THE UNIVERSITY OF MELBOURNE

IP Licence Agreement – Life Sciences

Details Schedule

#	Item	Details
1.	**Commencement Date** *(Clause 2)*	The date on which the last Party to sign this agreement signs it.
2.	**Licensor**	**The University of Melbourne**, a body politic and corporate established in 1853 and constituted under the *University of Melbourne Act 2009* (Vic) ABN 84 002 705 224 of Melbourne, Victoria 3010 Australia (**University**) Attention: IP Manager Email address for notices: ip-mailbox@unimelb.edu.au
3.	**Licensee**	**[insert]** ACN [insert] of [insert address] (**Licensee**) Attention: [insert] Email address for notices: [insert]
4.	**Application of this agreement**	The following parts of this agreement are applicable only if they are selected by the Parties: ☐ agreement to commence at **Evaluation Licence** stage: **Parts A** and **B** below apply ☐ agreement to commence at **Commercialisation Licence** stage: **Part B** below applies. **Part A** does not apply. **Part A** (Clause 4): **IP evaluation licence**: the University agrees to grant the Licensee a limited licence to use the Licensed IP during the Licence Option Period to achieve the Commercialisation Triggers. **Part B** (Clause 5): **IP commercialisation option and licence**: the University agrees to grant the Licensee a commercialisation licence. Where this agreement commences at the Evaluation stage, this is

#	Item	Details
		contingent on the Licensee meeting a Commercialisation Trigger during the Licence Option Period.
5.	**Licensed IP that is Exclusively Licensed IP** *(Clauses 4 and 5)*	**Patents** [insert]. <table><tr><th>Country</th><th>App / Pat No.</th><th>Filing Date</th><th>Title</th></tr><tr><td>[#insert#]</td><td>[#insert#]</td><td>[#insert#]</td><td>[#insert#]</td></tr><tr><td>[#insert#]</td><td>[#insert#]</td><td>[#insert#]</td><td>[#insert#]</td></tr></table> **Research Group Improvements** for which the Licensee has received notice, in accordance with clause 7(a).
6.	**Licensed IP that is Technical Information** *(Clauses 4 and 5)*	[None] **Copyright Materials** *Copyright subsisting in the following materials.* [insert] [(and as further described in Schedule 1).] **Know-How** [insert] [(and as further described in Schedule 1).]
7.	**Field** *(Clauses 4.1(a) and 5.5)*	[All fields of use.]
8.	**Territory** *(Clauses 4.1(a) and 5.5)*	[Insert] [OR *Worldwide *For the avoidance of doubt, by the term 'worldwide' the University makes no representation that any Intellectual Property Rights in any of the Licensed IP exist or are enforceable, or will exist or will be enforceable, worldwide or in any particular jurisdiction.]*
9.	**Licence Option Period** *(Clause 5.1)*	A period of 12 months starting from the Commencement Date, or otherwise as extended in accordance with clause 4.2.
10.	**Research Group** *(Clauses 1.1 and 7)*	[Academic's / Principal Investigator's Title and Name] in their capacity as an employee of the University, and University personnel working under their direct supervision.

#	Item	Details
11.	**Commercialisation Triggers** *(Clause 5.4)*	Where this agreement commences at the Evaluation Licence stage in accordance with item 1 of this Details Schedule, the Licensee must meet **one or more of** the following conditions in order to exercise its option under clause 5.2(a) to **obtain a licence to commercialise the Licensed IP**: • raise investment funding of at least $500,000; or • secure bona fide purchase orders of $500,000 or more from customers for Products utilising the Licensed IP.
12.	**Equity** *(Clause 5.6)*	Fully-paid ordinary shares in the Licensee representing [10%/20%] of the issued share capital of the Licensee immediately following the issue of those shares, calculated as at the issue date on a fully-diluted basis as though all unconverted securities and equity instruments (including any simple agreement for future equity (**SAFE**)) had been converted into ordinary shares, rounded to the nearest whole number. The shares must [be non-dilutable until the Licensee has raised at least [$*Insert value range*] million in equity investment and otherwise] have the same full voting, dividend, distribution and other rights that apply in respect of all other ordinary shares on issue in the Licensee. However, if: • this agreement commences at the evaluation licence stage in accordance with item 4 of the Details Schedule; and • the Equity is required to be issued after the grant of the Commercialisation Licence under clause 5.5 following exercise of an option in respect of a Commercialisation Trigger that is an investment event, the number of shares comprising the Equity is to be determined on a 'pre-money' basis, being the number of ordinary shares that would have resulted in the holder of the Equity holding [10%/20%] of the issued share capital of the Licensee immediately before completion of that investment event, calculated on a fully-diluted basis, had those shares been issued immediately before completion of that investment event.
13.	**Equity timing** *(Clauses 5.6)*	Where this agreement commences at: • The Evaluation Licence stage, the Equity must be issued as soon as reasonably practicable after the Commercialisation Licence is granted under clause 5.5 and in any event no later than thirty (30) days after that grant; or • The Commercialisation Licence stage, the Equity must be issued as soon as reasonably practicable following the Commencement Date and in any event no later than thirty (30) days following the Commencement Date.
14.	**Patents Repayment Plan** *(Clause 17.2(c)(2))*	The Licensee must pay the amount owing to the University under clause 17.2(c)(2), being the Prior Registration Costs and any fees paid by the University under clause 17.2(a), in equal quarterly instalments over a period of [3] years.

<table>
<tr><th>#</th><th>Item</th><th>Details</th></tr>
<tr><td></td><td></td><td>Subject to the University first issuing an invoice for the relevant amount, the first quarterly instalment is due on the later of:
• the first anniversary of the Commencement Date; and
• if this agreement commenced at the Evaluation Licence stage and the Evaluation Licence is continuing on that anniversary, the date on which the Licensee exercises its option under clause 5.4(a).
Each subsequent instalment is due on each date falling 3 months after the due date for the previous instalment, until the relevant amount has been paid in full.
For the avoidance of doubt, if this agreement commences at the Evaluation Licence stage and the Licensee does not exercise its option under clause 5.4(a), no amount is payable under this plan.</td></tr>
<tr><td>15.</td><td>Prior Registration Costs
(Clause 17.2(c)(2)(A))</td><td>$[X], being the costs incurred by the University in respect of the Patents prior to the Commencement Date.</td></tr>
<tr><td>16.</td><td>Royalties
(Clause 8)</td><td>Royalties
The following Royalties are to be paid by the Licensee to the University, for each Calendar Quarter within thirty (30) days of the end of that Calendar Quarter.
(a) Net Sales Royalty: on a Product-by-Product and country-by-country basis, [X]% of Net Sales. The applicable Net Sales Royalty rate will be reduced by 50% in respect of:
(i) any such Product from the date on which its Exploitation in the relevant country no longer falls within a Valid Claim; and
(ii) any such Product where Exploitation relies solely on the Technical Information and does not fall within a Valid Claim,
such that the reduced Net Sales Royalty rate is to 0.5[X] of Net Sales.
(b) Sublicence Income Payment: [Y]% of Sublicence Income.</td></tr>
<tr><td>17.</td><td>Development Milestones</td><td>[Insert / Not applicable]
<table><tr><td>Milestone Date</td><td>Milestone</td></tr><tr><td></td><td></td></tr></table></td></tr>
</table>

Terms and Conditions:

1 Definitions and Interpretation

1.1 Definitions

Terms defined in the Details Schedule have the meaning given in the Details Schedule, and all other capitalised terms used in this agreement have the meanings given below:

(a) **Affiliate** means any corporation or other entity that controls, is controlled by, or is under common control with a Party. "**Controls**," "**control**" or "**controlled**" as used in this paragraph means direct or indirect ownership of fifty percent (50%) or more of the shares of such corporation, or a fifty percent (50%) or more interest, direct or indirect, in the decision-making authority of an entity.

