

STATE OF TEXAS §
 § TAX ABATEMENT AGREEMENT
COUNTY OF DALLAS §

This Tax Abatement Agreement (the “Agreement”) is entered into by and between the City of Coppel, Texas (“City”), and ZS Pharma, Inc., a Delaware corporation (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

W I T N E S S E T H:

WHEREAS, the City Council of the City of Coppel, Texas (the “City Council”), passed an Ordinance (the “Ordinance”) establishing Tax Abatement Reinvestment Zone No. 107 (the “Zone”), for the real property described in Exhibit “A” (the “Land”), for commercial/industrial tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the “Tax Code”); and

WHEREAS, the City has adopted guidelines for tax abatement (the “Tax Abatement Guidelines”); and

WHEREAS, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Tax Code; and

WHEREAS, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of the Coppel area, it is in the best interests of the taxpayers for the City to enter into this Agreement in accordance with said Ordinance, the Tax Abatement Guidelines and the Tax Code; and

WHEREAS, Company currently leases approximately 26,000 square feet of space at Suite 100, 508 Wrangler Drive, Coppel, Texas 75019, and intends to expand its operations at that location to include a total of approximately 116,000 square feet of space at that location; and

WHEREAS, Company has entered into the First Amendment (effective July 27, 2016) and the Second Amendment (effective December 14, 2016) to the existing lease to lease a total of approximately 116,000 square feet or more of space in the building located at 508 Wrangler Drive, Coppel, Texas 75019 (the “Leased Premises”), for a period of at least ten (10) years (the “Lease”), and intends to locate certain Tangible Personal Property (hereinafter defined) at the Leased Premises, for the purpose of manufacturing, packaging and distributing a pharmaceutical product; and

WHEREAS, Company’s development efforts described herein will create permanent new jobs in the City; and

WHEREAS, the City Council finds that the contemplated use of the Leased Premises, set forth in this Agreement, and the other terms hereof are consistent with encouraging development of the Zone in accordance with the purposes for its creation and/or in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code and all other applicable laws; and

WHEREAS, the City Council finds that the Leased Premises sought are feasible and practicable and would be of benefit to the Zone and to the City after expiration of this Agreement; and

WHEREAS, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Leased Premises is located; and

WHEREAS, City has adopted programs for promoting economic development and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

WHEREAS, City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, City has determined that providing the Fee Waiver to Company in accordance with this Agreement is in accordance with City Economic Development Program and will: (i) further the objectives of City; (ii) benefit City and City's inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in City.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the Zone, which contributes to the economic development of Coppell and the enhancement of the tax base in the City, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Company's existence as a going business, insolvency, appointment of receiver for any part of a Company's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any

proceeding under any bankruptcy or insolvency laws by or against such Company, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Capital Investment” shall mean total capitalized cost for the costs of expanding and improving the Leased Premises, including hard and soft costs related to Company’s improvements and finish-outs constructed in the Leased Premises, and for the costs of Tangible Personal Property (including furniture, fixtures, and equipment) located at the Leased Premises.

“City” shall mean the City of Coppell, Texas.

“Company” shall mean ZS Pharma, Inc., a Delaware corporation.

“Effective Date” shall mean the last date of execution of this Agreement.

“Expiration Date” shall mean March 1 of the calendar year following the calendar year in which the tenth (10th) anniversary date of the First Year of Abatement shall occur.

“First Year of Abatement” shall mean the calendar year commencing on January 1, 2019.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Land” means the real property described in **Exhibit “A”**.

“Lease” shall mean the lease of the Leased Premises for a period of at least ten (10) years.

“Lease Inception Date” shall be deemed to be August 31, 2016.

“Leased Premises” shall mean approximately 116,000 square feet of space in the building located at 508 Wrangler Drive, Coppell, Texas 75019.

“Related Agreement” shall mean any agreement, other than this Agreement, by and between the City and the Company, its parent company, and any affiliated or related entity controlled or owned by Company, or its parent company.

“Required Use” shall mean the continuous operation of Company’s manufacturing, packaging and distributing pharmaceutical products business, as well as training, marketing and related activities.

“Tangible Personal Property” shall mean furniture, fixtures and equipment owned or leased by the Company and located at the Leased Premises, subsequent to the execution of this Agreement and which is assigned an account number separate and apart from the tangible personal property located at the Leased Premises as of January 1, 2018. Tangible Personal Property shall not include inventory, Freeport Goods or Goods in Transit located at the Leased Premises.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

Article II General Provisions

2.1 Company has or intends to enter into the Lease of the Leased Premises, which Leased Premises is located within the city limits of the City and within the Zone. Company intends to locate and maintain Tangible Personal Property at the Leased Premises following the Company’s occupancy thereof.

2.2 The Leased Premises are not in an improvement project financed by tax increment bonds.

2.3 This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City.

2.4 The Leased Premises are not owned or leased by any member of the Coppel City Council or any member of the Coppel Planning and Zoning Commission.

2.5 Company shall, on or before April 30 of each calendar year that the Agreement is in effect, certify in writing to the City that it is in compliance with each term of the Agreement.

2.6 The Leased Premises shall, at all times during the term of this Agreement, be used in the manner (i) that is consistent with the City’s Comprehensive Zoning Ordinance, as amended, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone.

2.7 Fee Waiver. Subject to the continued satisfaction of all the terms and conditions of this Agreement, the City agrees to waive fifty percent (50%) of building permit fees associated with the Company’s occupancy of the Leased Premises (“Fee Waiver”).

2.8 Capital Investment. The Capital Investment shall, as of December 31, 2018, be at least Ten Million Dollars (\$10,000,000).

2.9 Limitations. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

Article III

Tax Abatement Authorized

3.1 This Agreement is authorized by the Tax Code and in accordance with the City Tax Abatement Guidelines, and approved by resolution of the City Council.

3.2 Subject to the terms and conditions of this Agreement, and provided the Taxable Value for the Tangible Personal Property is at least Ten Million Dollars (\$10,000,000) as of January 1 of the First Year of Abatement and as of January 1 of each year thereafter that this Agreement is in effect, the City hereby grants Company an abatement of eighty-five percent (85%) of the Taxable Value of the Tangible Personal Property for a period of ten (10) consecutive years, beginning with the First Year of Abatement. The actual percentage of Taxable Value of the Tangible Personal Property subject to abatement for each year this Agreement is in effect will apply only to the Tangible Personal Property located at the Leased Premises subsequent to the execution of this Agreement. The failure of the Tangible Personal Property to have a Taxable Value of at least Ten Million Dollars (\$10,000,000) as of January 1 of any given Tax Year shall not be an event of default subject to termination and repayment of the abated taxes pursuant to Article V hereof, but shall result in the forfeiture of the tax abatement for the Tangible Personal Property for such Tax Year.

3.3 The period of tax abatement herein authorized shall be for a period of ten (10) consecutive years.

3.4 During the period of tax abatement herein authorized, Company shall be subject to all taxation not abated, including but not limited to, sales tax and ad valorem taxation, if any, with respect to the Leased Premises.

3.5 The Company currently occupies the Leased Premises. The Company agrees, subject to events of Force Majeure, to continuously lease and occupy the Leased Premises for a period of at least ten (10) consecutive years commencing no later than December 31, 2017. The Company may in the future add floor space in addition to the approximate 116,000 square feet and any Tangible Personal Property contained in such added floor space shall be subject to this abatement agreement for the remaining term of the Agreement.

3.6 During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Leased Premises shall not be used for any purpose other than the Required Use and the operation and occupancy of the Leased Premises in conformance with the Required Use shall not cease for more than ninety (90) days except in connection with and to the extent of an event of Force Majeure or closures due to retooling, maintenance, regulatory mandated shutdowns and remodeling to enhance or modify operations at the Leased Premises.

3.7 The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article IV Leased Premises

4.1 Company intends to occupy the Leased Premises under the Lease and to locate Tangible Personal Property at the Leased Premises. Nothing in this Agreement shall obligate Company to occupy the Leased Premises and locate Tangible Personal Property at the Leased Premises, but said actions are conditions precedent to tax abatement for such Company pursuant to this Agreement.

4.2 As conditions precedent to the initiation of the Company's tax abatement pursuant to this Agreement (i) Company entered into the Lease effective February 13, 2013 with the expansion of space under the First Amendment (effective July 27, 2016) and the Second Amendment (effective December 14, 2016); and (ii) Company agrees to occupy the Leased Premises on or before the December 31, 2017.

4.3 Company agrees to maintain the Leased Premises during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.

4.4 The City, its agents and employees shall have the right of access to the Leased Premises at reasonable times and with reasonable notice to Company, and in accordance with access, regulatory, security, visitor and other policies of the Company, in order to insure that Company is in compliance with the terms and conditions of this Agreement.

