**CELL LINE LICENSE AGREEMENT**

This Cell Line License Agreement ("Agreement") is made effective the \_\_\_\_\_th day of \_\_\_\_\_, 2021 between **Applied Biological Materials, Inc** (“LICENSEE”), a Canadian for profit corporation, with its principal place of business at #1-3671 Viking Way, Richmond, B.C. V6V 2J5, Canada, and **University of Foggia** (“LICENSOR”), at Via Antonio Gramsci, 89, 71122 Foggia FG, Italy, each a “Party,” and collectively “Parties.”

**RECITALS**

**Whereas:** LICENSOR owns certain cell lines that have been developed in connection with LICENSOR's research. By assignment of the inventions from the inventors, LICENSOR owns certain know-how and materials. LICENSOR intends to grant licenses to use certain cell lines for the development of products, processes and methods for public use and benefit.

**Whereas:** LICENSEE desires to use certain cell lines to develop marketable products, processes and methods for public use and benefit.

**Now, therefore:** in consideration of the mutual covenants and premises herein contained, the Parties agree as follows:

**ARTICLE 1.00 – DEFINITIONS**

When used herein, the following terms shall have the meanings set forth below. All reference to the singular shall include the plural and vice-versa.

**1.01 “Affiliate”:** shall mean an entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Party. For purposes of this definition, “control” shall mean the direct or indirect ownership of (a) at least fifty per cent (50 %) or the maximum percentage, if less than fifty per cent (50 %), as allowed by applicable law, of the outstanding voting securities of such entity, or (b) at least fifty per cent (50 %) of the decision-making authority of such entity.

**1.02 “Cell Line(s)”:** are defined in Attachment A.

**1.03 “Field of Use”:** research use only.

**1.04 “Know-How”:** trade secrets including technical information, whether or not patentable, including but not limited to scientific and practical information and formulas; information about qualities and procedures; information about materials and sources; and other relevant writings used in the culture of the Cell Line(s) as provided by LICENSOR to LICENSEE.

**1.05** “**Modifications”:** means materials created by LICENSOR that contain or incorporate the Cell Line(s), including but not limited to molecules, antibodies, cells, or any other materials or products derived therefrom, or other compositions contained in or components of any such modifications of the Cell Line(s).

**1.06 “Net Sales”**: the amount invoiced by LICENSEE for the transfer of a Cell Line(s) to a third party, less documented: (a) sales, excise, use, or value-added taxes shown on the face of the invoice; (b) credits for defective or returned Cell Line(s) actually given; and (c) regular trade and discount allowances given.

**1.07 “Territory”:** world-wide.

**ARTICLE 2.00 – GRANT OF RIGHTS**

**2.01 GRANT.** LICENSOR hereby grants to LICENSEE a nonexclusive, nontransferable, license in the Territory under LICENSOR's Rights to possess and use the Cell Line(s), Modifications, and Know-How, to make, use and sell in the Field of Use.

**2.02 NO OTHER RIGHTS GRANTED.** Except as expressly set forth herein, no licenses, no sublicenses, or rights shall be created by implication, estoppel or otherwise under this Agreement.

**ARTICLE 3.00 – TRANSFER OF LICENSEE MATERIAL(S)**

**3.01 SHIPMENT OF CELL LINE(S).** Within thirty (30) business days of the Effective Date, LICENSOR will provide the Cell Line(s) and Know-How to LICENSEE, as directed in writing by LICENSEE’s Scientific Contact specified in Attachment B. Related shipping expenses will be paid by LICENSEE by use of provided courier account number. LICENSOR will provide reasonable access to necessary personnel, LICENSOR’s Scientific Contact(s) in Attachment B, and to transfer Know-How in Attachment C.

**3.02 REPLACEMENT OF CELL LINE(S).** If the cells of any provided Cell Line(s) are not viable upon arrival or deemed not free of microbial contamination including bacterial, fungal and *Mycoplasma*, and free of HCV, HIV, and HBV, LICENSOR will send LICENSEE a fresh supply of the Cell Line(s) in question at own expense.

**ARTICLE 4.00 – EARNED ROYALTIES, ACCOUNTING AND REPORTS**

**4.01** **EARNED ROYALTIES.** LICENSEE will make nonrefundable and noncreditable earned royalty payments (“Earned Royalties”) to LICENSOR in accordance to Attachment D of Net Sales of Cell Line(s) defined under Section 1.02 (Cell Line(s)). The Earned Royalties are payable as described in Section 4.03 (“Accounting and Reports”). No Earned Royalties are due to LICENSOR on transfers to LICENSEE Affiliates.

