

NON-EXCLUSIVE TECHNOLOGY LICENSE AGREEMENT**AGT. NO.** _____

This Technology License Agreement (“Agreement”) is between The Board of Regents (“Board”) of The University of Texas System (“System”), an agency of the State of Texas whose address is 210 West 7th Street, Austin, Texas 78701 on behalf of The University of Texas Southwestern Medical Center (“UT Southwestern”), a component institution of System, whose address is 5323 Harry Hines Boulevard, Dallas, Texas 75390-9094 (“Licensor”) and _____, with its principal place of business at _____ (“Licensee”) (collectively, “Parties”, or singly, “Party”).

This Agreement has an effective date of the date of final signature by the Parties (“Effective Date”).

No binding agreement between the Parties will exist until the Agreement has been signed by both Parties. Unsigned drafts of the Agreement shall not be considered offers.

Background

Licensor owns certain Technology Rights (as defined below) which were developed at UT Southwestern. Licensee desires to secure the right and license to use Technology Rights. Licensor has determined that such use of the Technology Rights is in the public’s best interest and is consistent with Licensor’s educational and research missions and goals. Licensor desires to have the Technology Rights in Licensed Material (as defined below) used for the benefit of Licensee, the inventors, Licensor, and the public.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the Parties hereby agree as follows:

1. Definitions

“Academic Partners” (or singly, **“Academic Partner”**) means any academic third parties accessing Technology Rights while actively carrying out a collaborative research program with Licensee.

“ATCC” means American Type Culture Collection, a non-profit organization having a principal place of business located at 10801 University Boulevard, Manassas, Virginia 20110, USA.

“Collaborators” (or singly, **“Collaborator”**) means Academic Partners and/or Contract Service Providers.

“Contract Service Providers” (or singly, **“Contract Service Provider”**) means any third parties accessing Technology Rights solely for the benefit of Licensee while performing a research contract for Licensee.

“Derivatives” means materials, whether modified or unmodified, that are derived from Original Material, examples of which include, without limitation, secretions, purified proteins, and purified nucleic acids.

“**Field**” means internal research purposes only.

“**Government**” means any agency, department or other unit of the United States of America or the State of Texas.

“**Inventors**” means Adi F. Gazdar and John D. Minna.

“**Licensed Material**” means the Original Material, Progeny, and Derivatives.

“**Original Material**” means all cell lines (singly, Cell Line) listed in Exhibit A: HCC Cancer Cell Lines, created by Inventors at Licensor before the Effective Date.

“**Progeny**” means any progeny (or descendants, passages, or subcultures, as the case may be) of Original Material, whether modified or unmodified.

“**Technology Rights**” means Licensor’s rights in Licensed Material.

2. License Grant and Commercialization

2.1 Grant

- (a) Licensor grants to Licensee a non-exclusive license under Technology Rights to use Licensed Material within Field.
- (b) This grant is subject to (i) the payment by Licensee to Licensor of all consideration required under the Agreement, (ii) any rights of, or obligations to, the Government as set forth in Section 7.2 (Government Rights), and (iii) rights retained by Licensor to:
 - (1) Publish the general scientific findings from research related to Technology Rights; and
 - (2) Use and transfer Technology Rights for any purposes.
- (c) Licensor reserves all rights not expressly granted in the Agreement and disclaims the grant of any implied rights to Licensee.
- (d) For clarity and avoidance of doubt, this Agreement does not grant the Licensor any rights in or to any inventions, technologies, intellectual properties, results, or data generated, created, or developed by or on behalf of Licensee through the use of Licensed Material.

2.2 Third Parties

Licensee may not transfer Licensed Material to any third party, except that Licensor consents to Licensee's transfer of the Licensed Material to Collaborators, provided:

- (a) such Collaborators are bound by written terms and conditions consistent with this Agreement;
- (b) Licensee remains responsible to Licensor for actions performed by Collaborators with Licensed Material as if such actions were performed by Licensee; and
- (c) such Collaborators are bound by written agreement with Licensee to destroy all Licensed Material in its possession once the Collaborator's collaboration with (or performance of research services for) Licensee involving the use of Licensed Material ceases.

