

WARRANT AGREEMENT COVID19-LOAN GUARANTEE BS MASTER

Annex L1 to the Loan Agreement

WARRANT AGREEMENT

dated [DATE]

between

Canton of Basel-Stadt
[DEPARTMENT/OFFICE]
[ADDRESS]

(the "**Warrant Holder**")

and

[COMPANY]
[ADDRESS]

(the "**Company**")

(the Warrant Holder and the Company each a "**Party**" and collectively, the "**Parties**")

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PREAMBLE

- A.** The Company is organized in the form of a [Swiss stock corporation (*Aktiengesellschaft*)] registered with the commercial register of the Canton of Basel-Stadt under the no. CHE-[NUMBER] and having its registered address at [ADDRESS].
- B.** The Company, among others, entered into a subordinated loan agreement dated [DATE] (the "**Loan Agreement**") with Basler Kantonalbank pursuant to which the Company shall be granted a subordinated loan in the amount of CHF [AMOUNT] (the "**Loan**"). Pursuant to the Loan Agreement, [90%] of the Loan shall be guaranteed by means of a surety provided by the Warrant Holder as further agreed in a separate surety agreement by and between the Warrant Holder and Basler Kantonalbank (the "**Surety**") and 10% of the Loan shall be guaranteed by a bank guarantee provided by the Eckenstein-Geigy Stiftung pursuant to a bank guarantee issued by a Swiss bank (the "**Bank Guarantee**").

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS

Capitalized terms shall have the meanings as defined in **Annex W1**.

2. GRANT

The Company hereby grants the Warrant Holder as consideration for granting the Surety and the Bank Guarantee the right (each a "**Warrant**" and collectively, the "**Warrants**") to subscribe such number of shares ("N") in the Company of the class issued in the Company's last Financing Round resulting from the following formula:

$$N = (\text{Initial amount of the Loan prior to any repayment} / ([1.1] * \text{share price of the Company's last Financing Round}))$$

The shares issued as a result of the exercise of a Warrant shall be called each a "**Warrant Share**" and together the "**Warrant Shares**".

The granting of the Warrants shall be deemed to be restated on the day of the legally effective creation of conditional capital of the Company for the Warrant Shares.

3. EXERCISE PRICE

The exercise price for each Warrant shall be $[1.1] * \text{share price of the Company's last Financing Round}$ (the "**Exercise Price**").

4. EXERCISE PERIOD

The Warrants shall be exercisable during the term commencing on the date of this Agreement and ending on the 10th anniversary of such date (the "**Exercise Period**"). If no Transaction is carried out prior to the end of the Exercise Period, the Warrant Holder shall have the choice to either exercise the Warrants (thereby adhering also to the Shareholders' Agreement) or to require that the Company shall use com-

mercially reasonable efforts to identify a buyer of the Warrant Shares or to purchase the Warrants from the Warrant Holder at fair market value. Such purchase price will be determined jointly by the Company and the Warrant Holder at this point in time – if necessary with the assistance of a neutral expert – in the spirit of a loyal partnership and taking into account the risk assumed by the Warrant Holder at the time of disbursement of the Loan.

5. EXERCISE

While the Warrants remain outstanding during the Exercise Period, the Warrant Holder may exercise the Warrants in whole (subject to the subsequent paragraph) effective immediately prior to the closing of (i) a transaction for the sale, transfer or other disposal of more than 50% of the issued and outstanding share capital of the Company (in one or a series of transactions) or any other transaction triggering a Liquidity Event or Exit as such term is defined in the Shareholders' Agreement (a "**Sale**"), (ii) the sale of substantially all of the Company's assets or (iii) the expiry of a lock-up for shareholders following an initial public offering of shares in the Company on an internationally recognized securities exchange (an "**IPO**") ((i) through (iii) each a "**Transaction**"). Such exercise shall be effected by:

- a) the surrender of the Warrants, together with a notice of exercise to the Company substantially in the form of **Annex W2**;
- b) the payment to the account of the Company set forth in **Annex W2** of an amount equal to the aggregate Exercise Price for the number of Warrant Shares for which the Warrants may be exercised; and
- c) the signing of an accession declaration to the Company's Shareholders' Agreement.

The Warrant Holder agrees that it will not exercise the Warrants in the event of a Sale if (i) a drag-along right (as defined in the Shareholders' Agreement) is exercised and (ii) the proposed acquirer offers to the Warrant Holder a cash payment for the Warrants as if the Warrants had been exercised and the Warrant Shares had been issued.

For the avoidance of doubt the Warrants shall remain outstanding even if the Outstanding Loan Amount is repaid prior to the Maturity Date or if the Outstanding Loan Amount becomes repayable as a result that the Borrower moves the center of its operations away from Basel-Stadt within three years upon the grant of the Surety. The Warrant Holder may waive all Warrants if the Lender under the Loan Agreement terminates the Loan for any other important reason prior to the Maturity Date without that the Company is in default under the Loan Agreement.

6. ISSUANCE OF WARRANT SHARES

Upon the exercise of the Warrants in accordance with Section 5, the Company shall issue to the Warrant Holder the number of Warrant Shares it is entitled to pursuant to this Agreement.