**4.02 U.S. CURRENCY.** All payments to LICENSOR under this Agreement shall be payable in United States dollars.

**4.03 ACCOUNTING AND REPORTS.** LICENSEE will, throughout the Term,

1. keep complete, continuous, true, and accurate books of accounts and records sufficient to support and verify the calculation of Net Sales, all royalties and any other amount believed due and payable to LICENSOR under this Agreement. Such books and records will be open at all reasonable times for inspection by a representative of LICENSOR for audit and verification of royalty statements or of compliance with other aspects of this Agreement. The LICENSOR representative will treat as confidential all relevant matters and will be a person or firm reasonably acceptable to LICENSEE. In the event such audit reveals an underpayment by LICENSEE, LICENSEE will within thirty (30) days pay the royalty due in excess of the royalty actually paid. In the event the audit reveals an underpayment by LICENSEE of more than FIVE PERCENT (5%) of the amount due, LICENSEE will pay interest on the royalty due in excess of the royalty actually paid at the highest rate then permitted by law.
2. deliver to LICENSOR on or before 1 February, a written report setting forth a full accounting showing how many amounts due to LICENSOR for the preceding calendar year have been calculated as provided in this Agreement, including an accounting of total Net Sales with a reporting of any applicable foreign exchange rate, deduction, allowance, and charge. Payment amounts due shall be made by LICENSEE thirty (30) days after receiving invoice from LICENSOR by check. If no Cell Line sales have occurred and no other amounts are due to LICENSOR, LICENSEE will submit a report so stating. If LICENSEE ceases to offer Cell Line(s) for sale, LICENSEE will so notify LICENSOR and this agreement will terminate, subject to Section 6.01 (Termination).

**ARTICLE 5.00 – WARRANTIES**

**5.01 USE OF NAME AND LOGO.** Neither Party will use for publicity, promotion or otherwise, any logo, name, trade name, service mark or trademark of the other Party or its Affiliates, or any simulation, abbreviation or adaptation of the same, or the name of any employee or agent of the other Party, without that Party’s prior, written, express consent. A Party may withhold such consent in that Party’s absolute discretion. With regard to the use of LICENSEE’s name, all requests for approval pursuant to this Section must be submitted to LICENSEE’s Licensing Team, at the e-mail address licensing@abmgood.com at least ten (10) business days prior to the date on which a response is needed.

**5.02 REPRESENTATIONS AND WARRANTIES.** Parties shall comply with all applicable international, national and state or provincial laws, ordinances and regulations in its performance under this Agreement.

LICENSEE warrants and represents to LICENSOR that:

1. it now maintains and will continue to maintain throughout the Term and beyond insurance coverage as set forth in Section 5.05 and that such insurance coverage sufficiently covers the LICENSOR Indemnitees; and
2. the execution and delivery of this Agreement has been duly authorized and no further approval, corporate or otherwise, is required in order to execute this binding Agreement.

LICENSORwarrants and represents to LICENSEE that:

1. it has the right to enter into this Agreement; and
2. the execution and delivery of this Agreement has been duly authorized and no further approval, corporate or otherwise, is required in order to execute this binding Agreement.

**5.03 COMMERCIALIZATION EFFORTS.** LICENSEE will use commercially reasonable efforts to have market introduction of the Cell Line(s) within six (6) months after the Effective Date.

**5.04 DISCLAIMERS.**

1. LICENSOR HAS NOT MADE AND DOES NOT MAKE ANY PROMISES, COVENANTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY NATURE, DIRECTLY OR INDIRECTLY, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION: MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DURABILITY, CONDITION, QUALITY OR ANY OTHER CHARACTERISTIC OF THE CELL LINE(S) AND KNOW-HOW.
2. LICENSEE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE; OR THAT THE POSSESSION, USE, PROPAGATION OR IMPORTATION OF THE CELL LINE(S) AND KNOW-HOW WILL NOT INFRINGE OTHER INTELLECTUAL PROPERTY RIGHTS. NOTHING IN THIS AGREEMENT WILL BE CONSTRUED AS AN OBLIGATION FOR LICENSEE TO BRING, PROSECUTE OR DEFEND ACTIONS REGARDING THE CELL LINE(S) AND KNOW-HOW.
3. LICENSOR AGREES THAT LICENSEE AND LICENSEE AFFILIATES WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING OUT OF ANY RIGHTS GRANTED OR PERFORMANCE MADE UNDER THIS AGREEMENT, WHETHER TO OR BY LICENSEE OR A THIRD PARTY. IN NO EVENT WILL LICENSEE’S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, EVEN IF LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**5.05 INDEMNIFICATION.** LICENSEE agrees to defend, indemnify and hold harmless the LICENSOR from any loss or liability that the LICENSOR suffers as a consequence of the use of Cell Line(s) by LICENSEE, any derivative thereof or any material treated therewith.

