

**Zentiva, k.s.**

as Licensor

and

**Institute of Macromolecular Chemistry of the CAS**

and

**Institute of Microbiology of the CAS**

as Licensees

# License Agreement

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This **License Agreement** (the "**Agreement**") is entered into by and between:

- (1) **Zentiva, k.s.**, company established and existing under the laws of Czech Republic, with its seat at U kabelovny 130, 102 37 Prague 10, identification number: 49240030, registered with Municipal Court in Prague, under No. A 64046 (the "**Licensor**"),
- (2) **Institute of Macromolecular Chemistry of the CAS (*Ústav makromolekulární chemie AV ČR, v. v. i.*)**, with its seat at Heyrovského nám. 2, 162 06 Prague 6 – Břevnov, Czech Republic and
- (3) **Institute of Microbiology of the CAS (*Mikrobiologický ústav AV ČR, v. v. i.*)**, with its seat at Vídeňská 1083, 142 20 Prague 4, Czech Republic.

(2) and (3) together as "**Licensees**" or "**Institutes**" and together with the Licensor as "**Parties**" and each of them as a "**Party**".

Whereas:

- (A) XXX;
- (B) XXX.
- (C) The Parties wish to establish a basis for cooperation where the Licensees would be provided a right to XXX (the "**Licensed IP Rights**") XXX.

The parties hereby agree as follows:

## **1 Definitions and Interpretation**

1.1 In this Agreement, unless the context requires otherwise, capitalised words shall have the following meanings:

<b>"Assignment"</b>	has the meaning as defined in Section 3.1(ii).
<b>"Business Day"</b>	shall mean a day other than a Saturday or Sunday or another day which is a public holiday in the Czech Republic;
<b>"Commencement Notification"</b>	has the meaning as defined in Section 6.2.
<b>"Commensurate Terms"</b>	has the meaning as defined in Section 6.3.2.
<b>"XXX"</b>	XXX
<b>"XXX"</b>	XXX
<b>"XXX"</b>	XXX
<b>"XXX"</b>	XXX
<b>"Commercially Reasonable Efforts"</b>	shall mean the use of reasonable efforts and resources, in good faith, consistent with the efforts and resources that a pharmaceutical company would commonly apply in pursuing XXX with respect to XXX.
<b>"Confidential Information"</b>	shall mean all and any technical, business or other information, documentation or materials exchanged between the Licensor and the Licensees, or on behalf of the Licensor or the Licensees, in any form (written, oral, photographic, electronic or otherwise) at any point in time (before signing

this Agreement, upon execution of this Agreement or during the term of the Agreement) concerning or in connection with Product or Licensed IP Rights, including but not limited to, Data, information and data obtained concerning or in connection with XXX and conditions of this Agreement.

<b>“Contractual Penalty”</b>	has the meaning as defined in Section 6.8.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“Final Waiver Notice”</b>	has the meaning as defined in Section 8.1.2.
<b>“Effective Date”</b>	shall mean the date of signing of this Agreement by all Parties, or if not signed on the same day by all Parties, the day on which the last of the Parties signs this Agreement.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“Negotiation Period”</b>	has the meaning as defined in Section 6.3.2.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“XXX”</b>	XXX.
<b>“Notice of Dispute”</b>	has the meaning as defined in Section 17.2.
<b>“Patent”</b>	shall mean (a) all patents, certificates of invention, applications for certificates of invention, priority patent filings and patent applications, and (b) any renewal, division, continuation (in whole or in part), or request for continued examination of any of such patents, certificates of invention and patent applications, and any all patents or certificates of invention issuing thereon, and any and all reissues, reexaminations, extensions, divisions, renewals, substitutions, confirmations, registrations, revalidations, revisions, and additions of or to any of the foregoing.
<b>“Priority Right”</b>	has the meaning as defined in Section 6.1.
<b>“Product”</b>	shall mean XXX or any other product developed using any of the Licensed IP Rights, including any improvements thereto, for treatment in the Field.
<b>“Regulatory Authority”</b>	shall mean any authority whose review or approval is necessary for XXX.

<b>"Regulatory Filings"</b>	shall mean all approvals, licenses, registrations, submissions and authorizations made to or received from a Regulatory Authority necessary XXX.
<b>"XXX"</b>	XXX.
<b>"XXX"</b>	XXX.
<b>"XXX"</b>	XXX.
<b>"Specific Waiver Notice"</b>	has the meaning as defined in Section 6.4.
<b>"XXX"</b>	XXX.
<b>"Territory"</b>	shall mean worldwide.
<b>"Third Party Offer"</b>	has the meaning as defined in Section 6.3.1.
<b>"Trigger Event"</b>	has the meaning as defined in Section 5.6.
<b>"Trigger Notice"</b>	has the meaning as defined in Section 5.6.
<b>"XXX"</b>	XXX.

## 1.2 Interpretation

Unless the context requires otherwise:

- 1.2.1 words importing the singular number shall include the plural and *vice versa*.
- 1.2.2 the headings shall not affect the construction on the interpretation of this Agreement.
- 1.2.3 references in this Agreement to Sections and Schedules are references to the sections and schedules of this Agreement.
- 1.2.4 references in this Agreement to any statute shall include a reference to any modification, extension or re-enactment thereof from time to time.
- 1.2.5 references to a "person" include an individual, a company, a partnership and any unincorporated association or body of persons undertaking, enterprise or joint venture (whether or not having separate legal personality), a trust, an estate, a trustee, an administrator, an executor, or any other entity or organisation, including a Governmental Authority, and include any successors or permitted assigns to any of the foregoing;
- 1.2.6 references to an "authority" shall include any national, international, state, municipal or local government, or political subdivision thereof, or any multinational organization or any authority, agency, commission or other public body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal.
- 1.2.7 the words and phrases "including" "in particular" and "shall include" and similar expressions shall not be construed restrictively but shall be construed as meaning "including, without limitation or prejudice to the generality of the foregoing" "in particular, but without limitation or prejudice to the generality of the foregoing" and "shall include without limitation or prejudice to the generality of the foregoing" respectively.

## 2 Grant of license

- 2.1 Subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Licensees XXX license to XXX subject to the terms and conditions of this Agreement (the "XXX").
- 2.2 Subject to Section 8, provided XXX in accordance with the terms hereof, and subject to the Licensees having complied with the other terms of this Agreement, the Licensor shall provide XXX subject to the terms and conditions of this Agreement.
- 2.3 Except for the rights and licenses expressly granted in this Agreement, the Licensor retains all rights under its respective intellectual property, and no rights shall be deemed granted by the Licensor to the Licensees by implication, estoppel or otherwise.
- 2.4 The Licensees hereby acknowledge that the licenses XXX. The Licensees hereby covenant that they will not: (i) infringe any XXX; (ii) use any of the Licensor's knowhow outside the scope of the Licenses granted hereunder; or (iii) license, authorise or allow any third party to engage in any of the actions described above unless agreed otherwise herein.
- 2.5 The Licensees acknowledge that the licenses granted hereunder are subject to the respective individual terms of expiry of the relevant Licensed IP Rights and applicable law. The expiry of any Licensed IP Rights shall not affect the duration of the remainder of the Agreement or any other rights and obligations of the Parties thereunder.
- 2.6 During the term of the Agreement, the Licensees, shall not bring any action, or threaten any legal proceedings against the validity or enforceability of any of the Licensed IP Rights. The Licensees shall use all reasonable endeavours to arrange that their affiliates or any party acting on behalf of the Licensees comply with the obligations stated in the previous sentence.
- The provision of 2.6 applies to any sublicense granted to a third party according to section 3. The Licensees will be responsible for ensuring that such third party sublicensee complies with the terms and conditions of section 2.6
- 2.7 Disclaimer. The Licensor disclaims all representations and warranties, whether express or implied, whether the Licensed IP rights are capable of industrial and/or commercial exploitation, whether XXX. Further the Licensor grants no representation or warranty of non-infringement of any third party intellectual property right by using any of the Licensed IP rights,

## 3 Sublicense and assignment

- 3.1 Subject to compliance with their obligations under this Agreement, the Licensees shall be entitled to:
- (i) sublicense any of the Licenses (or their any part) to a third party within the scope of the relevant License (the "**Sublicense**"); or
  - (ii) assign any of the Licenses (or their any part) to a third party (the "**Assignment**"); or
  - (iii) use any of the Licenses as a non-monetary contribution to the registered capital of a company either newly established and incorporated by the Licensees themselves or in cooperation with a third party, or otherwise created as a spin-off company of the Licensees;

subject to the following:

- (a) prior to becoming entitled, directly or indirectly, to any benefit or right under any of the Licenses (or under any Sublicense), the relevant third party shall agree for the benefit of the Licensor to respect the terms of this Agreement and to refrain from any acts that could in any way prejudice the Licensor's rights and interests under this Agreement or applicable law; and
- (b) any Sublicense shall be in writing and on substantially the same (or narrower) license terms as those contained in this Agreement (except that the respective sublicensee shall not have the right to provide a further sublicense to a third party).

3.2 Nothing in this Agreement shall prevent or hinder the performance of any Licensees' obligations arising in connection with public or governmental subsidies for R&D, provided that: (i) the Licensees shall make all reasonable efforts to ensure no obligations arise under such subsidies which would restrict or adversely impact the Licensor's rights hereunder, and (ii) if, nevertheless, any such obligations arise, the Parties shall negotiate and agree in good faith appropriate measures to minimise their negative impact on the Licensor.

#### **4 XXX**

4.1 XXX.

4.2 XXX.

4.3 XXX.

4.4 XXX.

4.5 XXX.

#### **5 XXX**

5.1 XXX.

5.2 XXX.

5.3 XXX.

5.4 XXX.

5.5 XXX.

5.6 XXX.

5.7 XXX.

#### **6 Priority Right**

6.1 The Parties hereby agree that the Licensor shall have (irrespective of partial expiry of the Licensed IP Rights) during the term of the License Agreement and to the extent legally possible a priority right to XXX (the "**Priority Right**"). Provided that the Parties agree on the respective terms and conditions, the Licensor would be granted by the Licensees a license XXX.

6.2 At any time during the term of this Agreement, the Licensees may notify the Licensor in writing that a Trigger Event has occurred inviting the Licensor to commence negotiations on the potential granting of XXX.

6.3 Following the Commencement Notification:

6.3.1 The Licensees shall provide the Licensor with XXX, if applicable, to the extent necessary to assess whether the Licensor would be willing to acquire XXX under Section 6.1 or XXX, and any other information which may be reasonably useful for the Licensor in this respect and, if available, a bona fide offer provided on arms' length terms by a third party setting forth the principal terms and conditions upon which such third party would be willing to acquire XXX (the "**Third Party Offer**").

6.3.2 Unless the Licensor decides that he does not wish to proceed XXX, the Parties shall negotiate in good faith for a period of at least two (2) months from the Commencement Notification or such other longer period as may be agreed between the Parties (the "**Negotiation Period**") and shall exert all Commercially Reasonable Efforts to reach an agreement on the terms of XXX, which terms shall comply with the following conditions ("**Commensurate Terms**"):

- (i) shall take into account XXX, and as a whole, shall not be less favourable than the terms of the Third Party Offer,
- (ii) in particular, the royalties or other compensation to be paid by the Licensor for such rights shall not be higher than the royalties or other compensation for which such rights would be acquired by any third party,
- (iii) if no relevant Third Party Offer can be presented to the Licensor by the Licensees substantiating the proposed terms, or if the Licensor has reasons to believe that the Third Party Offer which has been presented has not been provided in good faith or on arms-length terms,
- (iv) the appropriate amount of royalties or other compensation will be determined based on an opinion issued by an expert agreed upon in good faith by all Parties.

6.4 Without prejudice to any of its other rights under this Agreement and without any liability on its part *vis à vis* the Licensees, the Licensor shall be entitled to decide at any time in its absolute discretion and notify the Licensees that it waives its Priority Right with respect to any particular Third Party Offer ("**Specific Waiver Notice**"). Such Specific Waiver Notice shall apply only with respect to a single particular Third Party Offer and with respect to a single corresponding Negotiation Period, and Section 6.6 shall apply accordingly.

6.5 If the Parties fail to agree on the Commensurate Terms during the Negotiation Period (as such period may be prolonged by an agreement of the Parties), or if the Licensor has waived its Priority Right in accordance with Section 6.4, the Licensees shall be entitled to XXX to a third party or agree with a third party that XXX, provided that such transaction is entered into:

6.5.1 on terms which are not more advantageous than any terms offered to the Licensor, in particular the Commensurate Terms and the terms stated in the Third Party Offer;

6.5.2 within less than six (6) months following the earlier of (i) the expiry of the Negotiation Period, (ii) the Licensor's waiver of its Priority Right in accordance with Section 6.4; and



6.5.3 on terms which secure remuneration payable to the Licensor in accordance with Section 7 below.

- 6.6 For the avoidance of doubt, if the Licensees have not entered into a transaction with a third party in accordance with Section 6.5 within the 6 month period pursuant to paragraph 6.5.2, the Licensor's Priority Right and other rights pertaining thereto and all applicable time periods for the exercise of such rights shall be reinstated.
- 6.7 Except as provided in Section 6.5 and 8.2, no Licensee shall exercise, provide, nor agree to provide, grant, give the benefit of or otherwise bestow on any third party (whether through a Sublicense or Assignment of the Commercialisation License or otherwise) XXX in any manner whatsoever, or any other right whatsoever which could in any way prejudice the Licensor's Priority Right or the granting of XXX to the Licensor in accordance with the terms hereof, or the exercise of the Licensor's rights and interests thereunder.
- 6.8 If any Licensee breaches the Licensor's Priority Right under this Agreement then, the Licensor shall be entitled to claim against the relevant Licensee that breached the Licensor's Priority Right to pay damages in the amount established by an independent expert agreed upon by all Parties.

## **7 Consideration for XXX**

- 7.1 Without prejudice to Section 6.7, in the event the Licensees XXX, the Licensor shall be entitled (without prejudice to any of its other rights under this Agreement) to consideration in an amount XXX (the "XXX") payable to the Licensor by the Licensees (unless expressly agreed between the Parties otherwise).
- 7.2 The Licensees shall pay the Licensor the XXX during the term of this Agreement, provided always that in respect of any licensed XXX shall be payable
- 7.3 Further details of the XXX payments shall be agreed in a XXX to be entered into by the Parties in the future.
- 7.4 The Licensees shall procure that any relevant third party involved in, or intended to benefit from, XXX (including, where appropriate, provide the Licensor with the relevant financial information, statements, data concerning such third party and allow the Licensor to appoint from time to time an independent auditor to verify such information, statements and data). The details of such assistance shall be provided XXX.

## **8 Priority Right Expiry and Transfer of the Licensed IP Rights**

- 8.1 The Licensor's Priority Right shall expire upon the earlier of:
- 8.1.1 the expiry of a period of 2 months from the delivery of the Trigger Notice to the Licensor by the Licensees; for the avoidance of doubt in XXX;
  - 8.1.2 delivery of a notice by the Licensor to the Licensees providing that the Licensor irrevocably and definitively waives its Priority Right and specifically stating that such notice is being provided under this Section 8.1.2 ("**Final Waiver Notice**");
  - 8.1.3 the Licensor has abandoned the maintenance or prosecution of the Licensed IP Right.
- 8.2 In the event the Priority Right has expired in accordance with Section 8.1, the Licensees shall be entitled to (i) request the Licensor to transfer the Licensed IP Rights to the Licensees, (ii) provide XXX and other terms of this Agreement.

8.3 The transfer of the Licensed IP Rights contemplated under Section 8.2 and the transfer of the Licensed IP Rights contemplated under Section 10.3 shall be carried out under the following terms:

8.3.1 for a transfer price calculated in accordance with Schedule 3;

8.3.2 the Licensed IP Rights shall be transferred without any representation or warranty and exonerating the Licensor to the widest extent possible under applicable law from any liability arising from or in connection with such transfer, and with full indemnity against any such liability provided by the Licensees to the Licensor;

8.3.3 all costs and expenses incurred in connection therewith (including administrative, legal or other expenses) shall be borne solely by the Licensees and to the extent the same are required to be borne by the Licensor, the Licensees shall on demand indemnify the Licensor for such reasonable costs and expenses.

## **9 Ownership and Maintenance of New IP**

9.1 The Licensees shall, to the extent permitted by applicable law, own all rights, title and interests in and to any New IP Rights, and any use or exploitation of such New IP Rights shall be carried out in compliance with the Licensees' obligations under this Agreement, in particular under Sections 6 and 7.

9.2 The Licensees shall have the sole right to prepare, file, prosecute and maintain any and all Patents describing or claiming New IP Rights at their own costs and expenses.

## **10 Maintenance of Licensed IP Rights**

10.1 The Licensor shall have the sole discretion to start, continue or abandon the preparation, maintenance or prosecution of the Licensed IP Rights at its own expense. The Licensor shall be solely entitled to make determinations as to whether to seek Patent term extensions or other rights or protection that are now or become available in the future regarding the Licensed IP Rights. Notwithstanding the above, the Licensor shall make Commercially Reasonable Efforts, at its own costs and expense to maintain the Licensed IP Rights in full effect until the planned maximum date of their respective expiry, unless the Licensor decides to abandon the maintenance or prosecution of any or all of the Licensed IP Rights.

10.2 In case the Licensor decides to abandon or cease maintenance of any of the Licensed IP Rights, the Licensor shall, no later than 3 months prior to the next deadline for any action that must be taken in order to maintain the relevant Licensed IP Right with the relevant Patent authority, provide a prior written notice of its decision to the Licensees. The Licensees shall then have the right to assume the responsibility for maintenance and prosecution of such Licensed IP Right at their own expense, and shall notify the Licensor accordingly.

10.3 If the Licensor decides to abandon or cease maintenance of any of the Licensed IP Rights:

10.3.1 the Licensor shall not be liable for any damages arising from and/or in connection with such decision;

10.3.2 the Licensees shall be entitled to require the Licensor to transfer such Licensed IP Rights to the Licensees in accordance with Section 8.3; or

10.3.3 the Licensees shall be entitled to make determinations on maintenance, prosecution or management of the respective Licensed IP Rights which the Licensor decided to abandon or cease maintenance, and the Licensor shall take any and all steps requested by the Licensees in connection with maintenance, prosecution or management of the respective Licensed IP Rights at the Licensee's costs and expense.

10.4 The Licensor shall duly and timely opt out all relevant Licensed IP Rights from the applicability of the Unified Patent Court system, when applicable.

## **11 Enforcement and Defence**

11.1 In the event that either Party becomes aware of any actual or threatened infringement, misappropriation, or other violation or challenge to the validity, scope, or enforceability of any Licensed IP Rights or New IP Rights by a third party, it will notify the other Party in writing to that effect within ten (10) days of receipt of such notice. Any such notice shall include all available evidence to support the allegation of infringement or threatened infringement by such third party.

11.2 Unless agreed otherwise, the Licensor undertakes at the request of the Licensees to enforce and defend the Licensed IP Rights provided that the Licensees (or any of them) agree to bear reasonable costs and expenses incurred in connection therewith. The Licensor and the Licensees will mutually coordinate and will further discuss how and when to defend the Licensed IP Rights. All rights of enforcement and defense remain with the owner thereof unless agreed or required by law otherwise.

## **12 Termination**

12.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated by an agreement of the Parties or unilaterally by the relevant Party pursuant to the provisions of Sections 12.2, 12.3 or 12.4,.

12.2 The Licensor may terminate this Agreement and/or any license granted hereunder at any time with immediate effect by notice in writing to the Licensees in the event of:

12.2.1 grant of sublicense, assignment, disposal or other use of any of the Licenses, the Licensed IP Rights or any rights granted under this Agreement by the Licensees contrary to the terms of this Agreement;

12.2.2 termination or abandonment of XXX (i) without a serious reason and (ii) lasting more than 180 days;

12.2.3 serious misuse by either of the Licensees of any Data or other Confidential Information in breach of the Licensee's obligations under this Agreement which had a material adverse effect on the Licensor which has not been remedied within thirty (30) Business Days of receipt of a written notice from the Licensor specifying such breach;

12.2.4 failure by either of the Licensees to comply with their respective obligations relating to the Licensor's Priority Right or to the Licensor's rights relating to XXX which has not been remedied within thirty (30) Business Days of receipt of a written notice from the Licensor specifying such breach;

12.2.5 other material breach in the performance of any of its obligations under this Agreement by either of the Licensees or potential sublicensees, which has not been remedied within thirty (30) Business Days of receipt of a written notice from the Licensor specifying such breach.

- 12.3 In case any of the Licensees breaches its obligation under Section 12.2 or any other obligation which substantially affects XXX, the Licensor shall be entitled to damages in the amount established by an independent expert agreed upon by all Parties.
- 12.4 The Licensees may terminate this Agreement at any time with immediate effect by notice in writing to the Licensor in the event of:
- (a) grant of any of the Licenses or any right of use to the Licensed IP Rights by the Licensor to any third party contrary to the terms of this Agreement;
  - (b) serious misuse of any data, results and/or materials relating to the Product by the Licensor, in breach of the Licensor's obligations under this Agreement which had a material adverse effect on the Licensees which has not been remedied within thirty (30) Business Days of receipt of a written notice from the Licensees specifying such breach;
  - (c) other material breach in the performance of any of its obligations under this Agreement by the Licensor, which has not been remedied within thirty (30) Business Days of receipt of a written notice from the Licensees specifying such breach;
  - (d) the Licensees find it ineffective to XXX
  - (e) lapse of a period of ten (10) years from XXX.

Without limiting any other rights of the Licensees hereunder, any of the Licensees shall be entitled to claim from the Licensor damages that occurred to any Licensee in connection with any event under Sections 12.4 (a) or 12.4 (b) or 12.4 (c) in the amount established by an independent expert agreed upon by all Parties.

- 12.5 To the extent allowed under applicable laws, the Licensor shall be entitled to terminate this Agreement and/or any license granted hereunder with immediate effect by notice in writing in case of liquidation, dissolution, bankruptcy, insolvency, or similar process affecting the ability of either of the Licensees to perform its rights and obligations under this Agreement. To the extent allowed under applicable laws, the Licensees shall be entitled to terminate this Agreement with immediate effect by notice in writing in case of liquidation, dissolution, bankruptcy, insolvency, or similar process affecting the ability of the Licensor to perform its rights and obligations under this Agreement.
- 12.6 Upon termination of this Agreement or any of the Licenses, the Licensee shall, at the Licensor's request, forthwith return to the Licensor all Confidential Information, Data and other information provided by the Licensor to the Licensee.
- 12.7 Termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such termination and neither Party's right to claim damages and/or unjust enrichment from the other Party shall be affected.
- 12.8 In the event that:
- 12.8.1 the Licensor exercises the Priority Right, to the extent that any provision of this Agreement is inconsistent with the provisions of the XXX, it shall be superseded and replaced by the provisions of the XXX;
  - 12.8.2 the Licensor becomes entitled to the XXX, to the extent that any provision of this Agreement is inconsistent with the provisions of XXX, it shall be superseded and replaced by the provisions of XXX.

## **13 Confidentiality**

- 13.1 Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Licensor and Licensee, all Confidential Information disclosed by a Party under this Agreement, the recipient Party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as contemplated in this Agreement. Each Party shall use at least the same standard of care as it uses to protect proprietary or confidential information of its own (but in no event less than reasonable care) to ensure that its employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the Confidential Information. Each Party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information.
- 13.2 Notwithstanding Section 13.1, the obligations of confidentiality and non-use shall not apply to Confidential Information to the extent the recipient Party can demonstrate by competent evidence that such information:
- (a) was disclosed to a Party's affiliated company in the meaning of Section 79 of the Act no. 90/2012 Col., as amended, corporations act, its employees, agents, consultants and other representatives;
  - (b) was already known to the recipient Party, other than under an obligation of confidentiality, at the time of disclosure;
  - (c) was generally available to the public or was otherwise part of the public domain at the time of its disclosure to the recipient Party;
  - (d) became generally available to the public or otherwise part of the public domain after its disclosure to the recipient Party and other than through any act or omission of the recipient Party in breach of this Agreement;
  - (e) was subsequently lawfully disclosed to the recipient Party by a person other than the disclosing Party, and who, to the best knowledge of the recipient Party, did not directly or indirectly receive such information directly or indirectly from the disclosing Party under an obligation of confidence;
  - (f) was developed by the recipient Party without use of or reference to any information or materials disclosed by the other Party and other than under an obligation of confidentiality *vis-à-vis* the other Party;
  - (g) was required to be disclosed under applicable law or specific court order, provided that to the extent practicable, the recipient Party shall give reasonable advance notice to other Party of such disclosure and provide it with an opportunity to comment on such disclosure and use efforts to secure confidential treatment of such information at least as diligent as each Party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the recipient Party agrees to take all reasonable action to avoid disclosure of Confidential Information hereunder.

## **14 Representations and warranties**

- 14.1 Each Party represents, warrants, covenants and/or agrees (as applicable) to the other as of the Effective Date that:
- 14.1.1 it is a corporation (the Licensor)/ public research institution (the Licensees) duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation and has all requisite corporate power and authority to execute and

perform this Agreement, and has taken all action required by law and its organizational documents to authorize the execution of this Agreement and the consummation of the transactions contemplated by this Agreement;

14.1.2 all consents, approvals and authorizations from all authorities or other persons required to be obtained by such Party in connection with this Agreement, and the transactions contemplated hereby, have been obtained;

14.1.3 this Agreement has been duly executed and delivered by such Party and constitutes a valid and binding Agreement enforceable against it in accordance with its terms;

14.1.4 the execution of this Agreement and all other instruments and documents required to be executed pursuant to this Agreement, and the consummation of the transactions contemplated hereby, do not and shall not (i) conflict with or result in a breach of any provision of its organizational documents, (ii) result in a breach of any other agreement to which it is a party; or (iii) violate any law.

14.2 Each of the Licensees represents, warrants, covenants to the Licensor and/or agrees (as applicable) that except as specifically permitted under this Agreement:

14.2.1 it has not and shall not grant any rights to or interest in XXX which is inconsistent with the terms and conditions of this Agreement, nor shall it assign its right, title or interest in or to XXX and it has not and shall not grant to any person rights (whether through license, option agreement or otherwise) that would otherwise interfere, limit or be inconsistent with the Licensor's rights hereunder, in particular that would result in a restriction on the Licensor's ability to XXX or to XXX;

14.2.2 it has used and shall use all reasonable precautions to preserve the confidentiality of the Product and all information pertaining thereto and the confidentiality of this Agreement (including any exhibits attached hereto) and the terms hereof;

14.2.3 it shall take all necessary steps in accordance with good scientific and clinical practice that may be reasonably expected from an academic research organization and applicable law to ensure that upon the Trigger Event, it shall have all rights, power and authority to grant to the Licensor XXX and (iii) all other rights that the Licensees purport or undertake to grant the Licensor hereunder;

14.2.4 without limiting its obligations under Section 13, it shall ensure that all of its employees, officers, consultants and contractors involved or to be involved in XXX or have existing obligations under applicable laws requiring assignment to the Licensees of all inventions relating to the Product made during the course of and as the result of their association with the Licensees and obligating the relevant person to maintain as confidential the Confidential Information which such person may receive;

14.2.5 it shall conduct XXX contemplated under this Agreement in compliance with applicable laws and in accordance with good scientific and clinical practices and applicable industry ethical codes that may be reasonably expected from an academic research organization and in the performance of its obligations under this Agreement, it shall comply and shall cause its officers, agents, representatives and employees to comply with all applicable laws, and shall obtain and maintain all licenses, permits, approvals and other authorisations

applicable to it in order to enable it to perform its respective obligations hereunder;

14.2.6 its employees and contractors have not and shall not, in connection with the performance of their respective obligations under this Agreement, directly or indirectly through third parties, pay, promise or offer to pay, or authorise the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to any public official or entity or other person for purpose of obtaining or retaining any advantage, funding or business for or with, or directing business to, any person;

14.2.7 it has not, and its employees and contractors, have not directly or indirectly promised, offered or provided any corrupt payment, gratuity, emolument, bribe, kickback, illicit gift or hospitality or other illegal or unethical benefit to a public official or entity or any other person in connection with this Agreement, and shall not, directly or indirectly, engage in any of the foregoing;

14.2.8 it shall conduct XXX without knowingly infringing or misappropriating the intellectual property rights of any person, and it shall ensure that upon exercise of the Licensor's Priority Right, the Licensor shall be entitled to XXX without infringing or misappropriating the intellectual property rights of any person and without having to incur any material expenditure for the right to use such intellectual property rights.

## **15 Indemnification**

15.1 Any Party shall indemnify, compensate, defend and hold harmless the other Party, its officers, agents, representatives and employees from and against any and all losses, liabilities, damages, penalties, fines, costs and expenses (including, reasonable attorneys' fees and other expenses of litigation) claims, actions, suits or proceedings that results from breach of any representations or warranties under this Agreement as provided in Section 14.

## **16 Future Cooperation**

16.1 Parties shall cooperate to provide a platform for future good faith negotiations of various alternatives for such cooperation, including possible joint venture cooperation in XXX with third parties.

## **17 Governing Law**

17.1 This Agreement shall be governed and construed under the laws of the Czech Republic. Subject to Section 17.2, any dispute arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Czech courts.

17.2 To the extent permitted by applicable legal regulations, any dispute arising out of or in connection with this Agreement, or either Party's rights or obligations hereunder this Section 17.2, the Party wishing to invoke dispute resolution proceedings shall send to the other Party, a written notice of dispute indicating that such notifying Party wishes to invoke such negotiations pursuant to this Section 17.2 and that sets out in reasonable detail the claims asserted, the nature of the dispute, any facts that are or are not in dispute, and the intended treatment and effect of such pending dispute ("**Notice of Dispute**"). The Parties shall, first meet and attempt to resolve the dispute in face-to-face negotiations. Unless otherwise agreed in writing by the Parties, this meeting shall occur within fifteen (15) days after either Party provides such notice of dispute to the other Party. If the Parties are unable to resolve such dispute through such negotiations

within sixty (60) days after the meeting referenced in this Section 17.2, the dispute shall be resolved by the Czech courts.

## **18 Miscellaneous Provisions**

- 18.1 Together with the future XXX, this Agreement embodies the entire agreement and understanding among the Parties with respect to granting of the license for Licensed IP Rights and Parties hereby agree that the XXX shall be terminated.
- 18.2 The Licensor is entitled to assign and/or transfer its rights and/or obligations under this Agreement to any third party. The Licensees are entitled to assign and/or transfer its rights and/or obligations in accordance with this Agreement as provided in Section 3 and except as stipulated herein, no Party may assign, pledge or otherwise transfer rights and/or obligations under this Agreement to any third party.
- 18.3 The Parties are in agreement that nothing contained in this Agreement, nor the execution of this Agreement shall in any way create a partnership, joint venture or similar relationship.
- 18.4 If any provision in this Agreement shall be found or be held invalid, illegal or unenforceable in any way, such provision shall, to the extent that it is invalid, illegal or unenforceable, be deemed not to form part of this Agreement, and shall not affect the validity, legality or enforceability of the remaining provisions. In case such invalidity, illegality or unenforceability affects rights and/or obligations of the Parties, the Parties hereby undertake to use their best efforts to replace such invalid, illegal or unenforceable provision with a valid, legal and enforceable provision the intent of which comes as close as possible to that of the original provision and this Agreement.
- 18.5 Any changes and amendments to this Agreement shall be made in writing only and shall be duly signed on behalf of both Parties. In case of failure to perform or breach of any condition or provision of this Agreement, a waiver of claims shall be enforceable and binding only if made in writing and signed by the Party to whom such claim belongs or in favour of whom such condition has been stipulated. Unless indicated otherwise in the applicable waiver, such waiver applies only to the particular claim stated therein and holds only for the given situation.
- 18.6 All notices and other communications under this Agreement must be in writing and will be deemed to have been duly given when received by the addressee, if sent by an recognized delivery service (receipt requested), in each case to the appropriate addresses, fax numbers or email address set forth below:

If to Licensor:

Zentiva, k.s.

U kabelovny 130

102 37 Prague 10

Czech Republic

Attn: XXX

If to Licensees:

Institute of Macromolecular Chemistry of  
the Czech Academy of Sciences

Heyrovského nám.2

162 06 Prague 6 – Břevnov

Czech Republic

Fax: +420-296 809 410

Email: [office@imc.cas.cz](mailto:office@imc.cas.cz)

Institute of Microbiology of the Czech  
Academy of Sciences



Email: XXX

Vídeňská 1083

142 20 Prague 4

Czech Republic

Fax: +420 244 471 286

Email: [mbu@biomed.cas.cz](mailto:mbu@biomed.cas.cz)

- 18.7 Any such notice shall be deemed to have been given: (a) when delivered if personally delivered; (b) when recipient confirms the receipt if sent by e-mail; (b) on the next Business Day after dispatch if sent by confirmed facsimile or by recognized delivery service.
- 18.8 This Agreement may be executed in any number of counterparts and they shall jointly form one and the same legal instrument. The Parties may execute this Agreement by signing any counterpart thereof.

*[Signatures on the following page]*

For the Licensor:

**Zentiva, k.s.**

In \_\_\_\_\_, on \_\_\_\_\_.

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

For the Licensees:

**Institute of Macromolecular Chemistry of  
the Czech Academy of Sciences (*Ústav  
makromolekulární chemie AV ČR, v. v. i.*)**

In \_\_\_\_\_, on \_\_\_\_\_.

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

Title:

**Institute of Microbiology of the Czech  
Academy of Sciences (*Mikrobiologický  
ústav AV ČR, v. v. i.*)**

In \_\_\_\_\_, on \_\_\_\_\_.

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

Title:

**Schedule 1**  
**XXX definition**

XXX

**Schedule 2**  
**List of Licensed Patent Rights**

XXX

**Schedule 3**  
**Calculation of Licensed IP Transfer Price**

Calculation based on the total development cost invested by Licensor

	Project investment by Zentiva (CZK)
<b>Total</b>	<b>XXX</b>

Activities realized by Licensor

<b>XXX</b>	<b>Activity</b>
<b>1</b>	<b>XXX</b>