

NON-EXCLUSIVE MATERIALS LICENSE AGREEMENT

THIS NON-EXCLUSIVE MATERIALS LICENSE AGREEMENT (the “**Agreement**”), effective as of date of last authorized signature (the “**Effective Date**”), is entered into by and between Fred Hutchinson Cancer Center, whose mailing address is 1100 Fairview Avenue North, Seattle, WA 98109 (“**Fred Hutch**”) and _____ whose mailing address is _____ (“**Company**”).

The background of this Agreement is as follows:

WHEREAS, to the best of its knowledge Fred Hutch owns and is a proprietor of certain Biological Materials, as defined below;

WHEREAS, Fred Hutch desires to license the Biological Materials to Company so Company may use the Biological Materials for research;

WHEREAS, Company desires to acquire a non-exclusive license to the Biological Materials under the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the premise and mutual covenants herein contained and intending to be legally bound hereby, Fred Hutch and Company agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms, as used herein, shall have the following meanings:

1.1 “Affiliate(s)” shall mean any corporation, limited liability company or partnership or their equivalents under foreign laws which is controlled by Company or which controls Company. For the purposes of this Agreement “control” means that one of the following conditions is met: **(a)** in the case of corporate entities, direct or indirect ownership of more than fifty percent (50%) of the stock or shares having the right to vote for the election of directors or otherwise to direct or cause the direction of management, and/or **(b)** in the case of non-corporate entities, direct or indirect ownership of more than fifty percent (50%) of the equity interest with the power to direct or cause the direction of the management of such non-corporate entities. A company will only be deemed to be an Affiliate for so long as such control exists. Company shall provide Fred Hutch with a list of all Affiliates from time to time within ten (10) business days of Fred Hutch’s request. The license rights granted herein will automatically extend to Affiliates for so long as they qualify as Affiliates. Company hereby unconditionally guarantees the compliance with and performance by each of its Affiliates of all provisions of this Agreement and will be responsible and jointly and severally liable for any breach of this Agreement by any of Company’s Affiliates.

1.2 “Biological Material(s)” shall mean **(i)** the Cell Line, and **(ii)** any material derived from, comprising, or containing any, or any portion, of the foregoing.

1.3 “Cell Line” shall mean the immortalized human smooth muscle cell line, pdSMC2A

1.4 “**Licensed Field**” shall mean for internal research purposes only. The Licensed Field specifically excludes (i) the sale, transfer or commercialization of the Biological Materials; and (ii) use of the Cell Line for (a) diagnostic or therapeutic procedures, products, manufacturing, or services; (b) internal drug research or drug discovery; or (c) human or veterinary applications.

1.5 “**Licensed Territory**” shall mean world-wide.

1.6 “**Third Party**” means an individual or entity other than Fred Hutch and Company

ARTICLE 2 - DELIVERY; LICENSE; RESTRICTIONS; DILIGENCE

2.1 Delivery. Following execution of this Agreement and upon Fred Hutch’s receipt of the License Fee and Material Fee (as detailed in Sections 4.1 and 4.2), Fred Hutch will deliver to Company the Biological Material, as they exist on the Effective Date, and Company shall be responsible for all reasonable shipping and handling costs thereof. During the Term. All Biological Materials will remain the sole property of Fred Hutch and are considered proprietary and confidential to the extent not patented.

2.2 License. Subject to Company’s fulfillment of its payment and other obligations hereunder, Fred Hutch hereby grants to Company, and Company hereby accepts, during the Term of this Agreement and within the Licensed Territory, a non-exclusive, non-sublicensable (except to contractors using the Biological Materials solely on behalf of Company), license to use the Biological Material in the Licensed Field.