**5.06 PROHIBITION AGAINST INCONSISTENT STATEMENTS**. LICENSOR shall not make any statements, representations or warranties, or accept any liabilities or responsibilities whatsoever that are inconsistent with any disclaimer or limitation included in this section or any other provision of this Agreement. LICENSOR shall not settle any matter that will incur liability for LICENSEE or require LICENSEE to make any admission of liability without LICENSEE’s prior written consent.

**ARTICLE 6.00 – TERM AND TERMINATION**

**6.01 TERMINATION.**

1. The term of the Agreement is perpetual, and for as long as LICENSEE so elects to sell the Cell Line(s). Termination shall be effective thirty (30) business days after mailing or personal delivery of such written notice unless such default, or other material breach is cured to Parties satisfaction within such thirty (30) day period.
2. LICENSEE or LICENSOR with mutual agreement may terminate this Agreement for any reason upon written notice to either Party.

**6.02 INFRINGEMENT OF THIRD PARTY RIGHTS.** If a court of final adjudication enters a judgment that the rights of a third party have been infringed by using the Cell Line(s), then this Agreement may be terminated by LICENSOR upon written notice to LICENSEE from LICENSOR.

**6.03 SURVIVAL.** The following obligations survive the termination of this Agreement:

1. any cause of action or claim of LICENSEE, accrued or to accrue, because of any action or omission by LICENSOR;
2. shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, permitted assigns and any legal representatives of the parties hereto;
3. Section 6.04 (‘Return/Destruction of Cell Line(s)”), Section 5.01 (“Use of Name and Logo”), Section 5.05 (“Indemnification”) and the relevant sections of Article 7.00 (“General Provisions”) and all definitions related thereto.

**6.04 RETURN/DESTRUCTION OF CELL LINE(S).** In the event a termination pursuant to this Article 6.00 (Term and Termination), and at LICENSOR’s sole discretion and expense, LICENSEE shall either return the Cell Line(s) to LICENSOR at LICENSOR’s own expense, or destroy it.

**ARTICLE 7.00 – GENERAL PROVISIONS**

**7.01 AMENDMENTS.** This Agreement may not be amended or modified except by a writing signed by both Parties and identified as an amendment to this Agreement.

7.02 NO ASSIGNMENT. Neither Party may assign its rights hereunder to any third party without the prior written consent of the other Party; provided, that a Party may assign its rights without the prior written consent of the other Party to any affiliate or other entity that controls, is controlled by or is under common control with such Party. Any purported assignment in violation of this clause is void. Such written consent, if given, shall not in any manner relieve the assignor from liability for the performance of this Agreement by its assignee.

**7.03 ENTIRE AGREEMENT.** This Agreement constitutes the final, complete and exclusive agreement between the Parties with respect to its subject matter and supercedes all past and contemporaneous agreements, promises, and understandings, whether oral or written, between the Parties.

**7.04 INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that the relationship between the Parties is that of independent contractors. Neither Party is the agent, employee, or servant of the other. Except as specifically set forth herein, neither Party shall have nor exercise any control or direction over the methods by which the other Party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, lease or equity relationship, expressly or by implication, between the Parties.

**7.05 NOTICES.** All notices and other business communications between the Parties related to this Agreement shall be in writing, sent by certified mail, addressed as follows:

|  |  |
| --- | --- |
| **To LICENSOR:** | **To LICENSEE:** |
| Name  Institution  Address  Telephone  Fax:  Email: | Director of Licensing  Applied Biological Materials, Inc.  1-3671 Viking Way,  Richmond, B.C. V6V 2J5  Canada  Telephone: (604) 247-2416  Fax: (604) 247-2414  Email: [licensing@abmgood.com](mailto:licensing@abmgood.com) |

Notices sent by certified mail shall be deemed delivered on the third day following the date of mailing. Either Party may change its address or facsimile number by giving written notice in compliance with this section.

