

**User Guide:**

*Please note: If your company is located or incorporated in China, Russia, Iran, Syria, North Korea, or Cuba, you cannot use this form. Please contact MSK at [trmotdrtm@mskcc.org](mailto:trmotdrtm@mskcc.org)*

Step 1: Fill out PDF (either online or by downloading/printing PDF)

Step 2: Sign, scan, and return completed PDF to MSK at TRMOTDRTM@mskcc.org

Step 3: Upon receipt of fully executed license agreement, MSK will send the payment link for License Agreement

Step 4: License Agreement becomes effective upon the date of MSK’s execution of the license agreement.

Credit card payment is required for transactions under \$10,000

**Please note: Changes to this Agreement without the written consent of MSK are expressly prohibited and will be null and void.**

NON-NEGOTIABLE NON-EXCLUSIVE INDUSTRY LICENSE AGREEMENT FOR MSK CELL  
LINES FOR RESEARCH USE ONLY [ATCC]

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PREAMBLE

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This non-exclusive license agreement (the “Agreement”) is effective on the date of execution by MSK of the Agreement (the “Effective Date”), and is entered by and between **MEMORIAL SLOAN-KETTERING CANCER CENTER, SLOAN-KETTERING INSTITUTE FOR CANCER RESEARCH, and MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES**, each a New York state not-for-profit corporation with offices at 1275 York Avenue, New York, New York 10065 (collectively “MSK”), and \_\_\_\_\_, a for-profit corporation with offices located at \_\_\_\_\_ (“LICENSEE”). MSK and LICENSEE may be referred to individually as “Party” and collectively as the “Parties.”

### WITNESSETH

WHEREAS, MSK is the owner of MATERIAL, as defined below; and

WHEREAS, LICENSEE desires to use such MATERIAL, as defined below; and

WHEREAS, MSK desires to have such MATERIAL utilized in the public interest and is willing to grant a license to its interest thereunder and to provide such MATERIAL to LICENSEE under the terms and conditions that follow; and

WHEREAS, LICENSEE and its Affiliates are not subject to U.S. export control restrictions, including without limitation, being located or incorporated in China, Russia, Iran, Syria, North Korea, or Cuba; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereto agree as follows:

### ARTICLE I – PREAMBLE AND RECITALS

The foregoing preamble and recitals are hereby incorporated and made a part of this Agreement.

### ARTICLE II – DEFINITIONS

For the purpose of this Agreement, the following words and phrases will have the following meanings:

- 2.1 “Affiliate” in either singular or plural means, with respect to a Party, any person, firm, corporation, or other entity controlling, controlled by, or under common control with a Party hereto. For purposes of this definition, “control” of an entity means either (a) direct or indirect ownership of more than fifty percent (50%) of the voting stock (or the equivalent of the entity;

(b) having the right to direct, appoint, or remove a majority of members of the entity's board of directors (or their equivalent); or (c) having the power to control or cause the direction of the policies or general management of the entity, whether by the ownership of stock, by law, by contract, or otherwise. In any jurisdiction where 50% control is not permitted by Applicable Laws, the "greater than 50%" threshold will be deemed satisfied by the possession of substantially the maximum percentage allowable in such jurisdiction. With regard to MSK, "Affiliate" will include, without limitation, Memorial Sloan-Kettering Cancer Center, Sloan-Kettering Institute for Cancer Research, and Memorial Hospital for Cancer and Allied Diseases.

- 2.2 "Applicable Laws" mean any national, international, supra-national, federal, state, or local laws, treaties, statutes, ordinances, rulings, rules, and regulations, which have been enacted by a government authority, including any rules, regulations, guidance, guidelines, or requirements of any regulatory authorities, national securities exchanges or securities listing organizations, courts, tribunals, agencies, legislative bodies, and commissions, that are in force at the Effective Date of this Agreement or that come into force during the Term of this Agreement, in each case to the extent that the same are applicable to the performance of a Party under this Agreement.
- 2.3 "CRO" in either singular or plural means any contract research organization that provides research services to LICENSEE on a fee-for-service contract basis and has no interest in the results of these research services for its own purposes.
- 2.4 "Field of Use" means use of any MATERIAL or Modification as a research reagent for internal research use only. Specifically *excluded* from the Field of Use are (i) any therapeutic, prophylactic, or diagnostic use for human or veterinary applications; (ii) any use which requires regulatory approval; (iii) any offer, sale, or transfer to a Third Party of any MATERIAL or Modification; and (iv) any incorporation of any MATERIAL or Modification into a commercial product or service for offer, sale, or transfer to a Third Party. For clarity, "Field of Use" includes internal research use, results of which may be included in an application for regulatory approval.
- 2.5 "MATERIAL" in either singular or plural means the cell line(s) LICENSEE selects in Section 3.1, together with any unmodified derivatives, parts, products, progeny, and purified or fractionated subsets.
- 2.6 "Modification" in either singular or plural means any substance created by LICENSEE which contains, comprises, or incorporates any MATERIAL.
- 2.7 "Third Party" in either singular or plural means any person, firm, corporation, or other entity other than MSK, LICENSEE, or any of their respective Affiliates.