(b) **Business Day** means a day that is not a public holiday in Melbourne (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)), a day within the University Christmas shutdown between 24 December and 2 January, or Easter Tuesday.

(c) **Calendar Quarter** means a period of three (3) consecutive months ending on the last day of March, June, September, or December, respectively.

(d) **Claim** means any action, claim, demand, proceeding, process however arising.

(e) **Commencement Date** has the meaning given in the Details Schedule.

(f) **Commercialisation Licence** has the meaning given in clause 5.5.

(g) **Commercialisation Triggers** has the meaning given in the Details Schedule.

(h) **Confidential Information** of a Party (**Disclosing Party**) means all unpatented inventions, ideas, know-how (including in the case of the University as the Disclosing Party, the Technical Information), concepts, trade secrets, processes, techniques, products and all other financial and business information or other commercially valuable information of the Disclosing Party, in any form, which is:

(1) by its nature confidential; or

(2) which is designated by the Disclosing Party as confidential to it,

and all copies, notes and records and all related information generated by using such information, and includes the terms and conditions contained in this agreement.

Confidential Information excludes or, as the case requires, ceases to include, information that is or becomes (as proven by the Receiving Party):

(3) after the date of its disclosure by the Disclosing Party to the other Party (**Receiving Party**), properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;

(4) at the date of its disclosure by the Disclosing Party to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;

(5) available to the public other than as a result of a breach of confidentiality by the Receiving Party or its permitted disclosees;

(6) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure; or

(7) about the fact of the existence of this agreement or the fact of the association of the University and Licensee as investor/investee and licensor/licensee.

(i) **Copyright** means all rights subsisting under the *Copyright Act 1968* (Cth), and any analogous rights recognised under the laws of any jurisdiction around the world.

(j) **Copyright Materials** has the meaning given to it in the Details Schedule.

(k) **Corporations Act** means the *Corporations Act 2001* (Cth).

(l) **Diligent and Reasonable Efforts** means to use such efforts and employ such resources as would normally be exerted or employed by a reasonable third party company for technology or a product of similar market potential at a similar stage of development or product life to the Licensed IP and the Product, when utilising sound and reasonable scientific and business practice and judgment in order to develop the Licensed IP and the Products in a timely manner and to maximise the economic return to the Parties from its commercialisation.

(m) **Dispute** means any dispute, controversy or claim arising out of or in any way connected with or relating to this agreement including (without limitation) as to the existence, validity or termination of this agreement.

(n) **Equity** has the meaning given in the Details Schedule.

(o) **Evaluation Licence** has the meaning given in clause 4.1(a).

(p) **Exclusively Licensed IP** means the Licensed IP identified as such in Item **Error! Reference source not found.** of the Details Schedule.

(q) **Exploit** or **Exploitation** means:

(1) **in relation to a product, kit, service, composition, component, substance, document or information resource**: to use, research, develop, make, have made, distribute, import, export, market, sell, hire out, lease, supply or otherwise dispose of it, or to promote or offer to do any of the foregoing;

(2) **in relation to a method, process or use**: to practice or to have practiced or use the method or process, to promote such use or to do any act referred to in paragraph (1) with any product or the method or process;

(3) **in relation to Intellectual Property Rights**: the exercise of any of the rights granted to the holder of those Intellectual Property Rights by the laws of the jurisdiction in which the Intellectual Property Rights subsist, including the right to grant sublicences in accordance with this agreement; and

(4) **in relation to an invention the subject of a Patent:** where the invention is a product, to make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things; and where the invention is a method or process, to use the method or process or do any such act in respect of a product resulting from that use.

(r) **First Commercial Sale** means first bona fide arm's length sale or lease for monetary consideration of a Product by or on behalf of the Licensee or its Affiliates or Sublicensees to a third party and excluding supply of Product as part of and reasonably required for the development of a Product (such as for a clinical study).

(s) **In-Licensed Intellectual Property Rights** has the meaning given in clause 3(b).

(t) **Insolvency Event** means that, in respect of a Party:

(1) execution or other process issued on a judgment, decree or order of an Australian court in favour of a creditor of the party is returned wholly or partly unsatisfied;

(2) it becomes insolvent under administration (as defined in the Corporations Act) or action is taken that could result in that event;

(3) it becomes an externally-administered body corporate (as defined in the Corporations Act);

(4) steps are taken by any person towards making the party an externally administered body corporate;

(5) it is subject to the appointment of a controller (as defined in the Corporations Act), trustee, trustee-in-bankruptcy, external administrator or guardian in respect of all or part of its property;

(6) it is taken to have failed to comply with a statutory demand within the meaning of the Corporations Act; or

(7) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to a Party, under any applicable law.

(u) **Intellectual Property Rights** means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, rights in confidential information, discoveries, inventions, patent rights, trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature, including methods and techniques, together with any documentation relating to such rights and interests whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of this agreement (but does not include Moral Rights).

(v) **Licensed IP** has the meaning given to it in the Details Schedule.

(w) **Licence Option Period** has the meaning given to it in the Details Schedule.

(x) **Moral Rights** has the meaning given to that term in Part IX of the *Copyright Act 1968* (Cth) or any similar foreign legislation, as applicable.

(y) **Net Sales** means the total amount billed or invoiced for all sales, transfers or other supplies of Products by or on behalf of the Licensee or any of its Affiliates or Sublicensees, and from leasing, renting or otherwise making Products available to others without sale or other dispositions, whether invoiced or not, to third parties (including but not limited to distributors, wholesales) in arms' length bona fide commercial transactions exclusively for money or, where the sales, transfers or other supplies of Products are not at arms' length or not exclusively for money, the price that would have been invoiced by reference to the fair market value of all consideration received as if the transaction had been an arms' length bona fide commercial transaction and the consideration had been in cash, after the deduction of all documented and reasonable:

(1) normal trade discounts and rebates actually given in relation to a specific Product and not as part of any bundled product offering (such discounts and rebates not to exceed 5% of the gross invoiced price and to be shown on the invoice);

(2) credits actually given for rejected Products;

(3) costs of packaging, insurance, carriage and freight, provided in each case that the amounts are separately charged on the relevant invoice;

(4) less any goods and services tax, value added tax or other sales tax (but not including any income tax); and

(5) import duties or similar applicable government levies,

provided that such deductions do not exceed the reasonable and customary amounts in the markets in which those sales occur. Net Sales does not include:

(6) sales, transfers or other supplies of Product as part of and reasonably required for the development of a Product (such as for a clinical study); or

(7) sales, transfers or other supplies of Product among or between Licensee and its Affiliates or Sublicensees for the purpose of subsequent resale to a third party (but subsequent resales to such third parties are included).

(z) **Net Sales Royalty** means the royalty payable on Net Sales under this agreement as set out in the Details Schedule.

(aa) **Parties** means the parties to this agreement, namely the University and the Licensee, and **Party** means any one of them.

