

DRAFT – For discussion purposes only - Not to be referred to as an offer

RESEARCH AND OPTION AGREEMENT

This Research and Option Agreement (“**Agreement**”) is made in Jerusalem this ____ day of _____ 20__ (the “**Effective Date**”), by and between:

YISSUM RESEARCH DEVELOPMENT COMPANY OF THE HEBREW UNIVERSITY OF JERUSALEM LTD., of Hi Tech Park, Edmond J. Safra Campus, Givat Ram, Jerusalem 91390, Israel (“**Yissum**”) of the first part; and

_____, of _____; (the “**Company**”), of the second part;

(each of Yissum and the Company, a “**Party**”, and collectively the “**Parties**”)

WHEREAS: pursuant to the regulations of the Hebrew University of Jerusalem (“**HUJ**”), the rights and title to all inventions, know-how and research results of scientists of HUJ vest solely with Yissum; and

WHEREAS: the Company wishes to fund, and Yissum has agreed to obtain the performance of, certain Research, as defined below, relating to _____ and, if such Research is successful, to consider taking, subject to its sole discretion, a license to the Research Results (as defined below) in accordance with agreed upon commercial and other terms and conditions; and

WHEREAS: Yissum agrees to obtain the performance of the Research, all in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. Interpretation and Definitions

- 1.1. The preamble and appendices annexed to this Agreement constitute an integral part hereof and shall be read jointly with its terms and conditions.
- 1.2. In this Agreement, unless otherwise required or indicated by the context, the singular shall include the plural and *vice-versa*, the masculine gender shall include the female gender, and the use of the word “or” shall mean “and/or”.
- 1.3. The headings of the sections in this Agreement are for the sake of convenience only and shall not serve in the interpretation of the Agreement.
- 1.4. In this Agreement, capitalized terms shall have the meaning set forth herein:
 - 1.4.1. “**Affiliate**” shall mean any person, organization or other legal entity which controls, or is controlled by, or is under common control with, the Company. “Control” shall mean the holding of more than fifty percent (50%) of (i) the equity, or (ii) the voting rights, or (iii) the right to elect or appoint directors.
 - 1.4.2. “**Research**” shall mean the research to be conducted by the Researcher pursuant to the Research Program.
 - 1.4.3. “**Research Budget**” shall mean the budget set forth in **Appendix A**.
 - 1.4.4. “**Research Period**” shall mean _____ from the Effective Date.
 - 1.4.5. “**Research Program**” shall mean the program under which the Research shall be funded by the Company and shall be carried out and conducted by the Researcher, as set forth in **Appendix A**.
 - 1.4.6. “**Research Results**” shall mean all results of the Research, including, but not limited to, methods, process, technique, data, information, discoveries, inventions, materials, devices or know-how arising therefrom.
 - 1.4.7. “**Researcher**” shall mean Prof. _____, or such other person(s) as determined and appointed from time to time by Yissum to supervise and to perform the Research, if applicable.
 - 1.4.8. “**Territory**” shall mean _____.

2. The Research

- 2.1. The Company hereby undertakes to finance performance of the Research in accordance with the Research Program or any amendment thereof. Such financing shall be, subject to any earlier termination of the Research pursuant to Section 2.2 below, in an amount of at least _____ New Israeli Shekels [NIS _____] (**inclusive/exclusive??** of overhead) (the “**Research Fee**”) plus value added tax (VAT), if applicable, payable in accordance with the Research Budget as set forth in **Appendix A**. Because the allocation of expenses in the Research Budget is based on expected expense categories and an expected allocation of specific expenses within each category, such categories and the allocation of expenses among the various expense categories may be modified by the Researcher(s) where reasonably necessary or appropriate during the Research Period, it being agreed, however that the aggregate Research Fee shall not be increased without the written consent of the Company. Payments may be made by check or by wire transfer to the following account:

Name of Bank: Hapoalim
Bank Key: 12
Bank's Address: Harokmim 26, Holon, Israel
Branch: Holon Service Center - 436
Bank Account Number: 12-436-142-155001
Swift Code: POALILIT
IBAN: IL56-0124-3600-0000-0155-001 (if required for payment from any country)

The Company shall always use the payment information provided above. The Company shall not accept any changes in respect of the payment route or bank account details that are received via email, facsimile or by other means of communication, including, without limitation, any invoice or other written request for payment, unless such changes are set forth in an amendment to this Agreement on the letterhead of Yissum signed by its Chief Financial Officer or Controller. If the Company breaches this provision, it shall bear any financial loss or other consequences arising therefrom and shall indemnify Yissum for any such loss or damages that may be incurred by Yissum.