The Company shall issue the Warrant Shares out of the Company's conditional share

capital and, if no (valid) or not sufficient conditional share capital is available, convene an extraordinary shareholders' meeting in due time, but in any case prior to the closing of the Transaction, to resolve a capital increase for the issuance of the Warrant Shares. Upon issuance of the Warrant Shares, the Warrant Holder shall be registered in the share register of the Company as legal owner of the Warrant Shares subscribed for pursuant to the exercise of the Warrants with full voting rights.

7. COVENANTS BY COMPANY

The Company covenants that (i) at the date of this Agreement it has obtained support declarations of shareholders representing two thirds (2/3) of the Company's share capital and voting rights substantially in the form of **Annex W3** (ii) as soon as practicable it shall create sufficient conditional capital for the issuance of the Warrant Shares and maintain such conditional capital until the end of the Exercise period; and (iii) the Warrant Shares, if and when issued, will be duly and validly issued, fully paid and free from all taxes, liens, and other charges with respect to the issuance thereof.

8. TRANSFER BY WARRANT HOLDER

The Company agrees that the Warrant Holder transfers and assigns to the Eckenstein-Geigy Stiftung, which has provided the Bank Guarantee, 10% of the proceeds retained by a sale of the Warrant Shares.

9. ADJUSTMENT OF NUMBER OF WARRANT SHARES

The number of and kind of shares purchasable upon exercise of the Warrants shall be subject to adjustment from time to time in accordance with art. 653d para. 2 of the Swiss Code of Obligations and as follows, whereby any adjustment under this Section 9 shall become effective at the close of business on the date the triggering event becomes effective:

- a) If the Company at any time before the lapse of the Exercise Period subdivides its shares, by split-up or otherwise, or issues additional shares as a dividend, or combines its shares, the number of Warrants shall forthwith be proportionately increased in the case of a subdivision or stock dividend or proportionately decreased in the case of a combination.
- b) In the event of a change relating to the Shares through merger, consolidation, reorganization, reclassification, recapitalization or otherwise in the Company's corporate structure, the Company shall, to the extent permitted by law, adjust the terms of this Agreement to ensure that the Warrant Holder receives, upon exercise of the Warrants, the same amount and type of shares, other securities, cash, property or other consideration that the Warrant Holder would have been entitled to receive without such change.
- c) In the event of a Dilutive Issuance, the Warrant Holder shall be issued the same number of additional Warrants with a strike price at nominal value equal to the number of Anti-Dilution Shares to be issued to the investors of the last Financing Round as if the Warrant Holder had been an investor in the last financing round for 100% aggregate exercise price. In absence of any provision

for the issuance of Anti-Dilution Shares, the number of warrants (N) shall be recalculated as follows:

- d) (Initial amount of the Loan prior to any repayment/([1.1]*share price of Dilutive Issue) and the Exercise Price shall be reset at [1.1]*share price of the Dilutive Issuance.

10. REPRESENTATIONS AND WARRANTIES BY WARRANT HOLDER

The Warrant Holder represents and warrants to the Company that the Warrants and any Warrant Shares, if issued, are being acquired for its own account, subject to the assignment foreseen in Section 8.

11. WARRANT HOLDER'S INFORMATION RIGHT

During the term of this Agreement, the Company shall (i) deliver to the Warrant Holder unaudited quarterly financial statements along with a short activity report within 30 days of the prior period, (ii) deliver to the Warrant Holder the Company's audited annual financial statements within 180 days after the end of the Company's fiscal year, (iii) allow the Warrant Holder to participate in the Company's shareholders' meetings and (iv) inform the Warrant Holder of (w) any material changes in the course of business (such as market entries, clinical results etc.), (x) any changes in the Company's capital structure, (y) the occurrence of an Exit Case and (z) the relocation of the Company's center of activities away from the Canton of Basel-Stadt.

The Company hereby releases the Warrant Holder and all competent federal, cantonal and communal authorities, the Swiss Federal Bank as well as their possible advisors from confidentiality provisions, in particular from the bank client secrecy, tax secrecy and official secrecy. Such release shall continue to apply until full exercise of the Warrants.

The Company shall provide further inspection rights to the extent required to implement this Agreement or exercise any rights thereunder.

12. MISCELLANEOUS

12.1 Confidentiality

The existence as well as the terms and conditions of this Agreement, any information exchanged among the Parties (including their respective representatives or advisors) under or in connection with this Agreement or in connection with any of the Warrant Holder's investments and shareholdings in the Company, and any information received from any Party (including their respective representatives or advisors) pertaining to the business and the operation of the Company or any of its subsidiaries, shall be subject to the confidentiality obligation set forth in the Company's Shareholders Agreement except as otherwise agreed (i) in this Agreement, (ii) in advance by each of the Parties or (iii) provided by law.

12.2 Assignment

The Company shall not assign or otherwise transfer the Warrants or any rights or obligations hereunder to any third party without the prior written consent of the War-

rant Holder. The Warrant Holder may assign or otherwise transfer the Warrants or any rights or obligations hereunder after prior information of the Company.