2.3 License Restrictions. Company will not transfer or permit access to the Biological Material to any Affiliate or third party other than Company’s personnel working under Company’s immediate control and supervision, and so long as such party(ies) are bound to the confidentiality and non-use obligations in Article 5. Notwithstanding the foregoing, Company may provide the Biological Materials to its contractors for research on behalf of Company; provided, Company shall be responsible for ensuring such contractors adhere to the restrictions set forth herein for the Biological Materials.

ARTICLE 3 - OWNERSHIP; RESERVATION OF RIGHTS; NO IMPLIED RIGHTS

3.1 Ownership. Fred Hutch is and will remain the sole owner of the Biological Materials, as well as any other current or future patent, copyright, trade secret, or other intellectual property therein in any country. Company agrees to execute and deliver and cause Company’s personnel to execute and deliver any additional documents and do all things necessary or appropriate, during and after the Term of this Agreement, to confirm all such rights of Fred Hutch and to facilitate the obtaining by Fred Hutch of any desired legal protection for the same in any countries. Any documents or actions described in the preceding sentence will be prepared, filed or taken at Fred Hutch’s expense, but Company will sign such documents and otherwise cooperate at no cost to Fred Hutch.

3.2 No Implied Rights. Nothing herein, nor the furnishing of Biological Materials hereunder, will create or imply any ownership rights in or licenses to Company its Affiliates or contractors of any present or future patent, copyright, trademark, trade secret or other intellectual

property rights in the Biological Materials in their current form or in any other forms made by Fred Hutch, its affiliates, agents or other licensees, or in any other inventions or works of Fred Hutch, except for the explicitly stated non-exclusive rights granted in Section 2.2 hereof, including fields of use outside of those explicitly defined, nor create or imply any obligation of Fred Hutch to enter into any other agreement with Company or any third party in relation to the Biological Materials. Nothing herein will be deemed to limit the rights of Fred Hutch to license or use the Biological Materials. Company will take all reasonable measures to protect the Biological Materials from claims by third parties, including creditors and trustees in bankruptcy.

3.3 Reservation of Rights. Fred Hutch reserves the right to make use of the Biological Materials for commercial and non-commercial purposes (including publication) and to transfer and/or license the commercial or non-commercial use and further development of all or part of the Biological Materials to any other parties. All other rights not specifically granted herein are also exclusively reserved to Fred Hutch.

3.4 Governmental Rights. Company's rights in this Agreement may also be subject to certain rights and restrictions of the United States federal, state and/or local government(s) if the Biological Materials were created in the course of government-funded research, including, without limitation, any rights and restrictions set forth in 35 U.S.C. Section 200 *et seq.* and the regulations pertaining thereto (or any successor statutes or regulations). Company agrees to take all reasonable steps to permit Fred Hutch to satisfy its obligations thereunder. If any term of this Agreement fails to conform with the foregoing statutes and regulations the relevant term will be unenforceable and subject to the severability provisions of Section 8.6 of this Agreement.

ARTICLE 4 – FEES; ROYALTIES; PAYMENTS; REPORTS AND AUDIT RIGHTS

4.1 License Fee. In partial consideration of the rights granted hereunder, Company will pay Fred Hutch a non-refundable, non-creditable license fee (“**License Fee**”) of five thousand Dollars U.S. (\$5000 USD) due thirty (30) days from Company's receipt of an applicable invoice from Fred Hutch.

4.2 Material Preparation Fee. In partial consideration of the rights granted hereunder Company will pay to Fred Hutch a non-refundable, non-creditable material preparation fee (“**Material Fee**”) of one thousand Dollars U.S. (\$1000 USD) due thirty (30) days from Company's receipt of an applicable invoice from Fred Hutch.

4.2 Annual Maintenance Fee. Beginning on the first anniversary of the Effective Date and on every subsequent anniversary of the Effective Date, Company will pay to Fred Hutch an annual maintenance fee of one thousand U.S. Dollars (\$1,000 USD) due within thirty (30) days from the Company's receipt of an applicable invoice from Fred Hutch.

4.3 Payments. All payments will be drawn on a U.S. bank, made payable to “Fred Hutchinson Cancer Center” and sent to Fred Hutch in accordance with Section 8.11. All payments will be made in U.S. Dollars without set-off for currency conversion.

ARTICLE 5 - CONFIDENTIAL INFORMATION AND PUBLICITY

5.1 Confidential Information. Any non-public information, drawings, diagrams or other items relating to the Biological Materials which are disclosed by Fred Hutch to Company and that are either identified as confidential or that, under the circumstances, should reasonably be expected to be confidential (collectively, the “**Confidential Information**”), will remain the property of Fred Hutch, will be retained in confidence by Company using not less than a reasonable degree of care, and will not be disclosed by Company to anyone other than Company personnel who are providing services and are bound by written confidentiality and non-use restrictions at least as strict as those set forth herein. All materials containing Confidential Information will remain the property of Fred Hutch and will, along with all copies summaries and other tangible manifestations thereof, be immediately returned (or destroyed if requested by Fred Hutch) to Fred Hutch upon its reasonable request. Company will be responsible for any breach of confidentiality hereunder by any of its Affiliates, consultants, employees, independent contractors and subcontractors. Company will advise Fred Hutch immediately in the event that it learns or has reason to believe that any person has disclosed or used or intends to disclose or use Fred Hutch’s Confidential Information and the remedial or preventative actions being taken. Company acknowledge and agree that a breach of this Article 5 may cause irreparable harm to Fred Hutch for which the award of money damages may be inadequate and that in the event of any breach of this provision, Fred Hutch will be entitled to seek injunctive relief in addition to seeking any other remedy provided in this Agreement or available at law. Notwithstanding any of the foregoing, Confidential Information does not include materials or information that Company can, prior to its proposed use or disclosure, substantiate by written documentation: **(a)** were explicitly approved for release by Fred Hutch; **(b)** were already known by Company prior to receiving the information or material from Fred Hutch or were disclosed to Company by a third party having the right to disclose without any obligation of confidentiality; **(c)** were or have become part of the public domain through no fault or breach of obligation by Company, its employees or agents; or **(d)** are required to be disclosed by law or court or administrative order, provided that Company will, if reasonably possible, notify Fred Hutch of the intended disclosure in advance, reasonably cooperate with the Fred Hutch’s effort to seek a protective order contesting or limiting the disclosure and limit its disclosure to that which is required for the foregoing purpose. The confidentiality obligations herein will survive the expiration or termination of this Agreement and continue in effect with respect to any item of Confidential Information for so long as it falls within the definition, and outside the exclusions, set forth herein.

5.2 Publicity. Neither party will make any use of the names, logos, trademarks or service marks of the other party or its affiliates or any of their officers, employees, students, investigators or board members, or make any press release or similar public announcement of this Agreement (other than merely the fact that it exists) without the prior written permission of the other party.

ARTICLE 6 - TERM AND TERMINATION

6.1 Term. This Agreement will begin on the Effective Date and continue for a period of five (5) years thereafter (the “**Term**”).

6.2 Termination by Company. Company may terminate this Agreement at any time for

convenience upon thirty (30) days written notice to Fred Hutch. Moreover, in the event that Fred Hutch breaches any of its material obligations hereunder, Company may, upon written notice, terminate this Agreement, provided that it will have first given Fred Hutch written notice specifying the nature of the breach and Fred Hutch will have failed to cure such breach within thirty (30) days thereafter.

6.3 Termination by Fred Hutch. In the event that Company its Affiliates or contractors breach any of their material obligations hereunder, Fred Hutch may, upon written notice to Company, terminate this Agreement, provided that it will have first given Company written notice specifying the nature of the breach and Company will have failed to cure such breach within thirty (30) days thereafter. Fred Hutch may also terminate this Agreement by written notice to Company upon Company's becoming insolvent (unless Company cures such condition within thirty (30) days of written notice of a claim of insolvency by Fred Hutch), making a general assignment for the benefit of creditors, suffering or permitting an appointment of a receiver for its business or assets, or becoming subject to any proceedings under domestic or foreign bankruptcy or insolvency law.

6.4 Effect of Termination. Upon the expiration or termination of this Agreement, Company its Affiliates and contractors will immediately discontinue the use of the Biological Materials and any related items provided by Fred Hutch and either return to Fred Hutch, at their own expense, or destroy and dispose of all Biological Materials, Fred Hutch Confidential Information and other items, as elected by Fred Hutch, and provide Fred Hutch with certification of such destruction.

6.5 Provisions Surviving Termination or Expiration. Termination or expiration of this Agreement for any reason will not preclude any party from pursuing all rights and remedies it may have hereunder or at law or in equity. In addition, Article 1, 5 and 7 and Sections 3.1, 3.4, 6.4, 6.5, 8.1, 8.5, 8.6, 8.8, 8.9, 8.11, 8.12 will survive the expiration or termination of this Agreement.

ARTICLE 7 – INDEMNIFICATION; EXCLUSION OF DAMAGES; NO WARRANTIES; LIMITATION OF LIABILITY AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Company and its Affiliates agree to defend, indemnify and release and hold Fred Hutch and its affiliates and its and their directors, trustees, employees, contractors and agents harmless from any claims, liabilities, damages and losses that might arise at any time under any theory of liability as a result of or related to: **(a)** a breach of Company's or its Affiliates' representations, warranties or other obligations hereunder; and **(b)** Company's, its Affiliates', and contractors' use, handling, storage, transportation, import, export or disposal of the Biological Materials, except to the extent caused by any willful misconduct on the part of Fred Hutch.

7.2 Exclusion of Damages. NEITHER FRED HUTCH NOR ITS AFFILIATES WILL BE LIABLE TO ANY PARTY FOR SPECIAL, EXEMPLARY, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE BIOLOGICAL MATERIALS OR ANY OTHER ITEMS

PROVIDED BY FRED HUTCH INCLUDING BUT NOT LIMITED TO DAMAGES MEASURING LOST PROFITS, GOODWILL OR BUSINESS OPPORTUNITIES, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 Warranty Disclaimer. The Biological Materials are experimental in nature, may have biological and/or chemical properties that are unpredictable and unknown at time of transfer, and are to be used in a safe manner and in accordance with all applicable governmental rules and regulations. The Biological Materials will not be used in any study involving human subjects. The Biological Materials are provided by Fred Hutch “AS IS.” FRED HUTCH MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE BIOLOGICAL MATERIALS OR ANY INFORMATION OR OTHER ITEMS PROVIDED BY FRED HUTCH HEREUNDER, INCLUDING, WITHOUT LIMITATION, REGARDING THEIR COMPOSITION, CHARACTERIZATION, PURITY, STABILITY, SAFETY OR UTILITY OR THE EFFICACY OR SAFETY OF ANY METHODS OF PREPARING, HANDLING, STORING, USING OR DISPOSING OF THE BIOLOGICAL MATERIALS AND FRED HUTCH EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE OR USE. FRED HUTCH ALSO DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO ANY THIRD PARTY RIGHTS AND TITLE, INCLUDING ANY PATENT RIGHTS, COPYRIGHTS AND TRADE SECRETS IN THE BIOLOGICAL MATERIALS OR RELATED INFORMATION OR OTHER ITEMS PROVIDED HEREUNDER.

7.4 Limitation of Liability. IN NO EVENT WILL FRED HUTCH’S AND ITS AFFILIATES’ TOTAL AND CUMULATIVE LIABILITY TOGETHER OF ANY KIND, EVEN FOR DIRECT DAMAGES, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE BIOLOGICAL MATERIALS OR ANY OTHER ITEMS PROVIDED BY FRED HUTCH EXCEED THE TOTAL AMOUNT OF THE LICENSE FEE RECEIVED BY FRED HUTCH.

7.5 Insurance. Throughout the term of this Agreement, or during such period as the parties will agree in writing, Company and its Affiliates’ will maintain full force and effect commercial general liability insurance and product liability insurance, with single claim limits at an amount customary to Company’s and its Affiliates’ business for activities of similar nature. The Company agrees to make available a copy of its insurance certificate to Fred Hutch upon request.

ARTICLE 8 - MISCELLANEOUS

8.1 Compliance with Laws. Company and its Affiliates will use the Biological Materials in compliance with all federal, state, local and foreign laws, governmental regulations and guidelines applicable to the Biological Materials and the use handling, storage, transportation and disposal thereof, including, without limitation, those of the National Institutes of Health. Company and its Affiliates acknowledges that the Biological Materials are subject to export control laws and regulations of the United States of America, including the Export Administration Regulations (“**EAR**”), the International Traffic in Arms Regulations (“**ITAR**”), and the Foreign Assets Control regulations. If Company or its Affiliates exports or re-exports, directly or indirectly (including through the provision to a foreign national in the United States or abroad), any of the

Biological Materials or any technology or technological data related thereto, Company will be solely responsible for obtaining, at its own expense, the appropriate licenses or other authorizations for itself and Fred Hutch, if required, for such exports or re-exports. Fred Hutch neither represents nor warrants that the foregoing will not be required nor that, if required, they will be issued. Company also represents and warrants that the transactions contemplated in this Agreement do not conflict with any importing laws of the countries in which Company or its Affiliates resides and in which the Biological Materials will be used. Company agrees to provide Fred Hutch with written notice of any import requirements for the Biological Materials with which Fred Hutch must comply. Company agrees that while Fred Hutch accepts no responsibility for determining if and where any licenses, permits, or other approvals are required, it will have the right to refuse to send the Biological Materials to any country if it has a reason to believe that doing so would violate applicable laws or regulations. Company will be responsible for any costs or expenses (including those of Fred Hutch) associated with licenses, permits and other approvals required by any government entity for shipments outside of the United States.

8.2 Assignment. Company will have no right to assign, sublicense or otherwise transfer its rights and obligations hereunder in whole or in part to any third party by agreement, operation of law or otherwise without Fred Hutch's prior written consent, and any attempt to do so without such written consent will be void and of no effect. Notwithstanding the foregoing, upon written notice to Fred Hutch, Company may assign this Agreement in its entirety solely to an entity of which Company has at least a fifty percent (50%) equity interest with the power to direct or cause the direction of its management, provided that Company first provides prior written notice to Fred Hutch of the nature of the assignment and the proposed transferee's written agreement in a form reasonably suitable to Fred Hutch to be fully subject to, and bound by, all of Company's obligations under this Agreement, and provided further that Company hereby guarantees and remains jointly and severally liable for all such transferred obligations. However, if Company ceases to exist as part of the transfer, Fred Hutch may condition the assignment on additional reasonable guarantees.

8.3 Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings relating to the subject matter hereof. It may only be amended by the written agreement of both parties, or as set forth in Section 8.6.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which so executed and delivered will constitute an original, but all such counterparts will together constitute one and the same instrument.

8.5 Governing Law; Venue. This Agreement and all matters related thereto will be construed and interpreted under and governed by the laws of the State of Washington (other than its conflicts of laws provisions) and applicable US federal laws, and Fred Hutch and Company hereby submit to the exclusive jurisdiction of the federal and state courts located in King County, Washington for the resolution of any dispute, claim or legal proceeding arising out of or related to this Agreement, waive any objection to such jurisdiction on the grounds of venue, forum non conveniens, or similar ground, and agree that any such dispute, claim or proceeding will be brought exclusively in one of those courts.