- 2.2. The Research shall be conducted by and under the supervision of the Researcher. Should the Researcher be unable to complete the Research for any reason, Yissum shall notify the Company of the identity of a suitable replacement researcher. If the Company does not object in writing to the replacement of a researcher on reasonable grounds within twenty (20) days of this notification, the substitute researcher shall be deemed acceptable to the Company. Alternatively, the Company shall have the right to terminate the Research being conducted by the Researcher who is no longer able to complete such Research, provided that (i) no monies paid to Yissum for the Research pursuant to the schedule set forth in **Appendix A** will be refundable; and (ii) the Company shall be responsible for the payment of any accrued fees and expenses due to Yissum based on work duly performed up to the date of termination and those irrevocable commitments that were part of the Research Budget and entered into by Yissum prior to having received the Company's written notice of termination.
- 2.3. It is agreed that (i) in view of the fact that the Research may involve conducting experiments on, or using, animals, the performance of the Research and the Research Program shall be subject to the Israeli Anti-Cruelty Law, 1994 and any other applicable laws and regulations, and to the approval of, and any modifications requested by, the relevant animal care and use committee of [HUJ][*add name of relevant academic/research institution*]; and (ii) in view of the fact that the performance of the Research may involve conducting experiments using human material (such as cells, blood, tissue, DNA, RNA, lysates, or body fluids), the performance of the Research and the Research Plan shall also be subject to the approval of, and any modifications requested by, the relevant [external Institutional Review Board][Helsinki Committee]. **IF RELEVANT. IF NOT, STRIKE THE HIGHLIGHTED LANGUAGE.**
- 2.4. Within XXXX (XX) days of the end of the Research Period, Yissum shall present the Company with a written report from the Researcher summarizing the results of the Research during the Research Period (the “**Scientific Report**”).

3. Option to License the Research Results; Ownership of the Research Results and Other Intellectual Property

- 3.1. Yissum hereby grants the Company an exclusive option (the “**Option**”) to receive an exclusive royalty-bearing license, in the Territory, to Yissum's interest in the Research Results (the “**License**”) upon

DRAFT – For discussion purposes only - Not to be referred to as an offer

commercial and other terms and conditions to be negotiated and set forth in a license agreement to be negotiated between the Parties (the “**License Agreement**”).

- 3.2. The Company may exercise the Option at any time from the Effective Date up to and including sixty (60) days from the Company’s receipt of the Scientific Report (the “**Option Exercise Period**”) by notifying Yissum in writing (the “**Option Exercise Notice**”).
- 3.3. Upon the date of Yissum’s receipt of the Option Exercise Notice within the Option Exercise Period, Yissum and the Company shall negotiate the terms and conditions of the License Agreement during a period of up to one hundred and twenty (120) days (the “**Negotiation Period**”).
- 3.4. **IF RELEVANT:** [The Company acknowledges that some or all of the Research Results may be developed with the support of the Israel Innovation Authority (the “**IIA**”) and that the Parties will require the IIA's approval for the grant of the License. Therefore, the grant of the License shall not take effect until, and to the extent that, the IIA has issued its approval. Yissum shall be responsible for obtaining such approval but the Company agrees that it shall assume all obligations imposed on the recipient of the IIA support, including, without limitation, the payment of any fees or penalties due as a result of the transfer of IIA-supported intellectual property outside the State of Israel.]
- 3.5. All rights in the Research Results, including in any patent applications that may be filed in connection with the Research Results, shall be owned by Yissum unless an employee of the Company is properly considered an inventor (according to US law) of any patent application so filed, in which event such patent application shall be owned jointly by Yissum and the Company (each, a “**Joint Patent**”). All rights in any other intellectual property developed solely by the employees or representatives of one Party shall belong exclusively to such Party.
- 3.6. Notwithstanding the foregoing in Section 3.5 above, should the Company not exercise the Option within the Option Exercise Period or the Parties fail to execute a License Agreement within the Negotiation Period despite good-faith negotiations, neither Yissum nor the Researcher shall have any further obligations towards the Company with respect to negotiating a License to the Research Results, whether solely owned by Yissum or jointly held with the Company. In such event, the Company agrees to take all reasonably necessary actions to assign its interest in any Joint Patent to Yissum without any compensation to be paid by Yissum to the Company. Thereafter, Yissum shall be entitled to commercialize or otherwise grant third parties any right or title in and to the Research Results according to Yissum’s sole discretion and without any further obligation to the Company.
- 3.7. From the Effective Date to the later of (a) the end of the Option Exercise Period; or (b) the execution of a License Agreement or (c) the expiration of the Negotiation Period, Yissum shall not, directly or indirectly, enter into any discussions or agreement with any third party, including any agreement to license, sell or purchase any rights or interests in or to the Research Results, nor shall it accept, consider, initiate or negotiate any offer from any other person or entity with respect to a collaboration, license, sale, purchase or other business transaction involving the Research Results.

