGNMENT**

This Agreement may not be assigned.

**11 DISPUTE RESOLUTION**

- 11.1 **Dispute Resolution by Arbitration.** Any dispute between the parties regarding any payments made or due under this Agreement will be settled by arbitration in accordance with the JAMS Arbitration Rules and Procedures. There parties are not obligated to settle any other dispute that may arise under this Agreement by arbitration.
- 11.2 **Request for Arbitration.** Either party may request such arbitration. Stanford and Licensee will mutually agree in writing on a third party arbitrator within 30 days of the arbitration request. The arbitrator’s decision will be final and nonappealable and may be entered in any court having jurisdiction.
- 11.3 **Discovery.** The parties will be entitled to discovery as if the arbitration were a civil suit in the California Superior Court. The arbitrator may limit the scope, time, and issues involved in discovery.
- 11.4 **Place of Arbitration.** The arbitration will be held in Stanford, California unless the parties mutually agree in writing to another place.

**12 NOTICES**

All notices under this Agreement are deemed fully given when written, addressed, and sent as follows:

All general notices to Licensee are mailed to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

All financial invoices to Licensee (i.e., accounting contact) are e-mailed to:

Name: \_\_\_\_\_

Email: \_\_\_\_\_

All general notices to Stanford are e-mailed or mailed to:

Office of Technology Licensing  
1705 El Camino Real  
Palo Alto, CA 94306-1106  
[info@otlmail.stanford.edu](mailto:info@otlmail.stanford.edu)

All payments to Stanford are mailed to:

Stanford University  
Office of Technology Licensing  
Department #44439  
P.O. Box 44000  
San Francisco, CA 94144-4439

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

### 13 MISCELLANEOUS

- 13.1 **Waiver.** No term of this Agreement can be waived except by the written consent of the party waiving compliance.
- 13.2 **Choice of Law.** This Agreement and any dispute arising under it is governed by the laws of the State of California, United States of America, applicable to agreements negotiated, executed, and performed within California.
- 13.3 **Exclusive Forum.** The state and federal courts having jurisdiction over Stanford, California, United States of America, provide the exclusive forum for any court action between the parties relating to this Agreement. Licensee submits to the jurisdiction of such courts, and waives any claim that such a court lacks jurisdiction over Licensee or constitutes an inconvenient or improper forum.
- 13.4 **Headings.** No headings in this Agreement affect its interpretation.
- 13.5 **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.

The parties execute 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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_