**7.06 WAIVER.** The failure of either Party to complain of any default by the other Party or to enforce any of such Party’s rights, no matter how long such failure may continue, will not constitute a waiver of the Party’s rights under this Agreement. The waiver by either Party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other provision. No part of this Agreement may be waived except by the further written agreement of the Parties.

**7.07 FORCE MAJEURE.** No party to this Agreement shall be liable to the other or deemed to be in default for any delay or failure in performance under this Agreement resulting from Acts of God, civil or military authority, Acts of enemies of the Queen, pandemics, or fire, explosions, earthquakes, floods, strikes, lockouts or any other event or condition beyond the reasonable control of such party exclusive, however, of the financial condition of such party.

**7.08 GOVERNING LAW AND JURISDICTION.** This Agreement is made and performed in Richmond, British Columbia, Canada. The terms and conditions of this Agreement, as well as all disputes arising under or relating to this Agreement, shall be governed by and construed under and in accordance with the laws of the Province of British Columbia, Canada.

**7.09 CONSTRUCTION.** Each Party acknowledges that it was provided an opportunity to seek advice of counsel and as such this Agreement shall not be construed for or against either Party.

**7.10 HEADINGS.** The headings of articles and sections used in this document are for convenience of reference only.

**7.11 NONDISCLOSURE.** Neither Party shall disclose any of the terms of this Agreement without the express, prior, written consent of the other Party, or unless required by law.

This Agreement may be executed in any number of counterparts which, when taken together, will constitute an original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Each Party hereto consents to be bound by photocopy or facsimile signatures of such Party’s representative hereto.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

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| **University of Foggia** | **Applied Biological Materials, Inc.** |
| x\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | x\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name  Title | Ryan Saranchuk  Director of Technology Transfer |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ATTACHMENT A**

Cell Line(s)

|  |  |
| --- | --- |
| **Cell Line(s)** | **Inventor(s)** |
| Immortalized, non-aggressive and non-metastatic clear cell carcinoma (RCC85#21) | Dr. Elena Ranieri |
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**ATTACHMENT B**

Scientific Contacts

**LICENSEE CONTACT**

Director of Licensing

Applied Biological Materials, Inc.

1-3671 Viking Way,

Richmond, B.C. V6V 2J5

Canada

Telephone: (604) 247-2416

Fax: (604) 247-2414

Email: [licensing@abmgood.com](mailto:licensing@abmgood.com)

**LICENSOR SCIENTIFIC CONTACTS**

Name

Address

Telephone:

Fax:

Email:

*\*\*More to be inserted with disclosure\*\**

**ATTACHMENT C**

Know-How

|  |  |
| --- | --- |
| **Information requested by LICENSEE** | **Filled in by LICENSOR/LICENSOR’s**  **Scientific Officer** |
| **Published Paper(s)** |  |
| **Name of Licensed Cell Line(s)**  (Include clone name(s) if applicable) |  |
| **Growth Medium Composition**   * Indicate recommended supplier name & Cat. No. |  |
| **Thawing Procedure**   * + Include seeding density   + Coating solution or special culture vessel used? * Indicate any special requirements |  |
| **Propagation and Subculturing Procedure**   * + Population doubling time * Include split ratio if applicable |  |
| **Recommended Freezing Media** |  |
| **Expected Morphology**  (attach images if available) |  |
| **How Cell Line(s) were Developed?**   * + Methods (immortalization, stable expression etc) * Drug resistance (include concentration) |  |
| **Characterization Data**  (include data as attachment)   * + Markers and detection methods used (i.e. PCR, WB, IHC, IF etc,)   + Species, source organ, and donor (gender, age, race) * STR profile or cell type validation |  |
| **Vector Information**   * Include vector map (may include as attachment) |  |
| **For Cell Line(s) that are Hybridoma Cells**   * + Include isotype, antibody purification method, and antibody application details |  |
| **Other Additional Information on Cell Line(s)**   * If have additional data to share, may include as attachment (i.e. differentiation protocols, etc) |  |

**ATTACHMENT D**

Earned Royalties

|  |  |
| --- | --- |
| **Earned Royalty** | **Royalty Rate** |
| On Annual Net Sales | 15.0% |