4. Responsibility for the Filing and Funding of Patent Applications Arising from the Research Results

- 4.1. If at any time during the term of this Agreement, a patentable invention arises from the Research, Yissum, in consultation with the Company, shall be responsible for filing an appropriate patent application, and the Company shall be responsible for funding the costs of the filing, prosecution and maintenance of such application (the “**Research Results Patents**”).
- 4.2. In the event that the Company does not exercise the Option or, having exercised the Option, does not execute a License Agreement, the Company shall have no further rights whatsoever in any Research Results Patents. In such case, Yissum shall assume the responsibility for all future costs of such Research Results Patents and shall be entitled to commercialize or otherwise grant third parties any right or title in and to such Research Results Patents according to Yissum’s sole discretion and without any further obligation to the Company.

5. Confidentiality

- 5.1. Each Party undertakes to the other that during the term of this Agreement and subsequent thereto, it shall maintain, and shall be liable for its officers, employees, representatives, or any other persons acting on its behalf (“**Representatives**”) maintaining, full and absolute confidentiality of all information, details and

DRAFT – For discussion purposes only - Not to be referred to as an offer

data which is in or comes to its knowledge or the knowledge of its Representatives, directly or indirectly relating to the Research or the business of the other Party. Each Party undertakes not to convey or disclose anything in connection with the foregoing to any entity without the prior written permission of the Party which disclosed such confidential information.

- 5.2. The obligation contained in this Section 5 shall not apply to information which:
- (a) is in the public domain as of the date of this Agreement or hereafter comes into the public domain through no fault of a Party or its Representatives; or
 - (b) the receiving Party can demonstrate through tangible evidence was in its possession before receipt from the disclosing Party or its Affiliates; or
 - (c) the receiving Party can demonstrate through tangible evidence was developed independently by it without reference to or reliance upon the disclosing Party's information; or
 - (d) was disclosed to the receiving Party without restriction on disclosure by a third party who has the lawful right to disclose such information.
- 5.3. Notwithstanding the above, a Party may disclose details and information to its Representatives and Affiliates as necessary for the performance of its obligations pursuant to this Agreement, provided that it procures that such parties execute a confidentiality agreement substantially similar in content to this Section 5 or are bound by confidentiality undertakings which are not less stringent than those specified above.
- 5.4. Without prejudice to the foregoing, the Company shall not mention the name of the HUI, Yissum or the Researcher unless required by law or in connection with prosecuting or maintaining the Research Results Patents, in any manner or for any purpose in connection with this Agreement or any matter relating to the Research, without obtaining the prior written consent of Yissum.
- 5.5. Each Party shall be fully accountable and responsible for actions of any of its Representatives (including in the case of Yissum, the Researcher and any other employees of HUI) which constitute a breach of this Section 5.
- 5.6. The provisions of this Section 5 shall be subject to permitted publications pursuant to Section 6 below.