8.6 Severability. The provisions of this Agreement will be severable, and the finding by a court of competent jurisdiction of the invalidity or unenforceability of any provision(s) hereof will not affect the validity or enforceability of the remaining provisions, and such court may amend the Agreement by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent, or if that is not possible, by substituting another provision that is legal and enforceable and achieves the same objective.

8.7 Force Majeure. Neither party will be liable for any default or delay in the performance of its obligations under this Agreement to the extent that such default or delay is caused, directly or indirectly, by acts of God, civil disturbance, war, fires, acts or orders of any Government agency or official, other than Company's failure to obtain approvals, natural catastrophes, or any other circumstances beyond such party's reasonable control. In any such event, the non-performing party will be excused from any further performance or observance of the obligation so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Any party whose performance is delayed or prevented by any cause or condition within the purview of this Section 8.7 will promptly notify the other party thereof, the anticipated duration of the non-performance, and the action(s) being taken to overcome or mitigate the delay or failure to perform. Notwithstanding the foregoing, under no circumstances will any delay or nonperformance be excused or forgiven **(a)** if the cause of the nonperformance could have been prevented or avoided by the exercise of reasonable diligence; **(b)** if the party whose performance is delayed or prevented fails to use reasonable diligence to promptly overcome and mitigate the delay or failure to perform; or **(c)** if the nonperformance is caused by the negligence, intentional conduct or misconduct of the nonperforming party. The parties understand and agree that Governmental acts, orders or restrictions do not constitute excusing events hereunder if such acts, orders or restrictions are issued due to either party's alleged failure to conform to applicable laws, regulations or other governmental requirements.

8.8 Headings. Headings used herein are for reference purposes only and neither limit nor amplify the terms and conditions herein.

8.9 Construction. For purposes of construction, this Agreement will be deemed to have been jointly drafted by the respective parties and their counsel, and the rule of construction of contracts that ambiguities are construed against the drafting party will not be applied against any party.

8.10 Waiver. The waiver by either party of any right, claim, or breach by the other party must be in written form and signed by the party against whom the waiver is charged, and it will not be construed as a waiver of any succeeding right, claim, or breach.

8.11 Notices. All notices to be given hereunder will be in writing and personally delivered or sent by postage pre-paid first class mail, airmail if not domestic, (except that payments and notices of breach or that otherwise materially affect the parties' rights hereunder must be sent postage pre-paid by international certified mail, return receipt requested or international Federal Express or other similar reputable courier or postal services) providing a tracking or return receipt delivery) addressed to the respective signatories below at the addresses first set forth above, or

such other address as a party will designate in writing for such purpose.

8.11.1 If to Fred Hutch:

Fred Hutchinson Cancer Center
Business Development
1100 Fairview Avenue North, MS: J2-110
Seattle, WA 98109
Attn: Vice President
Phone: 206-667-4304
bds@fredhutch.org

8.11.2 If to Company:

8.12 Independent Contractors. The relationship between Fred Hutch and Company created by this Agreement is solely that of independent contractors. This Agreement does not create any agency, distributorship, employee-employer, partnership, joint venture or similar business relationship between the parties. No party is a legal representative of another party, and no party has the right to assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of another party for any purpose whatsoever. Each party will use its own discretion and will have complete and authoritative control over its employees and agents and the details of performing its obligations under this Agreement.

8.13 Language. This Agreement and all correspondence between the parties related to this Agreement, including without limitation, all records and information that both parties are required or permitted to generate pursuant to this Agreement, will be produced in the English language only. In the event that a translation of any of the foregoing is prepared for the convenience of Company, the English language version will be the official version and will govern if there is a conflict between the two.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their properly and duly authorized officers or representatives as of the Effective Date.

**FRED HUTCHINSON CANCER
CENTER**

COMPANY

By: _____

By: _____

Name: Patrick Shelby, Ph.D.

Name: _____

Title: Director of Technology
Management,
Business Development

Title: _____

Date: _____

Date: _____

Signature Page to Non-Exclusive Materials License Agreement