(bb) **Patents** means:

(1) the pending applications or granted patents which are specifically listed in the Details Schedule, including:

(A) any patent application, including any provisional or utility patent application, or a continuation (in whole or in-part) or division thereof;

(B) any patent issuing from any such patent application;

(C) any re-issue, re-examination, substitution, addition, extension or confirmation of any of the above; and

(D) any patent or patent application claiming priority from, or claiming common priority with, any of the above; and

(2) any Research Group Improvement that is protected by, or is the subject of, a patent application or granted patent.

(cc) **Patents Repayment Plan** has the meaning that is given to it in the Details Schedule.

(dd) **Prior Registration Costs** means the amount specified in the Details Schedule.

(ee) **Product** means any products, services, methods, processes, compositions and components thereof:

(a) which in the course of Exploitation, falls within any Valid Claim of the Patents or otherwise exercises or relies upon any other exclusive right relating to the Licensed IP; or

(b) which incorporates, is based on or its development makes use of the Technical Information, in whole or in part, or which in the course of Exploitation, exercises rights including Intellectual Property Rights in and to the Technical Information.

(ff) **Publication** means the publication of an abstract, article or paper, presentation at a conference or seminar, or other public disclosure, where such publication discloses any details of the Exclusively Licensed IP, and **Publish** has a corresponding meaning.

(gg) **Registration Costs** means fees, costs and expenses (including patent attorney and legal fees and expenses) incurred in the filing, obtaining, prosecution, registration, searching, maintaining, managing and enforcing of the Patents and any other forms of registered Intellectual Property Rights protection relating to the Licensed IP in the Territory and includes all reasonable third party expenses incurred in making any amendments required to complete specifications or dealing with any opposition to any application for such registrations.

(hh) **Regulatory Exclusivity** means any exclusive marketing rights or data exclusivity rights conferred by any regulatory authority with respect to a Product.

(ii) **Related Body Corporate** has the meaning given to that expression by the Corporations Act.

(jj) **Research Group** has the meaning given in the Details Schedule.

(kk) **Research Group Improvement** means any University Improvement that:

(1) is (i) created, and (ii) disclosed to the University's technology transfer office, in each case during the period of [insert] beginning on the Commencement Date;

(2) is solely created by one or more members of the Research Group, in compliance with the University's Managing Conflicts of Interest Policy (MPF1366) and any applicable conflict of interest management plan thereunder;

(3) cannot be Exploited without Exploiting the inventions claimed by the Patents; and

(4) is free from any encumbrance that would prevent or otherwise be incompatible with the University granting the Licensee the exclusive right to Exploit the relevant University Improvement.

(ll) **Royalty Report** has the meaning given to it in clause 8.2.

(mm) **Royalty** means the royalty payable under this agreement in accordance with this agreement and the Details Schedule.

(nn) **Royalty Term** means on a Product-by-Product, and country-by-country basis, the period commencing on the Commencement Date and ending on the later of:

(1) the date on which the Exploitation of the Product in that country does not fall within a Valid Claim;

(2) the date twenty (20) years after the First Commercial Sale of a Product; or

(3) the expiration of Regulatory Exclusivity for such Product in the country in which Exploitation of the Product occurs.

(oo) **Selling Party** has the meaning given to it in clause 8.2.

(pp) **Sublicence** means any agreement or arrangement entered into by the Licensee or its Affiliate with any person (including an Affiliate of the

Licensee) under which that person is granted a licence, right or option to obtain a licence or right, to use, access, Exploit or otherwise exercise any rights in or to the Licensed IP.

(qq) **Sublicensee** means a person with whom the Licensee or its Affiliate enters into a Sublicence.

(rr) **Sublicence Income** means all payments (including milestone payments and development milestone payments), fees (including upfront fees, service fees, usage fees, access fees, option and licence fees, licence maintenance fees and non-cost component of any research funding), consideration (including cash or equity consideration) and revenue received, issued or derived by the Licensee or any of its Affiliates in connection with, arising from or attributable to any Sublicence regardless of the form of agreement under which such payments, fees, consideration and revenue is received, but not including payments received by the Licensee or Affiliate based on a Sublicensee's sale of Products for which Net Sales Royalties are payable to the University under this agreement.

(ss) **Sublicence Income Payment** means the amount payable on Sublicence Income under this agreement as set out in the Details Schedule.

(tt) **Technical Information** means the technical information and know-how identified as such as part of the Licensed IP in the Details Schedule.

(uu) **Term** means the period from the Commencement Date until the expiration of the last remaining Royalty Term unless this agreement is terminated earlier in accordance with its terms.

(vv) **Territory** has the meaning given in the Details Schedule.

(ww) **UM Commercialisation** means UM Commercialisation Pty Ltd (ACN 122 930 269) of the University of Melbourne, Parkville, Victoria 3010 as trustee of the UM Commercialisation Trust (ABN 14 291 242 160).

(xx) **University Improvement** means any development, improvement, enhancement, adaptation, application or modification of or to the Licensed IP (whether patentable or not), which is created by or on behalf of the University or any licensee or sublicensee thereof (other than the Licensee).

(yy) **Valid Claim** means a claim of:

(1) an issued and unexpired Patent that has not been revoked or held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction that is not appealable or has not been appealed within the time allowed for appeal, and that has not been abandoned, disclaimed or admitted to be invalid or unenforceable through reissue, re-examination or disclaimer or otherwise; or

(2) a pending Patent application that has not been finally abandoned or finally rejected or expired and which has been pending for no more than ten (10) years from the date of filing of the earliest priority Patent application to which such pending Patent application is entitled to claim benefit.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

(a) headings are for convenience only and do not affect interpretation;

(b) the singular includes the plural and vice versa, and a gender includes other genders;

(c) another grammatical form of a defined word or expression has a corresponding meaning;

(d) a reference to a person includes a natural person, partnership, body corporate, association, trust, unincorporated body, governmental or local authority or agency or other entity;

(e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;

(f) if an act required to be done under this agreement on or by a given day is done after 5 pm on that day, it is taken to be done on the following day;

(g) a reference to A$, $A, dollar, or $ is to Australian currency;

(h) a reference to an agreement or document is to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this agreement or that other agreement or document;

(i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(j) specifying anything in this agreement after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included; and

(k) a reference to “GST”, “input tax credit”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

2 Term

This agreement commences on the Commencement Date and remains in effect for the Term.

3 IP Ownership and third party rights

(a) As between the parties, the Licensed IP and all rights, titles and interests, including all Intellectual Property Rights, in and to the Licensed IP, are owned by the University.

(b) The Licensee acknowledges and agrees that it is solely responsible for obtaining any licences to Intellectual Property Rights owned by third parties which are necessary for the Licensee to Exploit the Licensed IP as contemplated by this agreement (**In-Licensed Intellectual Property Rights**).

(c) The University agrees, until the earlier of [insert years] anniversary of the Commencement Date and the termination of this agreement, to provide, as soon as practicable upon reasonable request by the Licensee, to the Licensee details of any In-Licensed Intellectual Property Rights which the technology transfer office of the University is aware are required by the Licensee to Exploit the Licensed IP.

Part A: Evaluation Licence

This Part A only applies if expressly selected in the Details Schedule.

4 Evaluation Licence

4.1 Grant of licence

(a) The University grants to the Licensee:

(1) an exclusive, non-transferable licence to Exploit the Exclusively Licensed IP; and

(2) a non-exclusive, non-transferable licence to use the Technical Information,

in the Field in the Territory during the Licence Option Period for the sole and direct purpose of seeking to achieve the Commercialisation Triggers (**Evaluation Licence**).

(b) Without limiting clause 6(a), the University will not, during the Licence Option Period, conduct discussions or negotiations with any third party in relation to any arrangement for the commercial exploitation of the Exclusively Licensed IP by that third party.

4.2 Extension or termination of licence

(a) Subject to clauses 4.2(b) to 4.2(e), the Evaluation Licence will terminate on the date that the first of any of the events below occurs:

(1) the end of the Licence Option Period if the Licensee has not validly exercised the option contained in clause 5.2 prior to the end of the Licence Option Period, at which time this agreement itself will also terminate;

(2) the valid exercise by the Licensee of the option contained in clauses 5.2; or

(3) the termination of this agreement in accordance with its terms.

(b) At least twenty (20) Business Days before the end of the Licence Option Period, including as previously extended in accordance with the process in this clause 4.2, the Licensee may submit a request to the University to extend the Licence Option Period.

(c) A request under clause 4.2(b) must:

(1) be in writing and sent by email to IP-mailbox@unimelb.edu.au;

(2) include in the subject line the words "Request to extend Licence Option Period", followed by the technology name or shorthand descriptor for the technology the subject of the Licensed IP;

(3) briefly explain the progress the Licensee has made towards the Commercialisation Triggers to date, and why the Licensee expects it will be unable to achieve the Commercialisation Triggers during the current Licence Option Period;

(4) state the further period that is requested; and

(5) briefly explain why the Licensee considers it will be able to achieve the Commercialisation Triggers during that further period.

(d) The University must, within ten (10) Business Days of a request made in accordance with clauses 4.2(b) and 4.2(c), respond in writing to the Licensee and, at the University's absolute discretion:

(1) extend the Licence Option Period by the requested further period;

(2) extend the Licence Option Period by a different further period; or

(3) decline to extend the Licence Option Period.

(e) If the University agrees to extend the Licence Option Period in accordance with this clause 4.2, the Licence Option Period will be taken to be extended and references to the Licence Option Period in this agreement will be taken to refer to the period as extended.

4.3 University Improvements

(a) Subject to clause 7, the University owns all University Improvements created during the term of the Evaluation Licence, and on creation such improvements will be Confidential Information of the University subject to clause 1.1(h).

4.4 Sublicensing during the term of the Evaluation Licence

(a) The Licensee must not enter into any Sublicence during the term of the Evaluation Licence (including with an Affiliate) without the prior written consent of the University in accordance with this clause 4.4.

(b) Where the Licensee seeks approval to enter into a Sublicence, it must provide the University all details reasonably required by the University to consider the proposed Sublicence.

(c) In response to any request for approval to sublicense, the University may, at its sole unfettered discretion:

(1) approve the request;

(2) approve the request subject to whatever conditions the University considers reasonably necessary;

(3) decline to approve the request; or

(4) request further information.

(d) The University will consider and respond to any requests for approval to enter into a Sublicence as soon as reasonably practicable. The Licensee should make any requests for approval to enter into a Sublicence as early as reasonably practicable.

(e) Any Sublicence granted by the Licensee under this agreement must:

(1) be on terms consistent with and no less onerous than this agreement and the Evaluation Licence, unless otherwise agreed by the University in writing;

(2) terminate in the event this agreement is terminated for any reason, unless the Sublicence is novated to the University by agreement between the Parties, and the Sublicence must contain an express clause to this effect; and

(3) not permit the Sublicensee to grant any further sublicence of the rights granted under the relevant Sublicence without the University's prior written consent subject to any conditions specified in that consent. The Licensee must ensure that all consideration attributable to any further sublicence must be accounted for to the Licensee and such consideration is deemed to be Sublicence Income received by the Licensee under this agreement.

(f) The Licensee is at all times fully liable and responsible for all acts and omissions of its Sublicensees as if they were the acts and omissions of the Licensee.

(g) The Licensee must not seek to grant a Sublicence to any third party which it knows, or ought reasonably be aware, is likely to deal, sell, use or otherwise Exploit the Licensed IP outside of the Field or Territory.

Part B: Commercialisation Licence

5 IP Commercialisation Licence – Option and Grant

5.1 Applicability of clauses 5.2 to 5.4

Clauses 5.2, 5.3 and 5.4 apply only if this agreement commences at the Evaluation Licence stage in accordance with item 4 of the Details Schedule.

5.2 Grant of option

(a) The University grants to the Licensee an exclusive option to acquire the Commercialisation Licence, such option being exercisable by the Licensee during the Licence Option Period in accordance with clause 5.4 if the Licensee satisfies any of the Commercialisation Triggers.

(b) Without limiting clause 6(a), the University will not, during the Licence Option Period, conduct discussions or negotiations with any third party in relation to any arrangement for the commercial exploitation of the Licensed IP by that third party.

5.3 Termination of option

The option in clause 5.2 will terminate on the date that the first of any of the events below occurs:

(a) at the end of the Licence Option Period if the Licensee has not validly exercised the option in clause 5.2(a) by that time, at which time this agreement itself will also terminate; or

(b) on the termination of this agreement in accordance with its terms.

5.4 Exercise of option

(a) The Licensee may exercise the option in clause 5.2(a) by giving written notice to the University during the Licence Option Period. That notice must contain substantiation of how any of the Commercialisation Triggers have been met.

(b) If the University, acting reasonably, is satisfied that any of the Commercialisation Triggers have been satisfied based upon the written notice provided by the Licensee in accordance with clause 5.4(a), the University will grant the Commercialisation Licence to the Licensee in accordance with clause 5.5.

(c) If the University, acting reasonably, is not satisfied that any of the Commercialisation Triggers have been satisfied based upon the written notice provided by the Licensee in accordance with clause 5.4(a), the University will provide the Licensee with reasons in writing.

5.5 Grant of Licence

If, in accordance with item 1 of the Details Schedule, this agreement commences at:

(a) the Evaluation Licence stage, then upon the Licensee providing the University with evidence in writing to the satisfaction of the University, acting reasonably, that the Licensee has exercised the option under clause 5.4(a); or

(b) the Commercialisation Licence stage, then on and from the Commencement Date,

the University grants to the Licensee each of the following, separate licences:

(c) an exclusive, non-transferable licence to Exploit the Exclusively Licensed IP; and

(d) a non-exclusive, non-transferable licence to Exploit the Technical Information,

in the Territory solely and directly within the Field during the Term (**Commercialisation Licence**), provided that the Licensee satisfies its obligations under clause 5.6 (failing which the Commercialisation Licence may be revoked at the University's discretion).

5.6 Issue of Equity

In exchange for the grant of the Commercialisation Licence in accordance with clause 5.5, the Licensee must:

(a) issue the Equity to UM Commercialisation (or a nominee, as directed by the University in writing to the Licensee) at the times set out in item 13 of the Details Schedule; and

(b) enter into, and procure that all of the shareholders of the Licensee enter into, a shareholders agreement or deed relating to the Licensee on terms as agreed in writing with UM Commercialisation, the University or the relevant nominee.

5.7 Right to sublicense

(a) Other than to permitted Sublicensees in accordance with clause 5.8, the Licensee must not during the Commercialisation Licence enter into a Sublicence (including with an Affiliate) without the prior written consent of the University, which must not be unreasonably withheld. The Licensee must provide the University with all details of any proposed Sublicence, as reasonably required by the University, as part of seeking consent.

(b) The University's approval of a proposed Sublicence may be given subject to whatever conditions the University considers reasonably necessary.

(c) Any Sublicence granted by the Licensee under this agreement must:

(1) be on terms consistent with and no less onerous than this agreement, unless otherwise agreed by the University in writing;

(2) terminate in the event this agreement is terminated for any reason, unless the Sublicence is novated to the University by agreement between the Parties, and the Sublicence must contain an express clause to this effect; and

(3) not permit the Sublicensee to grant any further sublicence of the rights granted under the relevant Sublicence without the University's prior written consent subject to any conditions specified in that consent. The Licensee must ensure that all consideration attributable to any further sublicence must be accounted for to the Licensee and such consideration is deemed to be Sublicence Income received by the Licensee under this agreement.

(d) The Licensee is at all times fully liable and responsible for all acts and omissions of its Sublicensees as if they were the acts and omissions of the Licensee.

(e) The Licensee must not seek to enter into a Sublicence with any third party which it knows, or ought to reasonably be aware, is likely to deal, sell, use or otherwise Exploit the Licensed IP outside of the Field or Territory.

5.8 Permitted sublicences

The Licensee may grant non-exclusive sublicences to the following without the prior written consent of the University:

(a) the Licensee's distributors of Product to sell that Product 'as is' to end user purchasers in the Field and in the Territory; or

(b) as part of a sub-contract to a reputable third-party supplier of services for the research, development and manufacture of Products within the Field and Territory on behalf of the Licensee.

5.9 Licensee Endeavours

The Licensee must at all times during the term of the Commercialisation Licence use Diligent and Reasonable Efforts (including, if it wishes, through Sublicensees approved by the University) to:

(a) pursue the development and Exploitation of the Licensed IP and Products;

(b) obtain all necessary regulatory approvals for, and in relation to, Products;

(c) develop markets and create supply, demand and sales of Products; and

(d) continue active, diligent marketing efforts for Products throughout the Field in the Territory.

5.10 Product development

If the University notifies the Licensee in writing that the University requires reports on Product development, during Product development and within 30 days after the end of each year following the commencement of the Commercialisation Licence until termination of this agreement, the Licensee must provide the University with true, accurate and detailed written reports of the following information relating to that year:

(a) details relating to activities to develop and Exploit the Licensed IP and Products, including work completed, key scientific discoveries and summary of work-in-progress;

(b) impending actions and activities in the forthcoming year, including any market plans for introduction of Product; and

(c) with respect to Sublicensees:

(1) the Licensee's discussions and efforts (if any) to appoint Sublicensees;

(2) names and addresses of Sublicensees;

(3) copies of any reports provided by Sublicensees; and

(4) details of any changes to or termination of Sublicences.

5.11 Development Milestones

(a) The Licensee must achieve each Development Milestone by the applicable milestone date set out in the Details Schedule and provide evidence of completion of that Development Milestone to the Licensor.

(b) If the Licensee becomes aware that it will not meet a Development Milestone by the applicable date, it must promptly notify the Licensor, providing details of the reasons for the delay and its proposed revised timeline.

(c) The Licensor may, acting reasonably and in its discretion, agree by written notice to extend the applicable milestone date.

5.12 University Improvements

(a) Subject to clause 7, as between the parties, the University owns all University Improvements created during the term of the Commercialisation Licence, and on creation such improvements will be Confidential Information of the University subject to clause 1.1(h).

6 Licence-back to the University

(a) On and from commencement of each of the Evaluation Licence and the Commercialisation Licence respectively (as applicable), the Licensee grants the University a non-exclusive, sublicensable, perpetual, royalty free, irrevocable, worldwide licence to use the Exclusively Licensed IP for non-commercial research, education and publication purposes as well as for the limited purpose of complying with the terms of any extant agreements, or any proposed arrangements as at the date of this agreement, between the University and any third party concerning the Licensed IP.

7 Research Group Improvements

(a) The University will provide written notice to the Licensee of any disclosure made to the University's technology transfer office of any Research Group Improvement, within twenty (20) Business Days of receipt of the disclosure.

(b) For the avoidance of doubt:

(1) the University makes no representation or warranty that any Research Group Improvement will be created at any time; and

(2) the University will not be responsible for paying any Registration Costs in connection with any Research Group Improvement.

8 Royalties

8.1 Royalty Payments

(a) The Licensee must pay the University the applicable Royalties and as specified in the Details Schedule and for the duration of the Term.

(b) Royalties will be calculated at the end of each Calendar Quarter and are to be paid within thirty (30) days of the end of that Calendar Quarter.

8.2 Royalty Reports

No later than thirty (30) days after the end of each Calendar Quarter, the Licensee must provide to the University a written report (each, a **Royalty Report**) and contain the following information concerning the immediately preceding Calendar Quarter:

(a) the date of the First Commercial Sale of a Product in each country;

(b) number of Products sold by the Licensee, its Affiliate(s) and Sublicensees (**Selling Parties**) in the Territory;

(c) the gross price charged by the Selling Parties for each Product in each country of the Territory;

(d) calculation of Net Sales received by the Selling Parties for the applicable Calendar Quarter in each country, including with breakdown of all applicable deductions applied;

(e) Sublicence Income received by the Licensee and its Affiliates;

(f) total Royalty payable to Licensor in Australian dollars, together with the exchange rates used for conversion; and

(g) any such other information reasonably required by the University to verify the calculation of Net Sales, Sublicence Income and Royalties payable under this Agreement.

8.3 Currency

The Licensee must make payments to the University in Australian dollars. Sales and payments received by the Licensee in currencies other than Australian dollars must be converted using the appropriate foreign exchange rate for the currency quoted by the Reserve Bank of Australia on the close of business on the last banking day of each period of 6 calendar months.

8.4 Non-market Transactions

If the Licensee or an Affiliate makes any sale, transfer or supply of Products or enters into a Sublicence and such transaction:

(a) includes consideration other than cash; or

(b) is not an arms' length bona fide commercial transaction,

other than sales, transfers or other supplies of Product:

(c) as part of the development of a Product (such as for a clinical study); or

(d) among or between Licensee and its Affiliates or Sublicensees for the subsequent resale to a third party,

then for the purposes of calculating the payment of Royalties, the consideration received for that transaction must be calculated by the Licensee by reference to the fair market value of all consideration received, as if the transaction had been an arms' length bona fide commercial transaction and the consideration had been in cash. The Licensee must provide the University with details of any such transactions and the basis of its calculations as part of its required reporting under clause 8.2. If the University disputes the valuation adopted by the Licensee, the dispute will be dealt with in accordance with clause 20.

8.5 Sublicence Income Protection

(a) The Licensee must not, and must procure that its Affiliates do not, directly or indirectly enter into, structure or characterise any arrangement or agreement with a third party with the purpose of circumventing the operation of the Sublicence Income Payment obligations under this Agreement.

(b) If the Licensor reasonably determines that any arrangement or agreement has been structured in a manner that avoids, reduces, or otherwise circumvents the payment of Sublicence Income Payments, the Licensor may determine the Sublicence Income that would reasonably have arisen had the arrangement been entered into on arm's length terms and in a manner consistent with the commercial substance of the transaction. The Licensee must pay Sublicence Income Payments calculated on that basis.

(c) Where an agreement with a third party includes both the grant of rights under this Agreement and the provision of other goods, services or intellectual property, the Licensee must ensure that consideration is allocated between those elements in a manner consistent with their respective fair market values.

8.6 Method of payments

All payments under this agreement must be made by electronic funds transfer to a bank account notified in writing by the University to the Licensee, unless otherwise agreed between the Parties.

8.7 Interest

Without prejudice to the University's other rights or remedies, if the Licensee fails to pay any amount by the due date, the University may charge interest on the amount outstanding:

(a) calculated daily from the due date of payment to the date the payment is received by the University in full; and

(b) at the then-current cash rate of the Reserve Bank of Australia + 2% per annum.

8.8 Taxes, deductions and set-off

(a) All payments specified in this agreement are GST exclusive. Where any consideration (whether expressed in money or otherwise) becomes due in respect of a taxable supply by the University:

(1) the University must provide the Licensee with a tax invoice and any other documentation required under the GST Law; and

(2) the consideration for the relevant supply will be increased by the applicable amount of GST at the prevailing GST rate and the Licensee must pay that increased amount.

(b) For the purpose of this clause:

(1) words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

(2) "GST Law" has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(c) The Licensee is responsible for all taxes and other fees relating to payments pursuant to this agreement. All payments to be made to the University under this agreement must be made without any set-off or deduction whatsoever unless such deduction or withholding is required under any applicable law, in which case the Licensee will:

(1) ensure that any deduction or withholding does not exceed the minimum amount legally required;

(2) immediately pay to the University such additional amount as will result in the net amount received by the University being equal to the amount which would have been received by the University had no such deduction or withholding been made;

(3) pay to the relevant government authority within the period for payment permitted by any applicable law the full amount of the deduction or withholding (including the full amount of any deduction or withholding on any additional amount paid under this clause); and

(4) on request in writing from the University, provide the University within the period for payment permitted under any applicable law an official receipt (if available) of the relevant government authority for all amounts deducted or withheld, or if such receipts are not issued by the relevant government authority, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

8.9 Nominee

The University may elect, by written notice to the Licensee, for any of the payments required to be made by the Licensee under this clause 8 to be made to a nominee of the University, and if the University makes such an election, all references in this clause 8 to the University will be interpreted to mean such nominee, and the University holds the benefit of the University's rights under this clause 8 for both the University itself and on trust for such nominee.

9 Maintenance and inspection of records

9.1 Records

The Licensee must keep separate, true, accurate and comprehensive records and accounts, in accordance with generally accepted accounting principles, containing all information relevant to determine the Licensee's compliance with this agreement during the Term and for a period of seven (7) years following termination of this agreement.

9.2 Inspection and audit

The Licensee must permit the University or its nominee (or both) during ordinary business hours and on no less than 5 days' notice to inspect, audit and verify any records maintained by the Licensee in connection with this agreement, amounts payable under this agreement or the Licensed IP, including:

(a) financial records, accounts and supporting documentation relevant to, Royalties, Net Sales, Sublicence Income and other amounts payable under this agreement; and

(b) copies of any Sublicences including to determine the Licensee's performance and compliance with this agreement.

The Licensee must:

(c) give all assistance reasonably necessary to, and provide all information reasonably requested by, the University or its nominee (or both) to carry out their inspection and verification; and

(d) permit the University and/or its nominee to take copies of any such records.

In the event that any audit discloses an underpayment of greater than five per cent (5%) of the amount due by the Licensee to the University, the Licensee must bear the costs of the audit.

9.3 Sublicenses and Affiliates

(a) The Licensee must ensure that Sublicensees and Affiliates maintain records in compliance with clause 9.1 as if they were the Licensee and must procure rights for itself and for the University to conduct audits of Sublicensee and Affiliate records in accordance with clause 9.2.

(b) The University may compel the Licensee to undertake an audit of Sublicensees and Affiliates using suitably qualified auditors approved by the University and provide the results thereof to the University once in every twelve (12) month period. Subject to clause 9.2, the audit will be undertaken at the cost of the University.

10 Publications

10.1 Intention to Publish

(a) The Licensee acknowledges that the University may wish to publish material related to the Exclusively Licensed IP. However, the University will obtain the prior approval from the Licensee in accordance with this clause 10 before releasing a Publication.

10.2 Publication Approval

(a) Where the University intends to Publish, it will provide a copy of the proposed Publication to the Licensee in confidence prior to releasing the Publication.

(b) Where the University provides a copy of a proposed Publication to the Licensee, the Licensee will reply in writing within one (1) month stating whether it approves or does not approve the Publication, and if it declines approval, the reasons for doing so. The Licensee will not decline approval unless it reasonably believes that the Publication:

(1) would harm, prejudice or in any other way injure the interest which it has in the Exclusively Licensed IP under this agreement; or

(2) contains the Licensee's Confidential Information.

(c) If the Licensee declines approval:

(1) on the grounds of clause 10.2(b)(1), the University may not publish the proposed Publication for a period of six months to enable the Licensee to file such applications, or take such other measures as it deems necessary, to mitigate such harm or prejudice, after which period the University will be free to publish the proposed Publication at its discretion; or

(2) on the grounds of clause 10.2(b)(2), the University may revise the proposed Publication to remove the Licensee's Confidential Information, and resubmit the proposed Publication to the Licensee for approval.

(d) If the Licensee does not give the University a reply within one (1) month of receiving the proposed Publication under clause 10.2(a) or a revised proposed Publication under clause 10.2(c), then approval will be deemed to have been given.

10.3 Student Thesis

Where the Publication is a thesis, the Licensee acknowledges the University's obligations under its statutes and policies to deposit in the library a copy (including a digital copy) of a student's completed thesis. If the Licensee reasonably believes that the Publication:

(a) would harm, prejudice or in any other way injure the interest which it has in the Exclusively Licensed IP under this agreement; or

(b) contains the Licensee's Confidential Information,

the Licensee may request the University to place the thesis on restricted access for such period as is reasonable to obtain protection of the Exclusively Licensed IP and in accordance with the University statutes and regulations.

10.4 No Editorial Rights

The Licensee will not have editorial rights over the content of Publications by the University and its personnel, including any thesis, and the Licensee acknowledges the University's obligations under the Australian Code for the Responsible Conduct of Research to publish all research findings (including negative findings and results contrary to hypotheses).

10.5 Acknowledgement

Each party agrees that it will acknowledge the other party's contribution in any Publication in accordance with the Australian Code for the Responsible Conduct of Research, unless the other party requests otherwise.

11 Quality control

(a) The Licensee must at all times comply with any relevant laws, regulatory requirements and technical standards relating to the development and Exploitation of the Licensed IP and Products.

(b) The Licensee must ensure that the Products:

(1) meet the quality standards expected of products reasonably comparable to the Product from time to time;

(2) have all requisite regulatory approvals;

(3) comply with all relevant laws and regulatory requirements, including but not limited to those relating to manufacturing, safety, transport and export; and

(4) are manufactured in a diligent and timely manner with due care and skill using high quality workmanship and material.

12 Compliance with laws

(a) The Licensee must comply with, and ensure that each of its Affiliates, officers, employees, agents and Sublicensees comply with, all applicable laws.

(b) Without limiting clauses 5.7 and 12(a), the Licensee must ensure that it and each of its Affiliates, officers, employees, agents and Sublicensees comply with all applicable anti-money laundering, counter terrorism financing and sanctions laws including not making any sales to or engaging in business activities with, or for the benefit of, any persons or countries that are subject to:

(1) Australian autonomous sanctions, including designated persons and entities subject to targeted financial sanctions (a list of which can be found at dfat.gov.au); or

(2) sanctions imposed by the United Nations Security Council, including designated persons or entities subject to financial sanctions (a list of which can be found at un.org/securitycouncil/content/un-sc-consolidated-list).

13 Confidentiality

13.1 Receipt

When receiving Confidential Information, the Receiving Party must:

(a) keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;

(b) limit access to those of its employees, agents and advisers reasonably requiring the Confidential Information for the purposes of this agreement, or to the extent necessary to exercise the rights granted under this agreement, in any case on a strictly need to know basis;

(c) not use the Confidential Information in any way other than for the purposes of this agreement or to the extent necessary to exercise the rights granted under this agreement, in any case without the prior written permission of the Disclosing Party;

(d) ensure that all employees, agents, advisers and Sublicensees to whom the Confidential Information is disclosed are bound to keep the Confidential Information confidential and not to use the Confidential

Information except for the purposes of this agreement or to the extent necessary to exercise the rights granted under this agreement; and

(e) immediately notify the Disclosing Party prior to any disclosure required by law in order to enable the Disclosing Party to take steps to protect the confidentiality of its information.

13.2 Permitted disclosures

(a) The University must not disclose any Confidential Information of the Licensee, without the prior written consent of the Licensee, unless such disclosure is to:

(1) its Related Bodies Corporate and Affiliates;

(2) third parties for the purpose of assessing potential investment in the Licensee; or

(3) is required by law or court order.

provided that such disclosure as referred in sub-paragraphs (1) to (2) is on a need-to-know basis, and that the Related Bodies Corporate, Affiliates and third parties referred to in this clause are bound by terms of confidentiality in respect of that Confidential Information.

(b) The Licensee must not disclose any Confidential Information of the University without the University's prior written consent, or unless the disclosure:

(1) is to a contractor, Affiliate or Sublicensee of the Licensee, to the extent reasonably required for the purpose of Exploiting or developing the Licensed IP, provided that the recipient is bound by terms no less onerous than those under this agreement to keep the Confidential Information confidential and not to use the Confidential Information except as permitted under this agreement;

(2) is to third parties for the purpose of assessing potential investment in the Licensee provided that such disclosure is on a need-to-know basis and the third party is bound by terms of confidentiality in respect of that Confidential Information;

(3) is required to be given to a regulatory agency in order to obtain approval for the marketing and/or sale of the Product; or

(4) is required by law or court order.

13.3 Return and destruction

Upon the termination of this agreement the Receiving Party must, at its own expense and at the election of the Disclosing Party, promptly destroy or return to the Disclosing Party any documents which embody the Disclosing Party's Confidential Information. The Receiving Party may retain:

(a) one copy of the foregoing documents in a secure location for record-keeping and verification purposes, including in relation to each Party's compliance pursuant to this agreement; and

(b) copies of the foregoing documents to the extent required by any applicable laws.

The Receiving Party shall not be required to delete or destroy any electronic back-up tapes or other electronic back-up files that have been created solely by their automatic or routine archiving and back-up procedures, to the extent created and retained in a manner consistent with its or their standard archiving and back-up procedures.

14 Media and University name

14.1 Announcements

Any public announcement or press release relating to this agreement made by either party must be made subject to clause 14.2 and must not contain any Confidential Information of the other party unless with the other party's prior written consent, which will not be unreasonably withheld or delayed.

14.2 University Name

(a) The Licensee must not, without the University's prior written consent:

(1) publicly use, or allow (explicitly or implicitly) the public use by Sublicensees, its Affiliates or third parties of the University's name and logo in any manner, including on any Products, in relation to fundraising activities or the Exploitation of the Licensed IP or Products; and

(2) use the University's name or logo on any materials.

(b) The Licensee may privately refer to the University as the licensor of the Licensed IP, including in discussions with potential Sublicensees and investors.

(c) The University may agree in writing on standing approval for certain uses of the University's name and/or logo and subject to any conditions imposed by the University.

15 Warranties and indemnity

15.1 Mutual Warranties

Each Party warrants that:

(a) it is duly incorporated:

(1) in the case of the University, as a body corporate and politic under the *University of Melbourne Act 2009* (Vic); and

(2) in the case of the Licensee, as a company limited by shares, and is duly incorporated and validly existing under the laws of Australia;

(b) it has taken all corporate action that is necessary to authorise its entry into this agreement and its carrying out the transactions that this agreement contemplates; and

(c) this agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.

15.2 University warranties

(a) The University warrants that, to the best of its knowledge and belief as at the Commencement Date without having conducted searches or evaluated third party Intellectual Property Rights:

(1) there is no actual or threatened litigation against the University as at the Commencement Date in relation to the Licensed IP; and

(2) the University has not received notice of any claim that the use of the Licensed IP infringes the Intellectual Property Rights of any third party.

(b) The Licensee acknowledges that the University does not represent or warrant that the Patents are applied for or registered in any territory or jurisdiction other than those specifically identified as such in the ‘Exclusively Licensed IP’ section of the Details Schedule.

15.3 Licensee's warranties

The Licensee warrants that it:

(a) is suitably qualified and has sufficient skills and expertise to Exploit the Licensed IP and otherwise undertake the activities anticipated by this agreement;

(b) has made its own independent assessment of the Licensed IP including the Intellectual Property Rights subsisting in and attaching to it, and has not relied on any representation of the University in entering this agreement; and

(c) as at the Commencement Date, there have not been any claims, lawsuits, arbitrations, legal or administrative or regulatory proceedings, charges, or complaints or investigations by any government authority threatened, commenced, pending or proceeding against the Licensee which will materially prevent the Licensee from complying with its obligations under this agreement.

15.4 Licensee Exploitation risk

The Licensee acknowledges that:

(a) it will Exploit the Licensed IP entirely at its own risk;

(b) other than as expressed in this agreement, and to the extent permitted by law, the University has not made any and excludes all warranties, terms, conditions or undertakings, whether express or implied, written or oral, statutory or otherwise including any:

(1) implied or actual warranty of merchantability or of fitness for a particular purpose in respect of the Licensed IP and Products;

(2) warranty that the Licensed IP and Products are accurate and complete and available in every country within the Territory; or

(3) warranty regarding the likely success of the development and Exploitation of the Licensed IP or market potential of Products; and

(c) nothing in this agreement is intended to exclude, restrict or modify rights which a customer may have under the Australian Consumer Law (including more specifically Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Australian*

Consumer Law and Fair Trading Act 2012 (Vic) as applicable) which may not be excluded, restricted or modified; and

(d) to the extent permitted by law, any conditions or warranties imposed by such legislation are excluded.

15.5 Liability

(a) Subject to clause 15.5(b), to the extent permitted by law:

(1) neither Party will be liable for any special, indirect or consequential loss or damage arising under or in connection with this agreement; and

(2) the total aggregate liability of each Party arising out of or in connection with this agreement, the Licensed IP or the Products (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to an amount not exceeding $200,000 (GST inclusive).

(b) The limitations and exclusions of liability in clause 15.5(a) will not apply in respect of:

(1) liability of the Licensee under the indemnity clause 15.6;

(2) fraud or wilful misconduct;

(3) the failure of the Licensee to issue Equity, pay Royalties, and/or comply with its obligations under clauses 5.6, 8 and 17; or

(4) any breach of the of the Licensee’s obligations under clauses 5.9 to 5.11 (Licensee Endeavours, Product Development and Development Milestones), 6 (Licence Back), 9 (Maintenance and Inspection of Records), and 19.5 (Effect of Termination).