6. Publications

Yissum, subsequent to the Effective Date, shall ensure that no publications in writing in scientific journals, or orally at scientific conventions, relating to the Research are published by it or the Researcher until Yissum, acting in its sole discretion, has taken the necessary steps to protect any patentable invention being disclosed in such proposed publication.

7. Liability and Indemnity

- 7.1. YISSUM MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THE RESEARCH. IN PARTICULAR, YISSUM MAKES NO WARRANTIES THAT ANY RESULTS OR INVENTIONS WILL BE ACHIEVED BY THE RESEARCH, OR THAT THE RESEARCH RESULTS, IF ANY, ARE OR WILL BE COMMERCIALY EXPLOITABLE OR THAT THE RESEARCH RESULTS PATENTS, IF ANY, WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER RIGHTS OF ANY THIRD PARTY. YISSUM SHALL HAVE NO LIABILITY WHATSOEVER TO THE COMPANY OR TO ANY THIRD PARTY FOR OR ON ACCOUNT OF ANY INJURY, LOSS, OR DAMAGE, OF ANY KIND OR NATURE, SUSTAINED BY THE COMPANY OR BY ANY THIRD PARTY, FOR ANY DAMAGE ASSESSED OR ASSERTED AGAINST THE COMPANY, OR FOR ANY OTHER LIABILITY INCURRED BY OR IMPOSED UPON THE COMPANY OR ANY OTHER PERSON OR ENTITY, ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE USE OF THE RESEARCH RESULTS.
- 7.2. The Company shall be liable for any loss, injury or damage whatsoever caused to its employees or to any person acting on its behalf or to the employees of Yissum, HUI, or to any person acting on their behalf, or to any third party by reason of the Company's acts or omissions pursuant to this Agreement or by reason of any use made of the Research Results.
- 7.3. The Company undertakes to compensate, indemnify, defend and hold harmless Yissum and HUI, or any person acting on their behalf, including, without limitation, any of their employees or other Representatives (the "**Indemnitees**") against any liability including, without limitation, product liability, damage, loss or

DRAFT – For discussion purposes only - Not to be referred to as an offer

expenses, including reasonable legal fees and litigation expenses, incurred by or imposed upon the Indemnitees by reason of its acts or omissions or which derive from the Company's use of the Research Results.

8. Termination of the Agreement

8.1. Unless terminated earlier pursuant to the provisions of this Section 8 below, this Agreement shall terminate upon the occurrence of the earlier of the following:

8.1.1. the later of: (i) the date of expiry of the Option Exercise Period, if the Company does not deliver an Option Exercise Notice to Yissum; or (ii) if an Option Exercise Notice is given by the Company within the Option Exercise Period: (a) the date of execution of a License Agreement; or (b) the date of expiry of the Negotiation Period, if the Company and Yissum fail to execute a License Agreement during the Negotiation Period; or

8.1.2. if the Company notifies Yissum in writing that it is not interested in obtaining a License; or

8.1.3. pursuant to Section 2.2 above.

8.2. Without prejudice to the Parties' rights pursuant to this Agreement or at law, each Party may terminate this Agreement by written notice to the other Party in any of the following cases:

8.2.1. Immediately upon such written notice, if: (i) a Party passes a resolution for voluntary winding up or a winding up application is made against it and not set aside within sixty (60) days; or (ii) a receiver or liquidator is appointed for a Party; or (iii) a Party enters into winding up or insolvency or bankruptcy proceedings. The Parties undertake to notify the other Party within seven days if any of the abovementioned events occur.

8.2.2. Upon breach of this Agreement, where such breach has not been remedied within thirty (30) days from the breaching Party's receipt of written notice of such breach.

8.3. In addition to the above, and without prejudice to Yissum's rights pursuant to this Agreement or at law, Yissum shall be entitled to terminate this Agreement upon fourteen (14) days prior written notice to the Company in the following circumstances:

8.3.1. Unauthorized early termination by the Company of the Research Program or failure to pay the Research Fee as set forth in Section 2.1 above; or

8.3.2. If an attachment is made over the Company's assets or if execution proceedings are taken against the Company and the same are not set aside within ninety (90) days of the date the attachment is made or the execution proceedings are taken.

8.4. The termination of this Agreement for any reason shall not release the Company from its obligation to carry out any financial or other obligation which it was liable to perform prior to the Agreement's termination.