Article V Default: Recapture of Tax Revenue

5.1 In the event Company: (i) fails to occupy the Leased Premises in accordance with this Agreement or in accordance with applicable State or local laws, codes or regulations; (ii) has delinquent ad valorem or sales taxes owed to the City (provided Company retains its right to timely and properly protest such taxes or assessment); (iii) suffers an event of "Bankruptcy or Insolvency"; or (iv) breaches any of the terms and conditions of this Agreement, or Related Agreement, which is not otherwise cured within the applicable cure period, then Company, after the expiration of the notice and cure periods described below, shall be in default of this Agreement. As liquidated damages in the event of such default, the Company shall, within sixty (60) days after termination, pay to the City all taxes which otherwise would have been paid by the Company to the City without benefit of a tax abatement for the property the subject of this Agreement at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code, as amended, but without penalty. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The Parties further agree that any abated tax, including interest, as a result of this Agreement, shall be recoverable against the Company, its successors and assigns and shall constitute a tax lien against the Tangible personal Property, and shall become due, owing and shall be paid to the City within sixty (60) days after notice of termination.

5.2 Upon breach by Company of any of the obligations under this Agreement, the City shall notify Company in writing, which shall have sixty (60) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured such sixty (60) day period, and the Company has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City may extend the period in which the default must be cured.

5.3 If the Company fails to cure the default within the time provided as specified above or, as such time period may be extended, then the City, at its sole option, shall have the right to terminate this Agreement by providing written notice to the Company.

5.4 Upon termination of this Agreement by City, all tax abated as a result of this Agreement, shall become a debt to the City as liquidated damages, and shall become due and payable not later than sixty (60) days after a notice of termination is provided. In addition, upon termination of this Agreement Company shall pay to City an amount equal to the Fee Waiver. The City shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The City, at its sole discretion, has the option to provide a repayment schedule. The computation of the abated tax for the purposes of the Agreement shall be based upon the full Taxable Value of the Tangible Personal Property without tax abatement for the years in which tax abatement hereunder was received by the Company, as determined by the Appraisal District, multiplied by the tax rate of the years in question, as calculated by the City Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue after expiration of the sixty (60) day payment period.

Article VI Annual Rendition

The Company shall annually render the value of the Tangible Personal Property to the Appraisal District, and shall provide a copy of the same to the City upon written request.

Article VII Miscellaneous

7.1 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: City Manager
City of Coppel, Texas
P. O. Box 478
Coppel, Texas 75019

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended for Company, to:

Attn: Heath Christie
Executive Director
ZS Pharma, Inc.
508 Wrangler Drive
Coppel, Texas 75019

With a copy to:

Attn: Cory Matthews
Director Real Estate
AstraZeneca Pharmaceuticals, L.P.
One MedImmune Way
Gaithersburg, MD 20878

7.2 Authorization. This Agreement was authorized by resolution of the City Council approved by its Council meeting authorizing the Mayor to execute this Agreement on behalf of the City.

7.3 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.4 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.6 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

7.7 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

7.8 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.9 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Company may not assign its rights and/or delegate or subcontract its obligations under this Agreement, except as expressly provided in this Agreement, whether by operation of law or otherwise, in whole or in part, without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing the Company may upon prior written notice to City assign this Agreement or any or all of its rights, and/or delegate or subcontract any or all of its obligations, hereunder to AstraZeneca or to any of its Affiliates, or any successor in interest (whether by merger, acquisition, asset purchase or otherwise) to substantially all of the business to which this Agreement relates; provided such assignee agrees to expressly assume the obligations of the Company under this Agreement in a form reasonably approved by the City. For purposes of this Section "Affiliate" shall mean any entity related to the Company by direct or indirect common or overlapping majority ownership, where collectively the Company and all Affiliates are a group of entities in which a single parent entity owns directly or indirectly a majority interest in each other entity that is part of the group. Subject to the preceding sentence, this Agreement will be binding upon, insure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns. Any attempted assignment, delegation or subcontracting in violation of this Section 7.9 shall be void and of no effect. In the event such an assignment is made, the Company agrees to provide the City with written documentation of the assignment.

7.10 Employment of Undocumented Workers. During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the taxes abated herein, and any other funds received by the Company from the City as of the date of such violation within one hundred twenty (120) days after the date the Company is notified by the City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid.

7.11 Right of Offset. The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement, or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

7.12 Purchase of Property. The City agrees that this Agreement (and the benefits granted to Company herein) shall remain in full force and effect in the event Company purchases the Leased Premises.

[Signature Page to Follow]

EXECUTED in duplicate originals the ____ day of _____, 2018.

CITY OF COPPELL, TEXAS

By: _____
Karen Selbo Hunt, Mayor

Attest:

By: _____
Christel Pettinos, City Secretary

Approved as to Form:

By: _____
City Attorney

EXECUTED in duplicate originals the ____ day of _____, 2018.

ZS PHARMA, INC.

By: _____
Name:
Title:

EXHIBIT “A”
(Legal Description of Land to be attached)