

Non-Exclusive Licence Agreement for the Supply of Polyclonal Antibody to Monomeric Green Fluorescent Protein



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1. DEFINITIONS

1.1. The following terms shall have the following meanings:

- 1.1.1. **Affiliate** means any company which, during the Term, is a holding company of the Licensee or a subsidiary company of the Licensee or of any such holding company but only for so long as such company remains a holding company of the Licensee or a subsidiary company of the Licensee or of any such holding company;
- 1.1.2. **Agreement** means the terms and conditions contained in this non-exclusive licence;
- 1.1.3. **Biannual Period** means the period from the Commencement Date until the date six (6) months following the Commencement Date and thereafter each subsequent period of six (6) months;
- 1.1.4. **Commencement Date** means the date on which the Licensor confirms, by e-mail to the Licensee, that the Licensor has accepted the Licensee's offer to take a licence to the Material and the Technical Information;
- 1.1.5. **Excluded Purposes** means i) any regulated or non-regulated diagnostic purposes; ii) any therapeutic purposes; or iii) any *in vivo* use in human subjects;

- 1.1.6. **Field** means to manufacture and sell as an *in vitro* use research reagent only;
- 1.1.7. **Force Majeure** means in relation to either Party any event or circumstance which is beyond the reasonable control of that Party and which results in or causes the failure of that Party to perform any or all of its obligations under this Agreement; provided always that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;
- 1.1.8. **Insolvency Event** means any one or more of the following:
- (a) a notice shall have been issued to convene a meeting for the purpose of passing a resolution to wind up the Licensee or such a resolution shall have been passed other than a resolution for the solvent reconstruction or reorganisation of the Licensee or for the purpose of inclusion of any part of the share capital of the Licensee in the Official List of the London Stock Exchange or other recognised stock exchange or an application by the Licensee for registration as a public company in accordance with the requirements of the Companies Act 1985; or
 - (b) a resolution shall have been passed by the Licensee's directors to seek a winding up or administration order or a petition for a winding up or administration order shall have been presented against the Licensee or such an order shall have been made; or
 - (c) a receiver, administrative receiver, receiver and manager, interim receiver, custodian, sequestrator or similar officer is appointed in respect of the Licensee or over a substantial part of its assets or any third party takes steps to appoint such an officer in respect of the Licensee; or
 - (d) a proposal for a voluntary arrangement shall have been made in relation to the Licensee under Part I Insolvency Act 1986; or
 - (e) a step or event shall have been taken or arisen outside the United Kingdom which is similar or analogous to any of the steps or events listed at (a) to (d) above; or
 - (f) where the Licensee is resident in the United Kingdom it is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- 1.1.9. **IPR** means all industrial and intellectual property of whatever nature anywhere in the world and all rights pertaining thereto, whether recorded or registered in any manner, or otherwise, including (without limitation) patents, trademarks, registered designs and applications for any of the same, copyright, design right, semiconductor topography rights, database and software rights, mask works, trade secrets, know-how, business names, trade names, brand names and all other legal rights protecting intangible proprietary information;
- 1.1.10. **Licensed Products** means i) the Material; ii) any derivative of the Material; and / or iii) any product containing or incorporating the Material and / or any derivative of the Material;
- 1.1.11. **Licence Fee** means TWO THOUSAND POUNDS STERLING £2000;
- 1.1.12. **Licensee** means the legal entity on behalf of which the terms and conditions contained in this evaluation licence agreement have been accepted;

- 1.1.13. **Licensor** means the University Court of the University of Edinburgh, a charitable body registered in Scotland with registration number SC005336, incorporated under the Universities (Scotland) Acts and having its principal office at Old College, South Bridge, Edinburgh EH8 9YL;
- 1.1.14. **Material** means 5mls of unpurified rabbit serum containing the monomeric Green Fluorescent Protein polyclonal antibody to be supplied by the Licensor to the Licensee under this Agreement;
- 1.1.15. **Net Sales Price** means the price as actually charged or invoiced for Licensed Products in an arm's length transaction less (i) transport, freight, packaging and insurance costs and (ii) sales, import, value added (or like) taxes to the extent identified on the invoice; provided always that where the Licensed Products are:-

- a) sold or otherwise supplied other than in an arm's length transaction; or
- b) sold or otherwise supplied to an Affiliate;

the Net Sales Price of each such Licensed Product shall be deemed to be the Net Sales Price which would have applied under this Agreement had such Licensed Product been supplied to an independent arm's length customer; and

where the Licensed Products are sold in combination with any other product or service sold or supplied by the Licensee for a monetary sum which is included in the price for the such product or service, the Net Sales Price, for the purpose of calculating royalties due under Clause 6, shall be determined by multiplying the Net Sales Price of the combination product by a fraction, the numerator of which is the Net Sales Price of the Licensed Product contained in such combination if the Licensed Product were sold separately and the denominator of which is the sum of the Net Sales Price of each of the products in such combination if each were sold separately;

- 1.1.16. **Party** means either the Licensor or the Licensee and **Parties** means both the Licensor and the Licensee;
- 1.1.17. **Purpose** means use of the Material as a research reagent only, for the purposes of all non-regulated *in vitro* uses only, by commercial or non-commercial organisations;
- 1.1.18. **Technical Information** means such technical information, relating to the Material, as may be provided by the Licensor to the Licensee;
- 1.1.19. **Term** means the period from the Commencement Date until the Termination Date; and
- 1.1.20. **Termination Date** means the first of the following dates to occur (i) the third anniversary of the Commencement Date; and (ii) if either Party exercises any right of early termination contained in Clause 12, the date of such early termination.

1.2. In this Agreement, unless the context otherwise requires:

- 1.2.1. references to recitals, clauses and sub-clauses are to recitals, clauses and sub-clauses of this Agreement;
- 1.2.2. headings to clauses and the schedule are for ease of reference only and do not form part of this Agreement and shall not in any way affect its interpretation;

- 1.2.3. references to a “company” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.4. the expressions “subsidiary company” and “holding company” shall have the meanings ascribed to them in section 1159 of the Companies Acts 2006;
- 1.2.5. words importing the singular shall include the plural and vice versa; and
- 1.2.6. any phrase introduced by any of the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding such terms.

2. BACKGROUND

- 2.1. The Licensor is the owner of the Material and the copyright in the Technical Information.
- 2.2. The Licensor has agreed to grant, and the Licensee has agreed to take, a non-exclusive licence to the Material and the Technical Information on the terms and conditions set out in this Agreement.

3. COMMENCEMENT AND DURATION

This Agreement and the licence granted hereunder shall commence on the Commencement Date and shall continue in force for the Term.

4. GRANT OF RIGHTS

- 4.1. Subject to the terms of this Agreement, the Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Material and the Technical Information for the Term and in the Field only, solely for the manufacture and sale of Licensed Products for the Purpose only. The Licensee shall have no right to grant sub-licences under this Agreement.
- 4.2. The Licensee shall not use the Material for, nor manufacture and / or sell any Licensed Products to third parties for, any Excluded Purpose.
- 4.3. The Licensee shall take reasonable steps to ensure that the Licensed Products are not purchased by any third party for any use other than the Purpose. In particular, the Licensee shall take reasonable steps to ensure that the Licensed Products are not purchased by any third party for any Excluded Purpose. Such reasonable steps shall include, without limitation, making it clear on the packaging for each Licensed Product that such Licensed Product is only suitable for use for the Purpose.
- 4.4. No further right or licence is granted to the Licensee by this Agreement save as expressly set out in this Clause 4 and the Material, the Technical Information and all IPR therein shall remain vested in the Licensor.

5. SUPPLY OF THE MATERIAL

- 5.1. Within 30 days after receipt of the Licence Fee from the Licensee pursuant to Clause 6.2, the Licensor shall supply the Material and the Technical Information to the Licensee.
- 5.2. The Licensee shall be responsible for the proper and safe handling, storage and use of the Material in accordance with all and any instructions or advice which may be given to the Licensee by the Licensor and in accordance with all applicable laws and regulations in the country in which the Material is used.

- 5.3. The Licensee shall not identify the Licensor in any promotional, advertising or other materials to be disseminated to the public, nor make any disclosure that the Licensor is the licensor of the Material or the Technical Information or use any trade mark, name or symbol of the Licensor without the prior written approval of the Licensor. Notwithstanding the above the Licensee shall be free to use the Technical Information for promoting sales of Licensed Products.
- 5.4. The Licensee shall use its best endeavours to develop, produce and offer for sale Licensed Products in commercial forms, dependent upon the Licensor's ability to provide Material to the Licensee. The Licensee shall also use its best endeavours to stimulate demand for Licensed Products and to meet demand by supplying third parties with their reasonable requirement of Licensed Products at reasonable prices and within reasonable delivery time.

6. CONSIDERATION

- 6.1. The consideration payable by the Licensee for the rights granted under Clause 4 shall comprise the payments set out in Clauses 6.2 and 6.3.
- 6.2. The Licensee shall, within thirty (30) days of the Commencement Date, pay to the Licensor the Licence Fee.
- 6.3. The Licensee shall within thirty (30) days of the end of each Biannual Period, pay to the Licensor a royalty of fifteen per centum (15%) of the Net Sales Price of Licensed Products sold or otherwise supplied during that Biannual Period.
- 6.4. The Licensee shall either (i) provide the Licensor with details of its own courier to charge all carriage or freight costs incurred in supplying the Material to the Licensee; or (ii) pay to the Licensor, within thirty (30) days of receipt of an invoice, all carriage or freight costs incurred in supplying the Material to the Licensee.
- 6.5. All and any monetary payments or other consideration due to the Licensor under and in terms of this Agreement:
- 6.5.1. are exclusive of value added (or the like) tax which may be payable thereon, which the Licensee undertakes to pay at the then prevailing rate forthwith upon receipt of an invoice from the Licensor; and
- 6.5.2. shall be paid gross without the deduction of any withholding or similar income taxes, charges, or other duties.
- 6.6. All and any payments due to the Licensor in terms of Clauses 6.2 and 6.3 shall be paid in Sterling either by direct bank credit or BACS (following receipt of an invoice), quoting ID 2350.
- 6.7. If the Licensee fails to pay any amount payable under this Agreement by the due dates given in Clauses 6.2 and 6.3, the Licensor shall be entitled to:
- 6.7.1. charge the Licensee interest on the overdue amount, payable by the Licensee forthwith on demand from the Licensor, from the due date up to the date of actual payment, accruing on a daily basis, after, as well as before, judgement, at the rate of 5 % over the base lending rate of the Bank of Scotland from time to time; and
- 6.7.2. terminate this Agreement as provided in Clause 12.