ARTICLE III – GRANT

3.1 Cell Line(s):

<b>Cell Line</b>	<b>Material Acquisition Fee</b>
Calu-5 (Human Lung Adenocarcinoma Cell Line)	please inquire
Calu-6 (Human Lung Adenocarcinoma Cell Line)	please inquire
MSK-921 (Human Head and Neck Squamous Cell Line)	1098
MSK-Leuk-1 (Human Oral Leukoplakia Cell Line)	1098
SK-BR-5 (Human Breast Carcinoma Cell Line)	807
SK-BR-7 (Human Breast Carcinoma Cell Line)	807
SK-CO-10 (Human Colon Carcinoma Cell Line)	807
SK-CO-15 (Human Colon Carcinoma Cell Line)	807
SK-ES-01 (Human Ewing Sarcoma Cell Line)	807
SK-GT-04 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-01(Human Lung Adenocarcinoma Cell Line)	807
SK-LC-02 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-04 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-05 (Human Lung Large Cell Carcinoma Cell Line)	807
SK-LC-06 (Human Lung Large Cell Anaplastic Carcinoma Cell Line)	807
SK-LC-07(Human Lung Adenocarcinoma Cell Line)	807
SK-LC-08 (Human Lung Squamous Cell Line)	807
SK-LC-09 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-10 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-11 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-12 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-13 (Human Lung Small Cell Carcinoma Cell Line)	807
SK-LC-14 (Human Lung Squamous Cell Carcinoma Cell Line)	807
SK-LC-15 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-16 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-17 (Human Lung Small Cell Carcinoma Cell Line)	807
SK-LC-19 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-20 (Human Lung Adenocarcinoma Cell Line)	807
SK-LC-21 (Human Lung Adenocarcinoma Cell Line)	807
SK-LMS-01(Human Vulvar Leiomyosarcoma Cell Line)	807
SK-LY-16 (Human Lymphoma Cell Line)	807
SK-LY-18 (Human Lymphoma Cell Line)	807
SK-MG-01(Human Brain Astrocytoma Cell Line)	807



- Five (5) years
- Ten (10) years
- High-throughput screening (HTS) use only (three [3] years)

from the Effective Date (the “Term”), unless this Agreement is extended or terminated before that time according to the terms hereof, and subject to the rights reserved or observed in this Article III.

Expressly *excluded* from the license is the right to:

- i) sublicense;
- ii) file patent applications claiming or related to any MATERIAL or Modification, method of manufacturing any MATERIAL or Modification, or use of any MATERIAL or Modification;
- iii) use any MATERIAL or Modification for sale, manufacture for sale, or use in the manufacture of another product or service for sale; and
- iv) transfer or distribute any MATERIAL or Modification to a Third Party, except when said Third Party is an Affiliate of LICENSEE or CRO as specified in Section 3.3.

3.2 Notwithstanding any other provisions of this Agreement, it is agreed that MSK and its Affiliates will retain the right to transfer, use, and distribute MATERIAL for any purpose. All rights reserved to MSK and its Affiliates, Third Parties, and the United States Government and others under 35 USC §§ 200-212, as amended, will remain and will in no way be affected by this Agreement.

3.3 Notwithstanding any other provisions of this Agreement, it is understood that LICENSEE may transfer any MATERIAL or Modification to a CRO to conduct research on behalf of LICENSEE provided, however, said CRO will use such MATERIAL or Modification under terms and conditions at least as restrictive as those set forth in this Agreement. Furthermore, LICENSEE is obligated to verify that any MATERIAL or Modification transferred to a CRO is destroyed upon completion of LICENSEE’s research.

#### ARTICLE IV – PAYMENTS

4.1 For the rights, privileges, and licenses granted hereunder, LICENSEE will make the following payments to MSK, in the manner hereinafter provided, a one-time, non-creditable, non-refundable, non-discountable license issue fee per cell line specified hereinafter (the “License Fee”). The License Fee will be due and payable within thirty (30) days of receipt of an invoice from MSK for such sum for amounts exceeding Ten Thousand U.S. dollars (\$10,000 USD), which MSK will issue in its sole determination. All fees under Ten Thousand U.S. dollars (\$10,000 USD) must be

paid via credit card directly without issuance of invoices by MSK.

A) If no high-throughput screening, the License Fee per cell line is:

- Three-Thousand Five Hundred U.S. dollars (\$3,500 USD) per cell line for a one (1) year term selected under Section 3.1;
- Seven-Thousand Five-Hundred U.S. dollars (\$7,500 USD) per cell line for a five (5) year term selected under Section 3.1; or
- Ten-Thousand Five-Hundred U.S. dollars (\$10,500 USD) per cell line for a ten (10) year term selected under Section 3.1.

B) If used for high-throughput screening only, excluding any other use, the License Fee per cell line is:

- Twelve Thousand dollars (\$12,000 USD) per cell line regardless of the term selected under Section 3.1, for a term of three (3) years.

C) If used for high-throughput screening as well as other internal research, the License Fee per cell line is the sum of (A) and a high-throughput screening flat fee of Twelve Thousand dollars (\$12,000 USD) for each cell line.

- 4.2 All payments will be made in United States currency to MSK, or to the account of MSK at such other bank, including any foreign country, as MSK may reasonably designate by notice to LICENSEE, but not in any other currency, without deduction or exchange, collection, or other charges.
- 4.3 Invoices will be sent for payments over Ten Thousand U.S. dollars (\$10,000 USD), unless paid by credit card. Such invoices will reference PO# \_\_\_\_\_, LICENSEE and will be sent to:

All payments by check (Ten Thousand U.S. dollars (\$10,000 USD) minimum) will be made by remittance to Memorial Sloan-Kettering Cancer Center (Tax Payer ID 13-1924236). Payment will show, “**Payment, Contract SK\_\_\_\_\_**” (*note: SK # provided by MSK in the fully executed Agreement*) on the check stub, will include the applicable invoice, and will be sent to:

Memorial Sloan-Kettering Cancer Center  
PO Box 29035  
New York, New York 10087

- 4.4 LICENSEE is responsible for obtaining the MATERIAL from the MSK Monoclonal Antibody Core Facility. In addition to the license fee set forth in Section 4.1, LICENSEE will pay the MSK Monoclonal Antibody Core Facility a “Material Acquisition Fee” per vial as reimbursement for preparation costs of the MATERIAL, as well as applicable shipping fees.

The Material Acquisition Fee and shipping fees will be paid to:

Memorial Sloan Kettering Cancer Center  
61820-05160  
General Post Office PO Box 5882  
New York, New York 10087

#### ARTICLE V – OPTION TO RENEW

LICENSEE may request, at its option, to extend the Term of this Agreement by providing written notification to MSK prior to the expiration of this Agreement. Upon MSK’s written agreement, and LICENSEE’s remittance of the agreed upon renewal fee, the Term will be extended by the agreed upon number of years.

#### ARTICLE VI – INDEMNIFICATION; DISCLAIMER; LIMITATION OF LIABILITY

- 6.1 LICENSEE will at all times during the Term of this Agreement and thereafter, indemnify, defend, and hold MSK, its Affiliates, trustees, Board of Managers, officers, employees, agents, and contractors harmless against all claims and expenses, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense, and liability of any kind whatsoever resulting from the development, production, manufacture, or use of any MATERIAL or Modification, or arising from any obligation of LICENSEE hereunder, except to the extent that such liability or claims arise from the gross negligence or willful misconduct of MSK.
- 6.2 For the Term of this Agreement, upon the commencement of use of any MATERIAL or Modification, LICENSEE will obtain and carry in full force and effect liability insurance that will protect LICENSEE and MSK in regard to events covered by Section 6.1. The nature and extent of the insurance coverage will be commensurate with usual and customary industry practices, as determined by LICENSEE’s good faith assessment.
- 6.3 LICENSEE hereby represents, warrants, and covenants that (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or organization; (b) it has the authority and right to enter into and perform its obligations under this



