

SPONSORED DEVELOPMENT AGREEMENT

This sponsored development agreement (this “**Agreement**”) is entered into as of this [xxx] day of [xxx], 20[xxx] (the “**Effective Date**”), by and between [xxx], having a place of business in [xxx] (“**Company**”) and [Organisation 2], a Swiss incorporated entity, having a place of business at [Address] (“**Sponsor**”), acting as a service provider for [Organisation 1] (a decentralized autonomous organization). Company and Sponsor shall be referred to individually as “**Party**” and collectively as “**Parties**”.

WHEREAS, Sponsor is interested in sponsoring a specific [xxx] therapeutic development program at Company targeting [xxx], as further described in Appendix A attached to this Agreement. Sponsor is willing to provide funds for the drug and therapeutic development program in exchange for the rights set out in this Agreement below.

The Parties hereby agree as follows:

1. Definitions

Whenever used in this Agreement with an initial capital letter, the terms defined in this Section 1, whether used in the singular or the plural, shall have the meanings specified below.

“**Commercialization**” or “**Commercialize**” means the marketing, licensing, production or other form of commercialization or for-profit exploration.

“**Company Expenses**” shall mean, to the extent not otherwise reimbursed, all out-of-pocket expenses and reasonable professional fees, including legal fees, patent agent fees and fees paid to other experts, incurred by Company in connection with: (a) general and administrative overhead or expenses reasonably allocated to Drug Development or Commercialization of the Drug Development Results; (b) reasonable fees and costs (such as legal fees, fees paid to Patent and Trademark Offices, and fees paid to other services providers) for the filings, prosecution, maintenance or enforcement of any patent application or patent covering or included in the Drug Development Results; (c) the preparation, negotiation, execution and/or enforcement of any contract, legal, regulatory or administrative filing or documents, in each case in connection with the Drug Development or Commercialization of the Drug Development Results; and (d) cost of goods sold, taxes collected from customers, delivery, insurance and other cost and expenses in connection with the Drug Development or Commercialization of the Drug Development Results.

“**Company Receipts**” shall mean all consideration actually received by Company from third party in connection with the commercialization of the Drug Development Results by Company, including sales of Products, sublicense, option, and assignment fees received by Company and from its sublicensees/assignees, but excluding payments received by Company (from Sponsor or any third party) for Drug Development.

“**Company Team**” shall mean employees of Company contributing to Drug Development during the Drug Development Period.

“**Drug Development**” shall mean the drug or therapeutic development activities actually conducted by the Company Team pursuant to the Drug Development Plan during the Drug Development Period. For

clarity, Drug Development excludes all other research, development or commercialization activities conducted by Company at any time.

“**Drug Development Period**” shall mean a period of [xxx] months commencing on the receipt of payment made in accordance with Section 3.1 below.

“**Drug Development Plan**” shall mean the drug or therapeutic development specified in the drug development plan in **Appendix A** attached hereto (as amended by written agreement of both Parties).

“**Drug Development Results**” shall mean any and all intellectual property, inventions, conceptions, reductions to practice, compositions, materials, methods, processes, know-how, data, information, formulae, records, results, studies and analyses, discovered by members of the Company Team in the performance of the Drug Development.

“**Net Company Receipts**” shall mean Company Receipts less Company Expenses.

“**Net Sales**” shall mean the gross amount of Sponsor’s and Affiliates sales and sales from Sponsor’s customers to end users under section 4.2 from the Products in a calendar year, after deduction of allowances for defective returned Products, sales taxes and duties.

“**Products**” shall be defined as any [xxx] that is developed based on the Drug Development Results for [xxx], produced and commercialized.

2. Performance of Drug Development

- 2.1. Performance of Drug Development. Company shall use reasonable efforts to perform the Drug Development and to provide Sponsor with the deliverables set forth in the Drug Development Plan. Notwithstanding the foregoing, Company makes no warranties that the Drug Development or Company’s performance under this Agreement will achieve any particular results; And Company is not obligated to start performing any Drug Development before receiving the first payment amount specified in Section 3.1.
- 2.2. Company team. The Drug Development will be directed, supervised and executed by the Company Team, who shall have primary responsibility for the performance of the Drug Development.
- 2.3. Reports. For projects of 6 (six) months duration or longer, Company will provide Sponsor quarterly progress reports, which may be in either oral or written form, or a combination thereof, depending on the nature of the information conveyed. If requested by Sponsor, Company will confirm within a reasonable period of time any oral progress reports with follow-up summary written reports. Company will provide Sponsor a final written report within 60 (sixty) days after the conclusion of the Drug Development (or such other time period specified in the Drug Development Plan) describing the methods used and results obtained together with any other pertinent findings from the Drug Development.
- 2.4. Contacts. Company’s contact person with respect to issues concerning the Drug Development shall be [xxx], email: [xxx], tel: [xxx]. Sponsor’s contact person with respect to issues concerning the Drug Development shall be [xxx], email: [xxx], tel: [xxx].

3. Funding of Drug Development

- 3.1. Payments. Sponsor shall pay to Company [xxx] USD ([xxx] US Dollars), plus value added tax to the extent required by applicable law to be paid as follows:
- [xxx]% ([xxx] percent) of such amount is due and payable in cash or by wire transfer to the account of Company on the Effective Date.
 - [xxx]% ([xxx] percent) of such amount is due and payable in cash or by wire transfer to the account of Company after successful completion of [xxx] of the Drug Development Plan.
- 3.2. Payment Terms. For the avoidance of doubt, all payments payable to Company should be net of any deductions or tax withholding, if applicable, which shall be borne by Sponsor. Company shall invoice Sponsor in accordance with the details provided by Sponsor in Appendix B and payment for the Drug Development shall be made by Sponsor within 30 (thirty) days of the date of Company's invoice. The actual spending of the budget might vary between the different cost items, at the Company Team's sole discretion, however the total budget will not be changed.
- 3.3. Ownership of Equipment. Upon termination or expiration of this Agreement, Company shall retain title to all equipment purchased or fabricated by Company with funds provided by Sponsor.

4. Intellectual Property

- 4.1. As between the Parties, all rights, title and interest (including all Intellectual Property Rights) in and to the Drug Development Results shall be owned solely and exclusively by Company. Company does not grant to Sponsor (and nothing in this Agreement shall be construed as the grant) any right, title or interest, whether written or implied, in or to any Drug Development Results or Intellectual Property Right owned or controlled by Company. Company has the sole discretion in connection with the application, registration, maintenance, enforcement or exploitation of any Intellectual Property Right in or to Drug Development Results.
- 4.2. Should Company not commercialize or exploit the Drug Development Results, or have plans in place to do so, within 5 years after conclusion of the Drug Development Period, Sponsor shall have the first right to negotiate the transfer of all rights, title, and interest (including all Intellectual Property Rights) in and to the Drug Development Results from Company to Sponsor within terms as defined in Section 7.

5. Allocation of Receipts from Commercialization

- 5.1. Commercialization. The Parties shall reasonably cooperate to commercialize the Drug Development Results. Sponsor and/or [Organisation 1] may notify Company of any licensing opportunity for the Drug Development Results; however, Company has the sole discretion in all Commercialization decisions activities. It is hereby clarified that Company is not under any obligation to Commercialize the Drug Development Results.
- 5.2. Distribution of Receipts. In consideration of the Sponsor's funding of the Drug Development hereunder, Company shall pay Sponsor a total of [xxx]% ([xxx] percent) of Net Company Receipts; provided however, Company's payment obligation under this Section 5.2 is fully satisfied, and

Company has no further obligation to pay any amount to Sponsor, if Company has paid Sponsor in total an amount equal to 600% of the total amount of Drug Development funding actually received in accordance with Section 3.1.

- 5.2.1. on or before the 2-year anniversary of the Effective Date, Company has paid Sponsor in total an amount equal to 200% of the total amount of Drug Development funding actually received in accordance with Section 3.1;
 - 5.2.2. on or before the 3-year anniversary the Effective Date, Company has paid Sponsor in total an amount equal to 300% of the total amount of Drug Development funding actually received in accordance with Section 3.1; or
 - 5.2.3. on or before the 4-year anniversary the Effective Date, Company has paid Sponsor in total an amount equal to 400% of the total amount of Drug Development funding actually received in accordance with Section 3.1; or
 - 5.2.4. Company has paid Sponsor in total an amount equal to 500% of the total amount of Drug Development funding actually received in accordance with Section 3.1.
- 5.3. **Non-Cash Consideration.** In respect of any Company Receipts in non-cash form Company may, at its sole discretion, hold and maintain the entirety of such non-cash Company Receipts and not distribute the applicable percentage share of such Company Receipts in kind to Sponsor, by notifying Sponsor in writing. In such cases, Company shall pay the Sponsor its applicable percentage share of any cash consideration actually received by Company at the time of sale or disposal of such non-cash Company Receipts.
- 5.4. **Bundling.** If the Drug Development Results or Intellectual Property Rights thereto are licensed in addition to other technology or Intellectual Property Rights, then the proportion of Net Company Receipts allocated to the license of Drug Development Results or Intellectual Property Rights thereto shall be determined by the Parties negotiating in good faith. If the Parties cannot reach an agreed after engaging in good-faith negotiation for 60 (sixty) days, then the matter shall be finally determined by a third-party IP valuation appraiser, investment banker or similar professional advisor mutually acceptable by both Parties. The Parties shall split all cost and fees of such professional advisor equally.
- 5.5. **Payment Terms.** Company will pay to Sponsor all amounts due under Section 5.2 above no later than 60 (sixty) days after the conclusion of each calendar quarter in which Net Company Receipts was received by Company. Each payment due to Sponsor under this Agreement shall be paid by wire transfer of funds to Sponsor's bank account, the details of which it shall provide to Company in writing. To the extent income tax laws require that income taxes be withheld from any amounts or consideration due to Sponsor under this Agreement, Company may deduct these taxes from the remittable amount and pay the taxes to the proper taxing authority. Such deducted amounts will be deemed paid to Sponsor for purposes of this Section 5.

Commented [LK1]: Do not mention in first draft proposal, fallback position if needed in negotiations.

6. Confidential Information

- 6.1. **Confidential Information.** "Confidential Information" shall mean all information (including but not limited to information about any element of the Drug Development Results) designated as confidential or which otherwise should reasonably be construed under the circumstances as being

confidential which is disclosed by or on behalf of Company, or any of its employees or affiliates, to Sponsor hereunder, except to the extent that such information, as demonstrated by Sponsor with written evidence: (a) was known to Sponsor at the time of disclosure, other than by virtue of a prior confidential disclosure to Sponsor by Company, or any of its employees or affiliates; (b) as of the date of disclosure was or is in, or subsequently entered or enters, the public domain, other than by a fault or omission of Sponsor; (c) as of the date of disclosure or thereafter was or is obtained from a third party free from any obligation of confidentiality to Company; or (d) as of the date of disclosure or thereafter was or is independently developed by Sponsor without the use of or reference to Confidential Information.

- 6.2. Restrictions. Sponsor agrees that, without the prior written consent of Company in each case, during the term of this Agreement, and for seven (7) years thereafter, it shall (a) keep confidential, and not disclose or use Confidential Information for any purpose; and (b) treat such Confidential Information with the same degree of confidentiality as it keeps its own Confidential Information, but in all events no less than a reasonable degree of confidentiality. Sponsor may disclose the Confidential Information only to employees, consultants, and affiliates of Sponsor who are legally bound by agreements which impose confidentiality and non-use obligations comparable to those set forth in this Agreement.

7. Payments from Commercialization by Sponsor

In the event that, in accordance with the terms of Section 4.2, Sponsor does obtain all right, title and interest in the Drug Development Results and, thereafter, Commercializes the Products, the following additional provisions shall apply.

7.1. Annual royalty.

7.1.1. Sponsor shall pay to Company a royalty of the Net Sales of the Products for so long as the Products are commercialized by Sponsor as follows:

- 2.0% of that portion of annual aggregate Net Sales of licensed Products less than or equal to 500M USD
- 1.5% of that portion of annual aggregate Net Sales of licensed Products from \$500M to \$1B USD
- 1.0% of that portion of annual aggregate Net Sales of licensed Products exceeding \$1B USD

7.1.2. Royalty to third parties. If Sponsor, its Affiliate or sublicensee is required to pay a third party amounts with respect to a licensed Product under agreements for intellectual property rights of such third party, Sponsor will have the right to deduct 50% (fifty percent) of the amounts paid to such third party from the amounts owing to Company for such licensed Product; provided that in no event would amount to be paid to Company with respect to such licensed Product be so reduced to less than 50% (fifty percent) of the amount that would otherwise be due to Company.

The royalty is earned as of the earliest of the date the Products are actually sold or the date an invoice for the Products is sent by Sponsor.

- 7.2. Sublicensing Payments. All royalty payment obligations as set out in this Agreement shall apply equally to any and all sublicense agreements entered into by Sponsor.
- 7.3. Combination Products. If any Products are incorporated into any other product (a “**Combination Product**”) supplied by the Sponsor and/or its sublicensees, and the Product is not priced separately from the Combination Product, the Net Sales of such Product shall be deemed to be the fair market value of the Products in the country of sale when sold separately.
- 7.4. Accounting. Sponsor shall calculate royalties (including any payments from sublicenses) accrued and, at the latest on the 31st of January each year, present Company with a yearly statement of accounts for the previous year in the form attached as Appendix C. Based on this statement Company will send Sponsor an invoice, unless no payment is due.
All payments are exclusive of any taxes, charges and duties that may be imposed in the country of origin and shall be paid to Company to the bank account designated by Company. Sponsor shall convert all royalties or other payments stated in currencies other than USD to USD at the spot rate of exchange against USD quoted by the Federal Reserve at the end of business of the last working day of the period the payments are due for.
Sponsor shall pay all invoices no later than 30 (thirty) days after the date of invoice. The balance of any amounts which remain unpaid more than 15 (fifteen) days after they are due to Company will accrue interest until paid at the rate of 8% (eight percent) per annum. However, in no event will this interest provision be construed as a grant of permission for any payment delays.
Sponsor shall be responsible for the accounting for and the payment of royalties in respect of sales or other disposals made by its Affiliates, agents and sublicensees.
- 7.5. Audit. Sponsor shall keep books and records sufficient to verify the accuracy and completeness of Sponsor's and eventual sublicensees' accounting. All books and records shall be preserved for a period not less than 10 (ten) years after they are created.
Sponsor shall take all steps necessary so that Company may within 30 (thirty) days of its request review and copy all the books and records at the premises of Company to verify the accuracy of Sponsor's accounting. The review may be performed by any employee of Company as well as by any attorney or registered accountant designated by Company.
If a payment deficiency is determined, Sponsor will pay the deficiency outstanding within 30 (thirty) days of receiving written notice, plus interest and compounded interest on outstanding amounts at the rate of 8% (eight percent) per annum. If a payment deficiency in the disfavor of Company exceeds 5 % (five percent) of the payments made or more than 100'000 USD (one hundred thousand US dollars), whichever occurs first, Sponsor shall pay Company's expenses incurred with respect to the audit and collection of outstanding payments, in addition to paying the outstanding payments.

Sponsor Representations

Securities Laws. To the extent this Agreement could be considered an investment contract, Sponsor acknowledges that this Agreement has not been registered under the Securities Act of 1933, as amended (the “**Securities Act**”), or any state securities laws and, therefore, cannot be assigned or resold unless registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. Sponsor is aware that Company is under no obligation to effect any such registration with respect to this Agreement or to file for or comply with any exemption from registration. Sponsor has not been formed solely for the purpose of providing the funding contemplated under this Agreement. Sponsor has such

knowledge and experience in financial and business matters that Sponsor is capable of evaluating the merits and risks of this Agreement, is able to incur a complete loss of the funding to be provided pursuant to this Agreement without impairing Sponsor's financial condition and is able to bear the economic risk of such funding for an indefinite period of time. Sponsor is an "accredited investor" as such term is defined in Rule 501 of Regulation D under the Securities Act and shall submit to Company such further assurances of such status as may be reasonably requested by Company. Sponsor's principal place of business is correctly set forth in the preamble to this Agreement.