7. RECORDS, REPORTING AND AUDIT

- 7.1. The Licensee shall keep true and accurate written records and books of account containing all data necessary for the determination of the completeness and accuracy of the reported sums payable to the Licensor under Clause 6.
- 7.2. Within 30 days of the end of each successive Biannual Period, the Licensee shall submit or cause to be submitted to the Licensor a written statement containing a calculation of the sums payable under Clause 6. Such statement shall be in the form of the Licensor's standard royalty report template (to be found at http://www.research-innovation.ed.ac.uk/download/Royalty_Statement_for_University_of_Edinburgh.doc) and shall, in particular, include:
- 7.2.1. the number of Licensed Products supplied during the previous Biannual Period and, if none, a statement to that effect;
 - 7.2.2. the Net Sales Price of each Licensed Product supplied during the previous Biannual Period;
 - 7.2.3. the sums due and payable under Clause 6 and, if none, a statement to that effect; and
 - 7.2.4. the amount of any deductions made by the Licensee from the sums referred to in Clause 7.2.3.
- 7.3. The Licensor or its duly authorised agent or representative may, for the purpose of verifying the calculation of the sums payable under Clause 6, at any time during normal business hours:
- 7.3.1. visit the premises of the Licensee (and, insofar as necessary the Licensee's agents, subcontractors and other professional advisers);
 - 7.3.2. inspect all records, information and books of account of the Licensee;
 - 7.3.3. make and remove copies of, or extracts of, all relevant records, information and books of account of the Licensee; and
 - 7.3.4. interview any of the Licensee's employees and directors.
- 7.4. The Licensee shall co-operate fully and shall require its agents, subcontractors and other professional advisers to co-operate fully, with the Licensor or its duly authorised agent or representative whilst they are exercising the rights set out in Clause 7.3.
- 7.5. If the verification carried out under Clause 7.3 should reveal a discrepancy between the sums actually paid to the Licensor as against the sums which were due to be paid under Clause 6, the Licensee shall within fourteen (14) days make up any shortfall to the Licensor. If such discrepancy exceeds five per centum (5%) the Licensee shall within fourteen (14) days of written request reimburse the Licensor any professional charges incurred by the Licensor for such verification.
- 7.6. The Licensor shall maintain, or shall require its duly authorised agent or representative to maintain, as confidential all financial information received from the Licensee under this Clause 7.

8. CONFIDENTIALITY

- 8.1. Each Party shall:

- 8.1.1. maintain secret and confidential all information having about it the nature of confidence (in this Clause 8 hereinafter referred to as "Confidential Information") belonging to the other Party that may be acquired in the course of this Agreement;
 - 8.1.2. use the same exclusively for the purposes of this Agreement; and
 - 8.1.3. disclose the same only to those of its employees to whom and to the extent that such disclosure is reasonably necessary for the purpose of this Agreement.
- 8.2. The obligations of confidence in Clause 8.1 shall not extend to Confidential Information which:
- 8.2.1. is already known to the receiving Party before the Commencement Date;
 - 8.2.2. is already in the public domain or subsequently comes into the public domain other than by breach of this Agreement;
 - 8.2.3. is required to be disclosed by law or regulation or the order of a competent court or other authority;
 - 8.2.4. the receiving Party can demonstrate it independently developed;
 - 8.2.5. is received from a third party who has the right to disclose it; or,
 - 8.2.6. the receiving Party has been given prior written permission by the disclosing Party to disclose.

9. LIMITED WARRANTIES

- 9.1. The Licensor warrants to the Licensee that, as at the Commencement Date the Licensor has the full power and authority to enter into and to perform its obligations under this Agreement.
- 9.2. The Licensee hereby warrants to the Licensor that:
 - 9.2.1. the Licensee has the full power and authority to enter into and to perform its obligations under this Agreement; and
 - 9.2.2. it will at all times during the term of this Agreement observe and comply with the terms of this Agreement.
- 9.3. Subject to Clause 9.1, no warranty is given by the Licensor in relation to the Material, the Technical Information or the uses to which they may be put by the Licensee or their fitness or suitability for any particular purpose or under any special conditions notwithstanding that any such purpose or special conditions may be known to the Licensor. The Licensee shall satisfy itself in relation to the fitness or suitability of the Material and the Technical Information for any particular purpose or under any special conditions. All conditions and warranties, express or implied, whether arising under statute or under common law (including but not limited to conditions and warranties as to quality, suitability and fitness for purpose) are hereby excluded to the maximum extent permitted by law.
- 9.4. As examples, but without limiting the foregoing, the Licensor gives no warranty:
 - 9.4.1. that the Material and Technical Information comply with any sample or description, have been developed or provided with reasonable care and skill, are viable, uncontaminated, safe, non-hazardous or non-toxic; or

9.4.2. that the Material has been tested, whether for the presence of pathogens or otherwise.

9.1 As examples, but without limiting the foregoing, the Licensor gives no warranty:

9.1.1 that the Material and Technical Information comply with any sample or description, have been developed or provided with reasonable care and skill, are viable, uncontaminated, safe, non-hazardous or non-toxic; or

9.1.2 that the Material has been tested, whether for the presence of pathogens or otherwise.

10. LICENSEE'S INDEMNITY

The Licensee shall indemnify and keep indemnified at all times the Licensor, its servants and agents from and against all claims, actions, losses, damages, demands, liabilities, costs and expenses (including, without limitation, all interest, penalties and legal and other professional costs and expenses) which may be brought against or incurred or suffered by the Licensor, its servants or agents and which arise out of or in connection with (i) the negligence or fraud of the Licensee, its servants or agents or others for whom the Licensee is responsible; (ii) the Licensee's use, disposal or storage of the Material and / or the Technical Information; and (iii) claims of product liability that may be instituted against the Licensor arising out of the Licensee's marketing, distribution, sale, production, manufacture, lease, licence, consumption, and advertisement of the Material and / or Licensed Products, including but not limited to, claims resulting from any type of manufacturing or design defect in such resulting products or processes or by the use or misuse of such products or processes.

11. LIMITATION OF LIABILITY

11.1. Subject always to Clause 11.2, and to the extent permitted by law, the aggregate liability of the Licensor for any breach of the terms of this Agreement shall not exceed two hundred thousand pounds (£200,000).

11.2. The Licensor:

11.2.1. does not exclude or limit liability to the Licensee for death or personal injury arising from the negligence or breach of duty by the Licensor; and / or

11.2.2. shall not be liable in contract, delict or otherwise for any indirect, incidental, special, exemplary or consequential loss and / or damage of any kind whatsoever (including, but not limited to, procurement of substitute products; loss of use, data or profits; failure to make anticipated savings; costs of wasted time; costs of missed business or commercial opportunities; goodwill; and / or business interruption) even if such was reasonably foreseeable or if the Licensor was notified of the possibility of such loss and / or damage.

12. TERMINATION

12.1. The Licensor shall be entitled to terminate this Agreement forthwith by notice in writing to the Licensee in the event that the Licensee:-

12.1.1. fails to perform or observe any of the obligations on its part to be performed or observed under this Agreement, provided that, where the Licensor considers the breach to be remediable, (i) the Licensor shall first have given written notice to the Licensee requiring the Licensee to remedy such breach within thirty (30) days and indicating that this Agreement will terminate otherwise and

- (ii) the Licensee has failed to remedy such breach to the Licensor's satisfaction within such timescale;
- 12.1.2. suffers an Insolvency Event prior to the Termination Date; or
- 12.1.3. payment by the Licensee is late pursuant to Clause 6.
- 12.2. The Licensee shall be entitled to terminate this Agreement by giving at least 30 days' notice in writing to the Licensor.
- 12.3. In the event of expiry or earlier termination of this Agreement howsoever arising:
 - 12.3.1. where applicable, all outstanding sums payable by the Licensee shall immediately become due and payable;
 - 12.3.2. all rights and licences granted to the Licensee hereunder shall cease;
 - 12.3.3. subject to Clause 12.4, the Licensee shall cease all and any use of the Material and the Technical Information; and
 - 12.3.4. subject to Clause 12.4, the Licensee will deliver to the Licensor all remaining Material, all Technical Information and all other Confidential Information of the Licensor to the Licensor (or at the request of the Licensor destroy same and certify such destruction).
- 12.4. The Licensee may sell remaining stocks of Licensed Products for up to 3 months after the date of termination subject to the provisions of this Agreement and to the payment of any royalties due thereon. Thereafter all remaining stocks of Licensed Products shall be returned by the Licensee to the Licensor forthwith at the Licensee's expense.
- 12.5. Clauses 1, 4.2, 4.3, 5.2, 5.3, 7 - 12 and 19 – 22 shall survive the expiry of this Agreement on the Termination Date or the earlier termination of this Agreement.

13. RELATIONSHIP OF PARTIES

Nothing in this Agreement and no action taken by the Parties contemplated pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the Parties or shall constitute either Party as an agent, employee or representative of the other.

14. VARIATION

Modification or variation of this Agreement or of any of the provisions herein contained shall not be valid unless made in writing and signed on behalf of the Parties or their duly authorised agents.

15. WAIVER

Failure by a Party to enforce at any time or for any period any term of this Agreement does not constitute and shall not be construed as a waiver of such term and shall not affect the right later to enforce such term and any other term in this Agreement.

16. NOTICES

- 16.1. Any notice, request or consent under this Agreement shall be in writing and shall be sufficiently served if sent by recorded delivery post to the following address:
In the case of notices to the Licensor to:

The University of Edinburgh
c/o Edinburgh Research and Innovation Limited
1-7 Roxburgh Street
Edinburgh
EH8 9TA

and marked for the attention of the Director, with a copy to the Head of Legal Division (reference ID 2347) or such other address as may be intimated from time to time in writing by the Licensor to the Licensee.

In the case of notices to the Licensee to its Registered or Principal Office (as the case may be) marked for the attention of the Chief Executive or such other address as may be intimated from time to time in writing by the Licensee to the Licensor.

- 16.2. Notice sent by recorded delivery post shall be deemed duly served at the expiry of two days after the date of posting. In proving service, it shall be sufficient to prove that the envelope was duly addressed to the appropriate Party in accordance with this Clause 16.

17. FORCE MAJEURE

Neither Party shall be liable for any delay in performing or for failure to perform its obligations under this Agreement or be held to be in breach of this Agreement caused by an event of Force Majeure. If an event of Force Majeure occurs, the affected Party shall be excused such performance (but only such performance) during the period of such Force Majeure event. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

18. ASSIGNATION

Neither Party may assign all or any part of the benefits or burdens of this Agreement without the prior written consent of the other Party.

19. SEVERABILITY

If any provision of this Agreement is held to be void or unenforceable by any legislation or judicial or administrative authority, such provision shall be deemed to be severable and shall not affect the validity of the remaining portion of this Agreement which shall remain in force and effect as if this Agreement had been granted with no such provision and it is hereby declared the intention of the Parties that they would have executed the remaining portion of this Agreement without including therein any such provision.

20. ENTIRE AGREEMENT

This Agreement sets out the entire agreement between the Parties with respect to the subject matter hereof and supersedes any previous understandings or arrangements whatsoever between the Parties.

21. DISPUTE RESOLUTION

- 21.1. The Parties agree to consult and negotiate in good faith to try to resolve any dispute, controversy or claim that arises out of or relates to this Agreement. The Parties agree that any and all disputes and controversies arising from, connected with, or relating to this Agreement or any breach thereof (collectively "Disputes") will be resolved in accordance with the terms of this Clause 21 as follows:

21.1.1. The Parties, through appropriate senior persons, shall first meet and attempt to resolve the Dispute in face-to-face or telephonic negotiations. The meeting shall occur within thirty (30) days of the time that one Party notifies the other in writing of the existence of the Dispute.

21.1.2. Should the Dispute not be resolved within thirty (30) days of the meeting referred to in clause 21.1.1, the Parties will be at liberty to resolve the Dispute through the courts in accordance with Clause 22.

22. GOVERNING LAW AND JURISDICTION

This Agreement, all questions of construction, validity and performance under this Agreement and any dispute arising out of in connection with the subject matter of this Agreement shall be governed by laws of Scotland and the Parties hereby submit to the exclusive jurisdiction of the Scottish courts.