Agreement; (c) as of the Effective Date, the execution, delivery and performance of this Agreement by LICENSEE does not conflict with, or constitute a breach of, any order, judgment, agreement, or instrument to which it is a Party or, to its knowledge, is otherwise bound; (d) no consent of any Third Party, including without limitation any governmental authority, is required for LICENSEE to execute, deliver, and perform under this Agreement as of the Effective Date; and (e) it will comply, and will ensure that its Affiliates comply, with all Applicable Laws in the performance of its obligations and exercise of its rights under this Agreement.

- 6.4 MSK represents, to its knowledge, that it has complied with all Applicable Laws in the collection, storage, and transfer of MATERIAL, at the time such MATERIAL was collected.
- 6.5 LICENSEE represents and warrants that neither LICENSEE nor its Affiliates, directors, executive officers, agents, shareholders, nor any person having a controlling interest in LICENSEE are (i) a person targeted by trade or financial sanctions under the laws and regulations of the United Nations, the United States, the European Union and its Member States, the United Kingdom, or any other jurisdiction that is applicable to the rights to be provided under this Agreement, including but not limited to persons designated on the U.S. Department of the Treasury, Office of Foreign Assets Control's List of Specially Designated Nationals and Other Blocked Persons and Consolidated Sanctions List, the U.S. State Department's Non-proliferation Sanctions Lists, the UN Financial Sanctions Lists, the EU's Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions, and the UK HM Treasury Consolidated Lists of Financial Sanctions Targets; (ii) located, incorporated, or organized under the laws of a territory subject to comprehensive U.S. sanctions (currently, Cuba, Iran, Crimea, North Korea and Syria, but subject to change at any time); or (iii) directly or indirectly owned or controlled by such persons (together "Restricted Persons"). LICENSEE further represents and warrants that LICENSEE shall notify MSK in writing immediately if LICENSEE or any of its directors, executive officers, agents, shareholders, or any person having a controlling interest in LICENSEE becomes a Restricted Person or if LICENSEE becomes directly or indirectly owned or controlled by one or more Restricted Persons. The Parties hereto understand that MSK is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by LICENSEE that LICENSEE will not export data or commodities to certain foreign countries without prior approval of such agency. MSK neither represents that a license will not be required nor that, if required, it will be issued. LICENSEE agrees to comply with all applicable trade sanctions and export control laws and regulations, including where applicable the U.S. trade sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (31 C.F.R. Part 501 et seq.), the U.S. Export Administration Regulations (15 C.F.R. Part 734 et seq.), and European Union trade sanctions and export laws (including without limitation Council Regulation (EC) No. 428/2009 (as amended)).

- 6.6 Except as otherwise expressly set forth in this Agreement, MSK MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY MATERIAL OR MODIFICATION LICENSED OR OTHERWISE PROVIDED TO OR DEVELOPED BY LICENSEE HEREUNDER AND HEREBY DISCLAIMS THE SAME. MSK MAKES NO REPRESENTATION WHATSOEVER, THAT ANY MATERIAL OR MODIFICATION OR METHOD USED IN MAKING OR USING SUCH MATERIAL, OR MODIFICATION WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
- 6.7 THE LIABILITY OF MSK, ITS AGENTS, OR ITS EMPLOYEES, WITH RESPECT TO ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES WILL BE LIMITED TO THE REFUND OF ANY AMOUNTS PAID BY LICENSEE TO MSK HEREUNDER AND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT WILL MSK BE LIABLE FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FROM ITS PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY, STATUTORY, OR OTHERWISE.

#### ARTICLE VII – PUBLICITY AND NON-USE OF NAMES

- 7.1 Except as required by law, neither MSK nor LICENSEE will release any information, publicity, news release, or other public announcement or publication regarding the terms of this Agreement without the prior written approval of the other Party.
- 7.2 Except as otherwise required by law or regulation, neither Party will use any name of the other Party or any of its Affiliates, departments, directors, officers, employees, or agents, or any adaptation thereof (each a “Name”) or any trademark, service mark, trade name, trade dress, logo, symbol, or image of the other Party or its Affiliates (each a “Mark”) in any press release, publicity, advertising, website content, advertising, signs, brochures, promotions, sales literature, social media, and other forms of digital, print, video, or voice marketing (“Marketing Materials”) without the prior express written consent obtained from the other Party in each case, except as required by law. LICENSEE will submit to MSK in writing (via MarComReview@mskcc.org) any proposed Marketing Materials using any Name or Mark of MSK preferably eight (8) business days in advance for MSK’s prior written approval, which approval will not be unreasonably withheld or delayed. In no case will MSK have fewer than at least five (5) business days from receipt of LICENSEE’s written proposal, unless required by law, to review and, if approved, provide its

written consent.

- 7.3 Notwithstanding the above, in the event LICENSEE publishes the results of its research with any MATERIAL or Modification, relevant MSK employees and the source of such MATERIAL will be acknowledged in accordance with academic standards.

#### ARTICLE VIII –TERMINATION

- 8.1 This Agreement will be effective as of the Effective Date and will expire according to the Term specified in 3.1, unless renewed or other terminated according to terms in this Agreement.
- 8.2 MSK may terminate this Agreement if LICENSEE becomes insolvent or, a petition in bankruptcy is filed against LICENSEE and is consented to, acquiesced in or remains undismissed for ninety (90) days; or makes a general assignment for the benefit of creditors, or a receiver is appointed for LICENSEE, and LICENSEE does not return to solvency before the expiration of a thirty (30) day period.
- 8.3 Should LICENSEE fail to pay MSK fees due and payable hereunder for more than thirty (30) days, MSK will have the right to terminate this Agreement on thirty (30) days written notice, unless LICENSEE pays MSK within the thirty (30) day period all such fees due and payable. Upon the expiration of the thirty (30) day period, if LICENSEE has not paid all such license fees and interest due and payable, the rights, privileges, and license granted hereunder will terminate immediately. The payment will accrue interest beginning the tenth day following the due date, calculated at the annual rate of the sum of: a) two percent (2%) plus (b) the prime interest rate quoted by the Wall Street Journal on the date said payment is due.
- 8.4 Upon any breach of this Agreement by LICENSEE, other than those occurrences set out in Sections 8.2 and 8.3, which will always take precedence in that order over any breach or default referred to in this Section 8.4, MSK will have the right to terminate this Agreement and the rights, privileges, and license granted hereunder by thirty (30) days' notice to LICENSEE. Such termination will become effective unless LICENSEE cures any such breach prior to the expiration of the thirty (30) day period.
- 8.5 LICENSEE will be entitled to terminate this Agreement upon thirty (30) days advance written notice to MSK, in the event of MSK's material breach of any of the provisions of this Agreement, if such breach is not cured (if capable of being cured) within this thirty (30) day period. For clarity, the License Fee remains non-refundable in the event that LICENSEE terminates the Agreement under this Section 8.5.
- 8.6 Upon termination of this Agreement for any reason, all rights granted herein will cease and revert to MSK for the sole benefit of MSK and nothing herein will be construed to release either Party

from any obligation that matured prior to the effective date of such termination, including the obligation to remit any and all fees accrued prior to such termination. LICENSEE must return to MSK or, at MSK's written request, destroy all MATERIAL and Modifications.

- 8.7 The provisions of ARTICLE I (Definitions) to the extent defined terms are contained in the following Articles and Sections, Articles IV (Payments), VI (Indemnification; Disclaimers; Limitation of Liability), VII (Publicity and Non-Use of Names), and X (Miscellaneous Provisions), Section 8.6, and this Section 8.7 of this Agreement will survive termination.

