

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 and the United States Department of Veterans Affairs ("VA") have an assignment to biological material known as BZ194 Monoclonal Antibody Specific for Mouse CMKLR1. It was developed in the laboratory of Dr. Eugene Butcher, and is described in Stanford Docket S06-328. Stanford and the VA have entered into a Cooperative Technology Administration Agreement wherein Stanford has authority to administer and manage the Invention on behalf of both parties. The biological material was developed in the course of research supported by the National Institutes of Health. Stanford wants to have the biological material developed 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 BZ194 cell line producing monoclonal antibody against mouse CMKLR1, provided to Licensee pursuant to this Agreement.
- 2.2 "Licensed Field of Use" means use of Biological Material for research purposes. The Licensed 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 any *in vivo* use for whatever purpose.
- 2.3 "Licensed Product" means a product or part of a product in the Licensed Field of Use containing, derived from, or made using Biological Material.
- 2.4 "Licensed Territory" means worldwide.
- 2.5 "Net Sales" means all gross revenue derived through Licensee from Licensed Product. Net Sales excludes the following items (but only as they pertain to the making, using, importing or selling of Licensed Products, are included in gross revenue, and are separately billed):
 - (A) import, export, excise and sales taxes, and custom duties;
 - (B) costs of insurance, packing, and transportation from the place of manufacture to the customer's premises or point of installation; and
 - (C) credit for returns, allowances, or trades.

- 2.6 “Indemnitees” means VA, 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 under to the Biological Material in the Licensed Field of Use to make, have made, use, import, offer to sell and sell Licensed Product in the Licensed Territory.
- 3.2 **Nonexclusivity.** The license is nonexclusive in the Licensed Field of Use beginning on Effective Date and expiring 15 years from Effective Date.
- 3.3 **Retained Rights.** Stanford retains title to all Biological Materials.
- 3.4 **Specific Exclusion.** Stanford does not:
- (A) grant to Licensee any other licenses, implied or otherwise, to any patents or other rights of Stanford or the VA regardless of whether the patents or other rights are required to exploit any Biological Material; and
 - (B) agree to furnish to Licensee any technology or technological information other than the Biological Material or to provide Licensee with any assistance.
- 3.5 **No Transfer.** Licensee is not permitted to transfer Biological Material to any third party without prior written consent from Stanford.

4 SUBLICENSING

Licensee may not grant sublicenses.

5 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 in the Licensed Patent. Licensee will ensure all obligations of these provisions are met.

6 ROYALTIES

- 6.1 **Issue Royalty.** Licensee will pay to Stanford a noncreditable, nonrefundable license issue royalty of \$2000.00 upon signing this Agreement. Upon receipt of payment, Stanford will send Biological Material to Licensee. In addition Licensee agrees to supply Dr. Eugene Butcher's Lab, at his request and at no charge,
- (A) Licensee products up to a cumulative value of \$5,000.00; and
 - (B) Up to 10mgs per year of Biological Material in the format requested (i.e., conjugated or unconjugated, etc.)

- 6.2 **Earned Royalty.** Licensee will pay Stanford earned royalties of 6% on Net Sales.
- 6.3 **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.
- 6.4 **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.
- 6.5 **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.

7 ROYALTY REPORTS, PAYMENTS, AND ACCOUNTING

- 7.1 **Earned Royalty Payment and Report.** Beginning with the first sale of a Licensed Product, Licensee will submit to Stanford a written report (even if there are no sales) and an earned royalty payment within 30 days after the end of each calendar year until annual volume of Net Sales reaches \$500,000, and at the end of each calendar quarter thereafter. This report will state the number, description, and aggregate Net Sales of Licensed Product during the completed calendar quarter. With each report Licensee will include any earned royalty payment due Stanford for the completed calendar quarter (as calculated under Section 6.2.)
- 7.2 **Termination Report.** Licensee will pay to Stanford all applicable royalties and submit to Stanford a written report within 90 days after the license terminates. Licensee will continue to submit earned royalty payments and reports to Stanford after the license terminates, until all Licensed Products made or imported under the license have been sold.

8 EXCLUSIONS AND NEGATION OF WARRANTIES

- 8.1 **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.
- 8.2 **No Representation of Biological Material.** Licensee also acknowledges that Stanford does not represent or warrant that the exploitation of Biological Material will be successful.

9 INDEMNITY

- 9.1 **Indemnification.** Licensee will indemnify, hold harmless, and defend all 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.
- 9.2 **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.
- 9.3 **Workers' Compensation.** Licensee will comply with all statutory workers' compensation and employers' liability requirements for activities performed under this Agreement.

10 STANFORD NAMES AND MARKS

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

11 TERMINATION

11.1 Termination by Licensee.

- (A) 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.
- (B) As of the effective date of termination, Licensee will:
- (1) cease use and sale of Biological Material and any Licensed Products; and
 - (2) return to Stanford or destroy all Biological Material.

11.2 Termination by Stanford.

- (A) Stanford may also terminate this Agreement if Licensee:
- (1) is delinquent on any report or payment;
 - (2) is not diligently developing and commercializing Licensed Product;
 - (3) is in breach of any provision; or
 - (4) provides any false report.

- (B) Termination under this Section 11.2 will take effect 30 days after written notice by Stanford unless Licensee remedies the problem in that 30-day period.
- (C) As of the effective date of termination, Licensee will:
 - (1) cease use and sale of Biological Material and any Licensed Products; and
 - (2) return to Stanford or destroy all Biological Material.

11.3 Surviving Provisions. Surviving any termination or expiration are:

- (A) Licensee's obligation to pay royalties accrued or accruable;
- (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 7, 8, and 9, and any other provision that by its nature is intended to survive.

12 ASSIGNMENT

This agreement may not be assigned.

13 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.

14 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:

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

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

All payments to Stanford are mailed to:

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

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

15 MISCELLANEOUS

- 15.1 **Waiver.** No term of this Agreement can be waived except by the written consent of the party waiving compliance.
- 15.2 **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.
- 15.3 **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.
- 15.4 **Headings.** No headings in this Agreement affect its interpretation.
- 15.5 **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 _____

APPENDIX A

SAMPLE REPORTING FORM

Stanford Docket No. S -**This report is provided pursuant to the license agreement between Stanford
University and (Licensee Name)****License Agreement Effective Date:**

Report Covering Period	
Yearly Maintenance Fee	\$
Net Sales	\$
Royalty Calculation	
Royalty Subtotal	\$
Credit	\$
Royalty Due	\$

Comments: