**STARTUP LICENSE AGREEMENTS**

**Start-Up Licenses will be offered under the terms outlined below beginning October 1, 2011 with the offer ending on September 30, 2012, at which time the program will be evaluated for its success and possible extension.**

**FIELD:** vaccines, drugs and therapeutics to prevent or treat disease in humans.

**SCOPE:**  Licenses to pending or issued US and foreign equivalent patents owned by the US Government and managed by the National Institutes of Health (NIH) Office of Technology Transfer, constituting inventions made by NIH and FDA intramural scientists.

**LICENSES:**

**Exclusive Evaluation License (1 yr option for Exclusive Commercialization License) and,**

**Exclusive Commercialization License**

**PREREQUISITES:**

* Pending or issued patent rights with NIH as the Lead Licensor that are not currently licensed, under negotiation, or subject to a CRADA option.
* Licensed territory must include the US and may include other countries.
* Field of use must include the development of a human vaccine, drug or therapeutic.
* Company is a startup, i.e., less than 50 employees, in operation less than 5 years, less than $5M in funding since incorporation, and majority owned by individuals, hedge funds, or venture funds or by a company that is majority owned by individuals, hedge funds or venture funds
* NIH Office of Technology Transfer approves the Company’s License application which, (A) for an Exclusive Evaluation License, details their interest and short-term development and anticipated long-term development plans for the technology; or (B) for an Exclusive Commercialization License, includes (i) a detailed business plan setting forth the Company’s plans and strategies to develop and commercialize the technology and (ii) financial, product development and sales milestones.
* All exclusive licenses are subject to applicable statutes and regulations and are granted based on the requirements set forth in 37 CFR §404.7.

**NOTICE IN FEDERAL REGISTER**: 15 days (the minimum required by statute)

**LICENSE TERMS:**

**Grant:**

**Exclusive Evaluation License**

One-year exclusive license with the option to amend the terms substantially in the form of the NIH Startup Exclusive Commercialization License

**Exclusive Commercialization License**

For the term of the patent(s) in a specified field of use with the right to sublicense or as the parties otherwise agree. A license for all fields of use may be granted. However, if the scope of the license covers multiple fields and/or products, it will be subject to NIH’s approval with the possible requirement to return license rights back to NIH for the fields and/or product lines the company decides not to develop (“pull back” language).

The Exclusive Evaluation License and Exclusive Commercialization License are both subject to reserved U.S. Government rights.

**Consideration**

***Patent Expenses:***

* Company will reimburse NIH for 50% of patent expenses incurred after the Effective Date of the Exclusive Commercialization License\*.
* At the earlier of the following events 1) Liquidity Event, 2) Grant of a Sublicense, 3) First Commercial Sale or 4) the third anniversary of the Effective Date of the Exclusive Commercialization License, the Company will reimburse all unreimbursed past patent expenses and will have an obligation to reimburse all future patent expenses.

***License Fee:***

* A $2,000 Exclusive Evaluation License fee. In lieu of an upfront license fee for the Exclusive Commercialization License, the Company will have a license obligation to make a cash payment to NIH at the time of the earliest Liquidity Event (e.g., asset sale, merger, acquisition IPO, or assignment), as follows:
* 0.75% of the fair market value of the Company at the time of the Liquidity Event for technologies when NIH has provided no more than *in vitro* data;
* 1.50% of the fair market value of the Company at the time of the Liquidity Event for technologies when NIH has provided no more than *in vivo* animal or toxicology data;
* 3.00% of the fair market value of the Company at the time of Liquidity Event for technologies when NIH has provided clinical data.

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| ***Minimum Annual Royalty:***  Paid yearly on January 1. |  |  |
| Following the 3rd anniversary of the Effective Date of the Exclusive Commercialization Agreement. | $15,000 |  |
| Following the 6th anniversary of the Effective Date of the agreement | $30,000 |  |
| Following the 9th anniversary of the Effective Date of the agreement and each calendar year thereafter | $150,000 |  |

**\*** If the Company has entered into a CRADA for the commercial development of the anticipated products or services (“Licensed Product(s)”), and its contribution is at least of equal value to the Minimum Annual Royalties otherwise due to NIH/FDA, then the Minimum Annual Royalties may be waived for up to five years from the effective date of the Exclusive Commercial License Agreement.

\*If the Company receives an SBIR or STTR award for the commercial development of the anticipated products or services (“Licensed Product(s)”), then the Minimum Annual Royalties may be waived for up to five years from the effective Date of the Exclusive Commercial License Agreement.

***Royalty:***

1.5 % of Net Sales of Licensed Product(s) or Process(es)

***Sublicensing:***

15% of Sublicensing Consideration

***Stacking Royalty Clause*** may be opened by the Company for negotiation following *execution of the license agreement* if the Company encounters a stacking royalty challenge. In order to have enough flexibility to reach the best agreement structure for both parties regarding the stacking of royalties, other terms of the Exclusive Commercialization License may need to be renegotiated.

***Combination Product*** may be opened for negotiation by the Company *following execution of the license agreement,* if the Company develops plans for a combination product. In order to have enough flexibility to reach a reasonable agreement for both parties regarding royalties on a combination product, other terms of the Exclusive Commercialization License may need to be renegotiated.

***Milestone Payments:*** None. Enforceable performance milestones are required.

Milestones may include, but are not limited to: Hiring of Management Personnel, Completion of Prototype or Proof of Concept, Submission of Grant, Manufacturing, First Sublicense, Initiation of Clinical Trials (all phases), Initiation of FDA Filings, First Sale, Minimum Series A Funding of a specified dollar amount, etc.