#### ARTICLE IX – NOTICES AND OTHER COMMUNICATIONS

Any notice or other communication pursuant to this Agreement will be sufficiently made or given on the date of mailing if sent to such Party by certified first class mail, postage prepaid, addressed to it at its address below or as it will designate by written notice given to the other Party:

In the case of MSK:

Memorial Sloan Kettering Cancer Center  
Attention: Yashodhara Dash, MBBS, PhD  
Vice President, Technology Management and Commercialization  
Office of Technology Development  
633 3rd Avenue 28th Floor  
New York, N.Y. 10017

*With a copy to:*

Attention: Chief Intellectual Property Counsel  
Office of General Counsel  
Memorial Sloan Kettering Cancer Center  
633 3rd Avenue 28th Floor  
New York, NY 10016

In the case of LICENSEE:

Attention:

## ARTICLE X - MISCELLANEOUS PROVISIONS

- 10.1 For the purpose of this Agreement, both Parties are and will be deemed to be, independent contractors and not agents or employees of the other. Neither Party has authority to make any statements, representations, or commitments of any kind, or to take any action, that will be binding on the other Party. Nothing herein contained will be deemed to create an employment, agency, joint venture, or partnership relationship between the Parties or any of their agents or employees for any purpose, including tax purposes, or to create any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party.
- 10.2 This Agreement will be construed, governed, interpreted, and applied in accordance with the laws of the State of New York, without giving effect to any choice/conflict of law principles. The state and federal courts located in New York County, New York, will have exclusive jurisdiction of any claims or actions between or among the Parties arising out of or relating to this Agreement, and each Party consents to venue and personal jurisdiction of those courts for the purpose of resolving any such disputes.
- 10.3 This Agreement may not be assigned by LICENSEE without prior written consent from MSK; provided, however, that LICENSEE may transfer or assign this Agreement with written notice to MSK but without the prior written consent of MSK, to an Affiliate of LICENSEE or in connection with a merger, consolidation, or a sale or transfer of all or substantially all of the assets to which the purpose of this Agreement relates. This Agreement will be binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Any assignment by a Party will bind its assignee to all provisions of this Agreement, including without limitation those concerning dispute resolution (choice of law, choice of forum, and consent to jurisdiction in New York). Any attempted assignment, delegation, or transfer not permitted under this Section 10.3 will be null and void.
- 10.4 The Parties hereto acknowledge that this Agreement sets forth the entire understanding among and between the Parties hereto as to the subject matter hereof and supersedes all prior agreements and communications, whether written, oral, or otherwise. This Agreement EXPRESSLY limits acceptance to the terms of this Agreement. Changes to this Agreement without the written consent of MSK are expressly prohibited and shall be null and void.
- 10.5 Except to the extent a provision is stated to be essential, or otherwise to the contrary, the provisions of this Agreement are severable, and in the event that any provisions of this Agreement will be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability will not in any way affect the validity or enforceability of the remaining provisions hereof. This Agreement was agreed to, and will be construed and interpreted, exclusively in the English language. Words (including defined terms) denoting the singular will include the plural and vice versa. The words “hereof,” “herein,” “hereunder,” and words of the like import when used in this Agreement will refer to this Agreement as a whole, and not to any

particular provision of this Agreement. The term “include” (and any variant thereof), and the giving of examples, will not be construed as a term of limitation unless expressly indicated by the context in which it is used. The headings in this Agreement will not affect its interpretation. Except as expressly provided herein, the rights and remedies herein provided will be cumulative and not exclusive of any other rights or remedies provided by law or otherwise. Each of the Parties has had an opportunity to consult with counsel of its choice. Each provision of this Agreement will be construed without regard to the principle of contra proferentum.

- 10.6 The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.
- 10.7 This Agreement may be executed in any number of counterparts and each of such counterparts will for all purposes be an original and all such counterparts will together constitute but one and the same agreement.
- 10.8 Neither Party will lose any rights hereunder or be liable to the other Party for damages or losses (except for payment obligations) on account of failure of performance by the defaulting Party to the extent such the failure is occasioned by war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions (except if imposed due to or resulting from the Party’s violation of law or regulations), failure of suppliers, inability to obtain MATERIAL or Modification, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence, intentional conduct or misconduct of the nonperforming Party and the nonperforming Party has exerted all reasonable efforts to avoid or remedy such force majeure (“Force Majeure”). For clarity, a failure to obtain funding will not constitute a Force Majeure.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMORIAL SLOAN-KETTERING  
CANCER CENTER, SLOAN-  
KETTERING INSTITUTE FOR  
CANCER RESEARCH, and MEMORIAL  
HOSPITAL FOR CANCER AND  
ALLIED DISEASES**

By: \_\_\_\_\_

Name: Gregory S. Raskin, M.D.

Title: Senior Vice President,  
Technology Development

Date: \_\_\_\_\_