3. **Compensation**

- 3.1 All payments to Licensor hereunder shall be made by deposit of United States dollars (USD) in the requisite amount to "UT Southwestern" and will be made by delivery by ACH/WIRE as follows:

Licensor will provide ACH/WIRE instructions to Licensee's Accounting Contact (as identified in Section 12) via email promptly after Agreement has been signed by both Parties.

All amounts payable hereunder by Licensee must be paid without deductions for taxes, assessments, fees, or charges of any kind. Licensee shall pay all wire transfer fees, including, for clarity, any inbound wire transfer fee that is charged by the bank receiving the wire transfer on behalf of Licensor

Prior to the initiation of any ACH/WIRE, Licensee must send an email to Cash Management (UTSWCashManagement@UTSouthwestern.edu) for identification and documentation purposes. Such email shall include the following information:

- (a) The amount of the ACH/WIRE payment and the date the ACH/WIRE payment is expected;
- (b) Any pertinent information that can be used to identify the payment from Licensee.

Option A: one-time upfront payment for a 10-year license

3.2 In consideration of rights granted to Licensee, Licensee will pay Licensor a one-time non-refundable license issue fee in the amount of US\$12,500.00 for each Cell Line listed in Exhibit A: HCC Cancer Cell Lines, for a total license issue fee in the amount of US\$_____, due and payable within 30 days of Licensee’s receipt of a fully executed Agreement from Licensor and an invoice therefor. All amounts payable hereunder by Licensee must be paid in United States dollars without deductions for taxes, assessments, fees, or charges of any kind, either by check or wire transfer. If payment is provided by wire transfer, Licensee shall pay all wire transfer fees, including, for clarity, any inbound wire transfer fee that is charged by the bank receiving the wire transfer on behalf of Licensor. Such payment will reference the Agreement number and will be sent to Licensor’s payment and accounting contact in Section 12 (Notices).

Option B: annually renewable license (up to 10 years)

3.2 In consideration of rights granted to Licensee, Licensee will pay Licensor the following:

- (a) a one-time non-refundable license issue fee in the amount of US\$3,750.00 for each Cell Line listed in Exhibit A: HCC Cancer Cell Lines, for a total license issue fee in the amount of US\$_____, due and payable within 30 days of Licensee’s receipt of a fully executed Agreement from Licensor and an invoice therefor.
- (b) a non-refundable annual license reissue fee in the amount of US\$3,750.00 for each Cell Line listed in Exhibit A: HCC Cancer Cell Lines, for a total license issue fee in the amount of US\$_____, due and payable on each anniversary of the Effective Date as applicable and receipt of a corresponding invoice therefor.

4. Transfer of Original Material

Within 15 days after UT Southwestern receives from Licensee the license issue fee delineated in Section 3.2, UT Southwestern will notify ATCC that Licensee has entered into this Agreement and is authorized to receive Original Material from ATCC. Licensee recognizes that Original Material is being made available to Licensee under a bailment agreement whereby Licensee recognizes Licensor’s continued ownership of Original Material and Licensor’s rights in Progeny and Derivatives.

5. Term and Termination

If Option A was selected in Section 3, then Section 5.1 shall be as follows:

5.1 Term
 Unless earlier terminated as provided herein, the term of the Agreement will commence on the Effective Date and continue for a period of 10 years.

If Option B was selected in Section 3, then Section 5.1 shall be as follows:

5.1 Term

Unless earlier terminated as provided herein, the term of the Agreement will commence on the Effective Date and continue for a period of an initial term of one (1) year (the "Initial Term"). The Agreement shall automatically terminate after the Initial Term, except that Licensee has the option to extend the term of the agreement in one-year increments by providing payment of the annual license reissue fee to Licensor per Section 3.2(b) prior to such automatic termination on an annual basis up to an aggregate total of ten (10) years.

5.2 Termination by Licensee

Licensee, at its option, may terminate the Agreement by providing Licensor written notice of intent to terminate, which such termination will be effective 90 days following receipt of such notice by Licensor.

5.3 Termination by Licensor

Licensor, at its option, may immediately terminate the Agreement upon delivery of written notice to Licensee of Licensor's decision to terminate, if any of the following occur:

- (a) Licensee becomes in arrears in any payments due under the Agreement, and Licensee fails to make the required payment within 30 days after delivery of written notice from Licensor; or
- (b) Licensee is in breach of any non-payment provision of the Agreement, and does not cure such breach within 60 days after delivery of written notice from Licensor; or
- (c) Licensor delivers notice to Licensee of three or more actual breaches of the Agreement in any 12-month period, even in the event that Licensee cures such breaches in the allowed period.

5.4 Other Termination Consideration

- (a) Immediately without the necessity of any action being taken by Licensor or Licensee, (i) if Licensee becomes bankrupt or insolvent, or (ii) Licensee's Board of Directors elects to liquidate its assets or dissolve its business, or (iii) Licensee ceases its business operations, or (iv) Licensee makes an assignment for the benefit of creditors or (v) if the business or assets of Licensee are otherwise placed in the hands of a receiver, assignee or trustee, whether by voluntary act of Licensee or otherwise; or
- (b) At any time by mutual written agreement between Licensee and Licensor.

5.5 Effect of Termination

When the Agreement expires or if the Agreement is terminated for any reason:

- (a) Licensee shall cease developing and/or using Licensed Material by the effective date of termination and will provide Licensor with written assurance that all Licensed Material have been destroyed; and
- (b) Nothing in the Agreement will be construed to release either Party from any obligation that matured prior to the effective date of termination; and
- (c) The provisions of Sections 7 (Representations and Disclaimers), 8 (Limit of Liability), 9 (Indemnification), 11 (Use of Name), 12 (Notices), and 13 (General Provisions) will survive any termination or expiration of the Agreement. In addition, the provisions of Section 3 (Compensation) shall survive with respect to all activities and payment obligations accruing prior to the termination or expiration of the Agreement.

6. **Export Compliance**

Each Party shall comply with United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and all other export-controlled commodities. Neither Party shall, directly or indirectly, re-export any controlled commodities, which are subject to this Agreement, unless the required authorization and/or license is obtained from the proper government agency(ies) prior to export.

7. **Representations and Disclaimers**

7.1 Licensor Representations

Except for the rights, if any, of the Government as set forth in Section 7.2, Licensor represents and warrants to Licensee that to the knowledge of Licensor's designated office for technology commercialization (i) Licensor is the owner or agent of the entire right, title, and interest in and to Technology Rights, (ii) Licensor has the right to grant licenses hereunder, and (iii) Licensor has not knowingly granted and will not knowingly grant licenses or other rights under the Technology Rights that are in conflict with the terms and conditions in the Agreement.

7.2 Government Rights

Licensee understands that Original Material was developed under a funding agreement with Government and that Government has certain rights relative thereto. The Agreement is made subject to the Government's rights under any such agreement and under any applicable Government law or regulation. To the extent that there is a conflict between any such agreement, such applicable law or regulation and the Agreement, the terms of such Government agreement, and applicable law or regulation, shall prevail.

7.3 Licensor Disclaimers

EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 7.1, LICENSEE UNDERSTANDS AND AGREES THAT LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND,

EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE LICENSED MATERIAL, OR AS TO THE OPERABILITY OR FITNESS FOR ANY USE OR PARTICULAR PURPOSE, MERCHANTABILITY, SAFETY, EFFICACY, APPROVABILITY BY REGULATORY AUTHORITIES, TIME AND COST OF DEVELOPMENT, AND/OR BREADTH OF TECHNOLOGY RIGHTS. LICENSOR MAKES NO REPRESENTATION AS TO WHETHER THERE ARE ANY PATENTS NOW HELD, OR WHICH WILL BE HELD, BY OTHERS OR BY LICENSOR THAT MIGHT BE REQUIRED FOR USE OF TECHNOLOGY RIGHTS IN FIELD. NOTHING IN THE AGREEMENT WILL BE CONSTRUED AS CONFERRING BY IMPLICATION, ESTOPPEL OR OTHERWISE ANY LICENSE OR RIGHTS TO ANY PATENTS OR TECHNOLOGY OF LICENSOR OTHER THAN THE TECHNOLOGY RIGHTS, WHETHER SUCH PATENTS ARE DOMINANT OR SUBORDINATE TO THE TECHNOLOGY RIGHTS SPECIFICALLY DESCRIBED HEREIN.

7.4 Licensee Representations

By execution of the Agreement, Licensee represents, acknowledges, covenants and agrees (a) that Licensee has not been induced in any way by Licensor or its employees to enter into the Agreement, and (b) that Licensee has been given an opportunity to conduct sufficient due diligence with respect to all items and issues pertaining to this Section 7 (Representations and Disclaimers) and all other matters pertaining to the Agreement; and (c) that Licensee has adequate knowledge and expertise, or has utilized knowledgeable and expert consultants, to adequately conduct the due diligence, and (d) that Licensee accepts all risks inherent herein. Licensee represents that it is a duly organized, validly existing entity of the form indicated in the preamble to the Agreement, and is in good standing under the laws of its jurisdiction of organization as indicated in the preamble of the Agreement, and has all necessary corporate or other appropriate power and authority to execute, deliver and perform its obligations hereunder.

8. **Limit of Liability**

IN NO EVENT SHALL LICENSOR, THE UNIVERSITY SYSTEM IT GOVERNS, ITS MEMBER INSTITUTIONS, INVENTORS, REGENTS, OFFICERS, EMPLOYEES, STUDENTS, AGENTS OR AFFILIATED ENTERPRISES, BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER ANY SUCH PARTY KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN FOR CLAIMS AGAINST LICENSEE FOR INDEMNIFICATION (SECTION 9) OR FOR MISUSE OR MISAPPROPRIATION OR INFRINGEMENT OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, LICENSEE WILL NOT BE LIABLE TO LICENSOR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER LICENSEE KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

9. Indemnification

9.1 Indemnification Obligation

Subject to Section 9.2, Licensee agrees to hold harmless, defend and indemnify Licensor, the university system it governs, its member institutions, its Regents, officers, employees, students and agents (“Indemnified Parties”) from and against any liabilities, damages, causes of action, suits, judgments, liens, penalties, fines, losses, costs and expenses (including, without limitation, reasonable attorneys’ fees and other expenses of litigation) (collectively “Liabilities”) resulting from claims or demands brought by third parties against an Indemnified Party on account of any injury or death of persons, damage to property, or any other damage or loss arising out of or in connection with the Agreement or the exercise or practice by or under authority of Licensee of the rights granted hereunder.

9.2 Conditions of Indemnification

Licensee shall have no responsibility or obligation under Section 9.1 for any Liabilities to the extent caused by the gross negligence or willful misconduct by Licensor. Obligations to indemnify and hold harmless under Section 9.1 are subject to: (a) to the extent authorized by the Texas Constitution and the laws of the State of Texas and subject to the statutory duties of the Texas Attorney General, the Indemnified Party giving Licensee control of the defense and settlement of the claim and demand; and (b) to the extent authorized by the Texas Constitution and the laws of the State of Texas and subject to statutory duties of the Texas Attorney General, the Indemnified Party providing the assistance reasonably requested by Licensee, at Licensee’s expense.

10. Assignment

The Agreement may not be assigned by Licensee without the prior written consent of Licensor, which consent will not be unreasonably withheld. A merger or other transaction in which the equity holders of Licensee prior to such event hold less than a majority of the equity of the surviving or acquiring entity shall be considered an assignment of the Agreement. For any permitted assignment to be effective, (a) Licensee must be in good standing under this Agreement and (b) the assignee must assume in writing (a copy of which shall be promptly provided to Licensor) all of Licensee’s interests, rights, duties and obligations under the Agreement and agree to comply with all terms and conditions of the Agreement as if assignee were an original Party to the Agreement.

11. Use of Name

Licensee will not use the name, trademarks or other marks of Licensor (or the name of the university system it governs, its member institutions, any of its Regents or employees) without the advance written consent of Licensor.

12. Notices

Any notice or other communication of the Parties required or permitted to be given or made under the Agreement will be in writing and will be deemed effective when sent in a manner that provides confirmation or acknowledgement of delivery and received at the address set forth below (or as changed by written notice pursuant to this Section 1.

Licensee Contacts

Licensee Contacts	Licensor Contacts
<p>Contact for Notice: Attn: _____ Address _____ _____ Fax: _____ Phone: _____ Email: _____</p> <p>Accounting Contact: Attn: Address _____ Fax: _____ Phone: _____ E-mail: _____</p>	<p>Contact for Notice: UT Southwestern Medical Center Office for Technology Development Attn: Director for Technology Commercialization 5323 Harry Hines Boulevard, Dallas, Texas 75390-9094 Fax: 214-951-0935 Phone: 214-648-1888 E-mail: TechnologyDevelopment@UTSouthwestern.edu</p>

Notices required under the Agreement may be delivered via E-mail provided such notice is confirmed in writing as indicated. Notices shall be provided to each Party as specified in the "Contact for Notice" address. Each Party shall update the other Party in writing with any changes in such contact information.

13. General Provisions

13.1 Binding Effect

The Agreement is binding upon and inures to the benefit of the Parties hereto, their respective executors, administrators, heirs, permitted assigns, and permitted successors in interest.

13.2 Construction of Agreement

Headings are included for convenience only and will not be used to construe the Agreement. The Parties acknowledge and agree that both Parties substantially participated in negotiating the provisions of the Agreement; therefore, both Parties agree that any ambiguity in the Agreement shall not be construed more favorably toward one Party than the other Party, regardless of which Party primarily drafted the Agreement.

13.3 Counterparts and Signatures

The Agreement may be executed (including by industry standard electronic signature software) in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A Party may evidence its execution and delivery of the Agreement by transmission of a signed copy of the Agreement via facsimile, email, or other reliable electronic means, which transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each Party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed Agreement electronically or delivery of the Agreement by facsimile, e-mail, or other reliable means of electronic transmission.

13.4 Compliance with Laws

Licensee will comply with all applicable national, state and local laws and regulations, including, without limitation, all export laws and regulations.

13.5 Governing Law

The Agreement will be construed and enforced in accordance with laws of the U.S. and the State of Texas, without regard to choice of law and conflicts of law principles.

13.6 Modification

Any modification of the Agreement will be effective only if it is in writing and signed by duly authorized representatives of both Parties. No modification will be made by email communications.

13.7 Severability

If any provision hereof is held to be invalid, illegal or unenforceable in any jurisdiction, the Parties hereto shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties, and all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intentions of the Parties hereto as nearly as may be

possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such other provisions in any other jurisdiction, so long as the essential essence of the Agreement remains enforceable.

13.8 Third Party Beneficiaries

Nothing in the Agreement, express or implied, is intended to confer any benefits, rights or remedies on any entity, other than the Parties and their permitted successors and assigns.

13.9 Waiver

Neither Party will be deemed to have waived any of its rights under the Agreement unless the waiver is in writing and signed by such Party. No delay or omission of a Party in exercising or enforcing a right or remedy under the Agreement shall operate as a waiver thereof.

13.10 Sovereign Immunity

Nothing in the Agreement shall be deemed or treated as any waiver of Licensor's sovereign immunity.

13.11 Entire Agreement

The Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior written or verbal agreements, representations and understandings relative to such matters.

13.12 Claims Against Licensor for Breach of Agreement

Licensee acknowledges that any claim for breach of the Agreement asserted by Licensee against Licensor shall be subject to Chapter 2260 of the Texas Government Code and that the process provided therein shall be Licensee's sole and exclusive process for seeking a remedy for any and all alleged breaches of the Agreement by Licensor or the State of Texas.

14. No Other Promises and Agreements; Representation by Counsel

Licensee expressly warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to Licensee in executing the Agreement except those explicitly set forth herein, and that Licensee is not relying upon any statement or representation of Licensor or its representatives. Licensee is relying on Licensee's own judgment and has had the opportunity to be represented by legal counsel. Licensee hereby warrants and represents that Licensee understands and agrees to all terms and conditions set forth in the Agreement.

15. Deadline for Execution by Licensee

If the Agreement is executed first by the Licensor and is not executed by the Licensee and received by the Licensor at the address and in the manner set forth in Section 12 within 30 days of the date of signature set forth under the Licensor’s signature below, then the Agreement shall be null and void and of no further effect.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Technology License Agreement.

LICENSOR: Board of Regents of the University of Texas System

LICENSEE: _____
Company Name

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Exhibit A: HCC Cancer Cell Lines

Count	ATCC Catalog Number	Description	UT Southwestern Internal Reference Number
1			
2			
3			
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12			