In addition, Sections 5, 6, 8.3, 9 and 10 as well as any other provisions that, by their meaning or intent, are intended to endure beyond termination or expiry of this Agreement, shall survive the termination or expiry of this Agreement to the extent required to effectuate the intent of the Parties as reflected in this Agreement.

9. Miscellaneous

9.1. Governing Law and Jurisdiction. The provisions and interpretation of this Agreement, all matters related to this Agreement and everything concerning the relationship between the Parties in accordance with this Agreement shall be governed by Israeli law without application of any conflict of law rules. Any dispute arising from this Agreement shall be submitted to the exclusive jurisdiction of the competent courts in Jerusalem.

9.2. Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party and without fault of such Party, including, without limitation, fires, earthquakes, floods, embargoes, pandemics, epidemics, wars, acts of war (whether war is

DRAFT – For discussion purposes only - Not to be referred to as an offer

declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances (except of such Party's personnel), acts of God, or acts, omissions or delays in acting by any governmental authority, provided that the nonperforming Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

- 9.3. Agreements with the Researcher. The Company shall not enter into any new agreement or arrangement of any kind with the Researcher without Yissum's prior written consent.
- 9.4. Assignment. No Party may transfer or assign or endorse its rights, duties or obligations pursuant to this Agreement to another, without the prior written consent of the other Parties, which consent shall not be unreasonably denied, conditioned or delayed.
- 9.5. Counterparts. This Agreement may be executed in any number of counterparts (including counterparts transmitted by facsimile and by electronic mail), each of which shall be deemed an original, but all of which taken together shall be deemed to constitute one and the same instrument.
- 9.6. Binding Effect. This Agreement shall be binding upon the Parties once executed by both Parties and shall enter into force and become effective as of the Effective Date.
- 9.7. Entire Agreement. This Agreement constitutes the full and complete agreement between the Parties and supersedes any and all agreements or understandings, whether written or oral, concerning the subject matter of this Agreement, and may only be amended by a document signed by both Parties.

10. Notices

All notices and communications pursuant to this Agreement shall be made in writing and sent by facsimile or by registered mail or electronic mail or served personally at the following addresses:

Yissum
Yissum Research Development Company
of the Hebrew University of Jerusalem,
Hi-Tech Park, Edmond J. Safra Campus
Givat Ram, P.O. Box 39135,
Jerusalem 91390
Israel
Attention: _____
Email: generalcounsel@yissum.co.il

The Company

Attention: _____
Email:

or such other address furnished in writing by one Party to the other. Any notice served personally or by electronic mail shall be deemed to have been received on the day of service. Any notice sent by registered mail shall be deemed to have been received seven days after being posted by prepaid registered mail.

IN WITNESS THE HANDS OF THE PARTIES

YISSUM

THE COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

DRAFT – For discussion purposes only - Not to be referred to as an offer

Name: _____

Name: _____

Title: _____

Title: _____

I the undersigned, Prof. _____, have reviewed, am familiar with and agree to all of the above terms and conditions. I confirm that I have received all permissions and approvals necessary for me to perform the Research. I hereby undertake to cooperate fully with Yisum in order to ensure its ability to fulfill its obligations hereunder, as set forth herein.

Prof. _____

Date signed

Appendix A

The Research Program

To be provided by the Researcher as follows:

1. Title of the Research
2. Schedule of various tasks/milestones of the Research
3. The projected duration of the Research
4. A budget for the Research, including at least the following categories:
 - a. Personnel
 - b. Materials (Consumables)
 - c. Equipment
 - d. Travel
 - e. Miscellaneous
 - f. Any specific expenses that do not fall within one of the previous categories
 - g. Overhead (35%)
5. A schedule and payment terms pursuant to which the Company will make payments for the Research.
Remember to add a line item for VAT

YISSUM

THE COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

I the undersigned, Prof. _____, have reviewed, am familiar with and agree to all of the above terms and conditions. I confirm that I have received all permissions and approvals necessary for me to perform the Research. I hereby undertake to cooperate fully with Yissum in order to ensure its ability to fulfill its obligations hereunder, as set forth herein.

Prof. _____

Date signed