Access to Information. Sponsor acknowledges that Company has given Sponsor access to all information in its possession relating to Company, has made its officers and representatives available for interview by Sponsor, and has furnished Sponsor with all documents and other information requested by Sponsor in considering entering into this Agreement and provide the funding contemplated by this Agreement.

Tax Advisors. Sponsor has reviewed with its own tax advisors the U.S. federal, state and local and non-U.S. tax consequences of the transaction contemplated by this Agreement. With respect to such matters, Sponsor relies solely on any such advisors and not on any statements or representations of Company or any of its agents, written or oral. Sponsor understands that it (and not Company) shall be responsible for its own tax liability that may arise as a result of the transactions contemplated by this Agreement.

8. Term and Termination

- 8.1. Term. This Agreement shall commence on the Effective Date and shall remain in effect, unless earlier terminated in accordance with the provisions of this Agreement, until the satisfaction of the Company's payment obligations pursuant to Section 5.2.
- 8.2. Termination for Default. In the event that either Party commits a material breach of its obligations under this Agreement and fails to cure that breach within 30 (thirty) days after receiving written notice thereof, the other Party may terminate this Agreement immediately upon written notice to the Party in breach.
- 8.3. Survival. Sections 3.2, 4, 6, 7, 8.3, and 9 shall survive any expiration or termination of this Agreement. Additionally, if Sponsor terminates this Agreement pursuant to Section 8.2 for Company's material breach, Sections 5.2 through 5.5 shall also survive termination of this Agreement until satisfaction of Company's payment obligations pursuant to Section 5.2.

9. Miscellaneous

- 9.1. Publicity Restrictions. Sponsor shall not use the name of Company or any of employees or affiliates, or any adaptation of such names, or any terms of this Agreement in any promotional material or other public announcement or disclosure without the prior written consent of Company.
- 9.2. Warranty Disclaimer. Company makes no express warranties and disclaims any implied warranties as to any matter relating to this Agreement, including without limitation any warranty as to merchantability, fitness for a particular purpose, or non-infringement of third-party rights with respect to the performance or results of the Drug Development.

9.3. Assignment. This Agreement and its rights or obligations may not be assigned by either Party without the prior written consent of the other Party ; except that either Party may, without such written consent, assign this Agreement and its rights and obligations hereunder (a) to its affiliates; or (b) to [Organisation 1], or (c) in connection with the transfer or sale of all or substantially all of such Party's business (or, in Company's case, the Drug Development Results and Intellectual Property Rights thereto), or in the event of such party's merger, consolidation, change in control or other similar transaction. Any purported assignment or delegation in violation of the foregoing shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

9.4. Governing Law and Jurisdiction. This Agreement will be governed by, interpreted and construed in accordance with the laws of Switzerland, without regard to the conflicts of law principles thereof.

9.5. Notice. Any notices required or permitted under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be sent by registered or certified mail, return receipt requested, to the following addresses of the Parties:

If to Company:

[xxx]

Attn: Chief Executive Officer

If to Sponsor:

[Organisation 2]

[Address]

Attn: Chief Executive Officer

9.6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements or understandings between the Parties relating to its subject matter. Any provision of the Agreement that is illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability, without affecting in any way the remaining provision hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

[xxx]

By: _____

Name: _____

Title: _____

[Organisation 2]

By: _____

Name: _____

Title: _____

Appendix A – Drug Development Plan

Appendix B – Sponsor Invoice Details

Address: [Organisation 2]
[Address]

Invoice Contact Name: [Representative]

Telephone Number: [Phone Number]

Email: [Email]

Appendix C – Sponsor Reporting Form

1	SRD	
2	Sponsor – legal entity	
3	Name of person who has filled out this form	Name and e-mail
4	Reporting period [dd/mm/year – dd/mm/year]	
5	Has any product based on licensed rights been launched in any market in the reporting period?	yes/no
6	Has Sponsor undertaken active development related to the licensed technology during the reporting period?	yes/no
7	Net Sales of licensed product(s)	Amount
8	Annual royalty according to SRD	Amount
9	Sublicense income received by Sponsor (if applicable) during the reporting period	Amount
10	Sublicense payment due to Recipient according to SRD (if applicable)	Amount

Sponsor fills in form and send at the latest January 31st to: [Email Company]