12.3 Costs and Expenses, Taxes

Each Party shall bear its own costs and expenses arising out of or incurred in connection with this Agreement and all transactions contemplated hereby. All taxes, charges and other duties as well as Swiss issuance and stamp taxes in connection with the issuance of the Warrant Shares upon exercise of the Warrants shall be borne by the Company.

12.4 Severability

If at any time any provision of this Agreement or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The Parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the Parties' original intention and shall to the extent possible achieve the same economic result.

12.5 Amendments

This Agreement (including this Section 12.5) may be amended only in writing by an instrument signed by both Parties.

12.6 Waiver of Rights

No waiver by a Party of a failure of any other Party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a similar or different character.

12.7 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the laws of Switzerland, excluding its conflict of laws rules.

12.8 Jurisdiction

Any dispute, controversy or claim arising out of or in connection with this Agreement, including disputes regarding its conclusion, validity, binding effect, amendment, breach, termination or rescission, shall be subject to the exclusive jurisdiction of the courts of the Canton of Basel-Stadt.

[signature page follows]

SIGNATURES

Warrant Holder

Canton of Basel-Stadt

Name:
Title:

Name:
Title:

Company

[COMPANY]

Name:
Title:

Name:
Title:

Annex W1**Definitions**

Affiliate	means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person or entity specified and includes funds, investment vehicles or other entities formed or incorporated in any jurisdiction which are managed by the Warrant Holder.
Agreement	means this warrant agreement.
Anti Dilution Shares	means any shares issued to an investor of the last Financing Round in a Dilutive Issuance as compensation
Company	has the meaning set forth on the first page of this Agreement.
Dilutive Issuance	has the meaning as defined in the Company's Shareholders' Agreement and in absence of such definition shall mean any issuance by the Company of (a) any form of equity or (b) any right or option to purchase shares of the Company or any other security convertible into such, at a subscription or purchase price below the Exercise Price, other than (i) shares issuable upon a stock split, stock dividend, or any sub-division of shares; (ii) shares issued or issuable to employees or directors of, or consultants to, the Company pursuant to an employee stock option program; (iii) securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements, a strategic partnership or bona fide business acquisition, in each case at fair market value; or (iv) shares issued in connection with an initial public offering (IPO).
Exercise Period	has the meaning set forth in Section 4.
Exercise Price	has the meaning set forth in Section 3.
Financing Round	means a share capital increase of the Company un-

	der at arm's length conditions with a minimal investment size of CHF 500'000.
IPO	has the meaning set forth in Section 5.
Loan Agreement	has the meaning set forth in Preamble B.
Party	means each party to this Agreement.
Sale	has the meaning set forth in Section 5.
Section	means a section of this Agreement.
Shareholders' Agreement	shall mean the agreement in force among Shareholders of the Company representing a majority of the shares of the Company regulating matters relating to the shares of the Company
Transaction	has the meaning set forth in Section 5.
Warrant(s)	has the meaning set forth in Section 2.
Warrant Holder	has the meaning set forth on the first page of this Agreement.
Warrant Share(s)	has the meaning set forth in Section 2.

Annex W2**Form of Exercise Notice**

[PLACE, DATE]

From: Canton of Basel-Stadt

To: [COMPANY]

Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Warrant Agreement dated [DATE] entered by [COMPANY] and the Canton of Basel-Stadt.

1. The undersigned hereby exercises the Warrants and subscribes for [NUMBER] Warrant Shares pursuant to the terms and conditions of the attached Warrants.

2. The undersigned will pay the aggregate Exercise Price by means of a bank wire to the following bank account of the Company:

Bank: [NAME]
In favor of: [COMPANY]
IBAN No: [NUMBER].

3. Please register the Warrant Shares in the name of the undersigned with the following address: [ADDRESS].

4. The undersigned hereby represents and warrants that the Warrant Shares, if issued, are being acquired for the account of the undersigned.

Canton of Basel-Stadt_____
Name:

Title:

Name:

Title:

Annex W3**Shareholder Undertaking and Waiver**

[PLACE, DATE]

From: [NAME SHAREHOLDER]

To: [COMPANY] & Canton of Basel-Stadt

Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Warrant Agreement dated [DATE] entered by [COMPANY] and the Canton of Basel-Stadt.

1. The undersigned hereby irrevocably waives his/her advance subscription rights (*Vorwegzeichnungsrechte*) regarding the granting of Warrants by [COMPANY] to the Canton of Basel-Stadt and consents the Warrants being allocated to the Canton of Basel-Stadt in the framework of said Warrant Agreement.
2. The undersigned hereby agrees that the Company creates and maintains conditional capital in form and substance sufficient to create the Warrant Shares to be issued at the exercise of the Warrants pursuant to the Warrant Agreement and hereby irrevocably undertakes to execute all documents, to approve all resolutions and to take all further actions necessary or desirable to create the corresponding conditional capital or the Warrant Shares to be issued to the Canton of Basel-Stadt in context of the exercise of the Warrants.

[NAME OF SHAREHOLDER]_____
Name:

Title:

Name:

Title: