**RIGHT OF FIRST OPPORTUNITY AGREEMENT**

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This Right of First Opportunity Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "First Party"), a company organised and existing under the laws of the [PROVINCE/STATE] of the [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Second Party"), a company organised and existing under the laws of the [PROVINCE/STATE] of the [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

WHEREAS [YOUR COMPANY NAME] carries on, as part of its businesses, the business of manufacturing, distributing, warehousing, selling, marketing and promoting [SPECIFY];

WHEREAS [SECOND PARTY NAME] carries on, as part of its businesses, research and development in the field of [SPECIFY];

AND WHEREAS the parties wish to enter into this agreement to provide for the right of first opportunity in favour of [YOUR COMPANY NAME] to manufacture, distribute, sell, market and promote any new Products developed by [SECOND PARTY NAME], the whole on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

“Agreement” means this agreement and all amendments made hereto by written agreement between the parties.

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in the [PROVINCE/STATE] of the [COUNTRY].

“New Product” means any new product developed by [SECOND PARTY NAME] or any of its Affiliates on or after the date hereof, being similar to or in the nature of the Products, but does not include any product listed below:

[SPECIFY, IF ANY RESTRICTIONS]

**1.2 Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

**1.3 Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, independent companies.

**2. RIGHT OF FIRST OPPORTUNITY**

[SECOND PARTY NAME] shall not offer to any person the opportunity to manufacture, distribute, market or promote in the [COUNTRY] any New Product without first offering to [YOUR COMPANY NAME] the opportunity to do so. With respect to any New Product that [SECOND PARTY NAME] intends to licence others to commercialize, [SECOND PARTY NAME] shall give to [YOUR COMPANY NAME] a written notice of such intention together with sufficient details on the nature and the characteristics of the New Product and the terms and conditions offered to [YOUR COMPANY NAME] with respect to the right to manufacture, distribute, market and promote the New Product. On or before the expiry of a [NUMBER IN LETTERS] [NUMBER] day delay from the date of receipt of [SECOND PARTY NAME]’s notice, [YOUR COMPANY NAME] shall notify [SECOND PARTY NAME] in writing of its acceptance of the terms and conditions offered by [SECOND PARTY NAME], failing which it shall be deemed to have rejected [SECOND PARTY NAME]’s offer.

If [YOUR COMPANY NAME] accepts [SECOND PARTY NAME]’s offer, then the parties shall act diligently and in good faith to execute all documentation required to give effect to the agreement resulting from the acceptance of [SECOND PARTY NAME]’s offer. In the event that [YOUR COMPANY NAME] did not accept the terms and conditions offered by [SECOND PARTY NAME] in connection with such New Product, then [SECOND PARTY NAME] may licence others to commercialise such New Product, provided however that [SECOND PARTY NAME] shall not enter into an agreement with such third party *in re*spect of such New Product on terms and conditions which are equal or more favourable than the terms and conditions offered to [YOUR COMPANY NAME]. If [SECOND PARTY NAME] enters into an agreement with a third party in connection with any New Product, then, within [NUMBER] days from the date of execution of such agreement, [SECOND PARTY NAME] shall notify [YOUR COMPANY NAME] of such event and such notice shall contain a statement that the terms and conditions of such agreement with the third party are not equal or more favourable to the terms and conditions offered to [YOUR COMPANY NAME].

**3. ARBITRATION**

Any dispute between the parties as to whether the terms and conditions offered by a third party to [SECOND PARTY NAME] for the right to manufacture, distribute, market and promote any New Product are not equal or more favourable than those offered to [YOUR COMPANY NAME] shall be referred to final binding arbitration pursuant to the laws regarding Arbitration the [COUNTRY], and the costs of such arbitration shall be borne by the party against whom the arbitration decision is rendered. For the purpose of the arbitration, [SECOND PARTY NAME] shall provide the arbitration board with a copy of any proposal by or any agreement with the third party made in connection with the New Product.

**4. GENERAL**

**4.1 Further Assurances**

Each of the parties shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

**4.2 Time of the Essence**

Time is of the essence of this Agreement.

**4.3 Benefit of the Agreement**

This Agreement shall ensure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

**4.4 Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

**4.5 Amendments and Waiver**

No modification of or amendment to this Agreement is valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, is limited to the specific breach waived.

**4.6 Assignment**

[YOUR COMPANY NAME] may not assign this Agreement other than to an Affiliate of [YOUR COMPANY NAME] or to a third party as part of the sale of all or substantially all of the Purchased Business. [SECOND PARTY NAME] may not assign this Agreement without the prior written consent of [YOUR COMPANY NAME], other than to an arm’s length acquirer of all or substantially all of [SECOND PARTY NAME]’s research and development technology business or to a proposed assignee having the financial and operating capability to perform [SECOND PARTY NAME]’s obligations hereunder, as agreed by the parties or as determined by an arbitrator in the event of a dispute. Any dispute as to such capability of any proposed assignee shall be submitted to final binding arbitration pursuant to the laws of Arbitration the[COUNTRY]. Moreover, any assignment by a party shall be conditional upon the assignee entering into a written agreement with the other party to be bound by the provisions of this Agreement in all respects and to the same extent as the assignor is bound.

 **4.7 Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and must be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To [YOUR COMPANY NAME]:

[YOUR COMPANY NAME]

[YOUR COMPLETE ADDRESS]

Attention: [INDIVIDUAL NAME]

Email: [EMAIL ADDRESS]

To [SECOND PARTY NAME]

[SECOND PARTY NAME]

[FULL ADDRESS]

Attention: [INDIVIDUAL NAME]

Email: [EMAIL ADDRESS]

Or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the [NUMBER] Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery or by electronic communication.

**4.8 Governing Law**

This Agreement shall be deemed to have been made in the [PROVINCE/STATE] of the [COUNTRY] and shall be construed and enforced in accordance with the laws of the [PROVINCE/STATE] of the [COUNTRY] and the laws of the [COUNTRY] applicable therein.

**4.9 Severability**

If any provision of this Agreement is determined to be unenforceable, such unenforceability shall attach only to such provision thereof and the remaining provisions hereof shall continue in full force and effect.

**4.10 Counterparts**

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one of the same instrument.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title