15.6 Licensee indemnity

(a) The Licensee is liable for and indemnifies the University and its Affiliates, officers, employees and agents (**Indemnified Parties**) from and against any Claims or demands, costs, damages, loss, expenses or liability of any kind (including reasonable legal costs and disbursements in defending or settling a claim giving rise to the same) (**Loss**) suffered or incurred by the Indemnified Parties in connection with:

(1) the manufacture, development, use or Exploitation of the Licensed IP by the Licensee, Affiliate or a Sublicensee;

(2) the infringement of any third party Intellectual Property Rights or Moral Rights by the Licensee, Affiliate or a Sublicensee;

(3) any breach of the Licensee’s obligations under this agreement contained in clauses 4.4 (Sublicensing during the term of the Evaluation Licence), 5.7 (Right to sublicense), 11 (Quality control), 12 (Compliance with Laws), 13 (Confidentiality), 14 (Media and University name), 16 (Insurance), and 18 (Infringement);

(4) the supply or sale of Products to third parties by the Licensee, its Affiliates or a Sublicensee or the use of such Products by third parties; or

(5) any claim or any death, injury or disability suffered by any person in connection with the Products or the Licensee’s manufacture, development, use or Exploitation of the Licensed IP,

except to the extent that the Loss is directly caused by the negligent act or omission of, or wilful misconduct of, or breach of this agreement by, the University or its Affiliates, officers, employees and agents.

(b) The Licensee must inform the University promptly if the Licensee becomes aware of any Claim relating to a Product or the Licensed IP, or any circumstances which may lead to such a claim.

(c) The University holds the benefit of the indemnities in this clause 15.6 for itself and on trust for each of the other Indemnified Parties.

16 Insurance

(a) The Licensee must effect and maintain comprehensive insurance in respect of its use and Exploitation of the Licensed IP and activities under this agreement to a level appropriate and sufficient to cover such use and Exploitation, including:

(1) public liability insurance;

(2) professional indemnity;

(3) workers compensation policy as required by law;

(4) from immediately prior to the first use of a Product in a human, a clinical study (if applicable) and product liability policy for an amount not less than $20 million on terms as reasonably agreed by the University; and

(5) from the date of first Product supply, a comprehensive product liability policy.

(b) As at the Commencement Date, the Licensee must ensure that (without limiting its obligations in clause 16(a)), the amount of insurance cover is no less than $10 million in respect of the cover referred to in clause 16(a)(1) and no less than $2 million in respect of the cover referred to in clause 16(a)(2). The Licensee's obligations in respect of insurance survive expiration or earlier termination of this agreement for a period of 10 years from the date of expiry or early termination.

17 Patent prosecution and costs

17.1 Patent prosecution

(a) The University will be responsible for the prosecution, maintenance and management of the Patents in accordance with this clause 17.

(b) The Licensee will, upon its request, have the following rights in relation to the prosecution, maintenance and management of the Patents in the Field in the Territory:

(1) the right to be kept up to date of the progress of any Patent applications;

(2) the right to comment on and be consulted with in relation to any key Patent decisions, and to have its comments and opinions be reasonably considered and regarded; and

(3) the right to be advised as soon as reasonably practicable of any patent office report or action which is likely to adversely impact upon any of the Patents.

(c) The Licensee must provide all assistance reasonably necessary, including signing any relevant documentation, to support the University's prosecution, maintenance and management of the Patents.

(d) The Licensee acknowledges that any engagement it has with the University's nominated patent attorneys is for the purposes of information and consultation only. The Licensee does not have the right to independently or unilaterally instruct the University's patent attorneys in relation to the Patents.

17.2 Patent Registration Costs

(a) Until the first anniversary of the Commencement Date, the University will pay any provisional or "Patent Cooperation Treaty" (PCT) fees associated with the any provisional application listed in item 5 of the Details Schedule. For the avoidance of doubt, this does not include fees payable for or in relation to any national phase entry/application.

(b) The University will reasonably consult with the Licensee regarding any national phase entry fees associated with the Patents. If the University and the Licensee agree to proceed with a national phase entry, the Licensee must pay, as directed by the University, either to the University or the University's nominated patent attorney, the estimated costs of the national phase entry, including filing fees, patent attorney fees, foreign patent attorney fees, official charges, taxes and similar expenses notified by the University or its nominated patent attorney, no later than fourteen (14) days before the applicable filing deadline. The University is not required to incur any such costs or to file, prosecute or maintain any national phase application associated with the Patents unless those amounts have first been paid by the Licensee.

(c) The Licensee must reimburse the University:

(1) within 30 days after receipt of an invoice from the University, for any and all Registration Costs associated with the Patents in the Territory which are incurred during the Term, other than those costs which are paid for by the University for under clause 17.2(a) or in respect of which the Licensee pays in advance under clause 17.2(b);

(2) in accordance with the Patents Repayment Plan:

(A) the Prior Registration Costs; and

(B) any fees paid by the University under clause 17.2(a)

17.3 Patent Abandonment

(a) The Licensee may give the University 90 days' written notice that it does not wish to pay Registration Costs with respect to any specific country or Patent, in which case the University may either:

(1) cease prosecution of those Patents in that country, in which case the Licensee remains responsible for any final unavoidable Registration Costs in relation to any continuing sale of Products using the Licensed IP in that country; or

(2) continue prosecution at its own cost, in which case that country will automatically be removed from the licensed Territory and the

Licensee may no longer use the Licensed IP and sell Products in that country.

(b) If the Licensee fails to pay Registration Costs in respect of any Patent by the relevant due date, the University may exercise the rights specified in clause 17.3(a) with respect to that Patent. The University must provide the Licensee with at least 10 days' written notice that it intends to exercise any of those rights.

17.4 Patent Challenges

(a) The Licensee warrants to the University that as at the Commencement Date, it is not aware of any basis or cause upon which to challenge the validity or enforceability of any of the Patents.

(b) Except where prohibited by law:

(1) the Licensee must not challenge the validity or enforceability of any of the Patents or oppose any University application for such Intellectual Property rights; and

(2) the University may terminate this agreement by notice in writing to the Licensee if the Licensee challenges the validity or enforceability of any of the Patents or opposes any University application for such Intellectual Property rights.

(c) The Licensee must ensure that any sublicence contains provisions consistent with this clause 17.4.

(d) If a third party challenges the validity or enforceability of any Patent (**Patent Challenge**), the party receiving the notification of the Patent Challenge will promptly inform the other party and the parties must manage and respond to the Patent Challenge in accordance with clause 18.2.

18 Infringement and Patent Challenges

18.1 Third party

Each Party must give the other notice and all known details of:

(a) any claim or allegation that the exercise of the rights under this agreement constitutes an infringement of the rights of any third party; and

(b) any third party's actual, suspected or threatened infringement or other unauthorised use of the Licensed IP in the Territory;

of which it becomes aware during the Term.

18.2 Action

(a) During the Term, the Licensee must not institute any proceedings relating to the Licensed IP without the prior written consent of the University where consent or the decision to withhold consent must not be unreasonably delayed.

(b) The Parties must consult with each other regarding the prevailing circumstances of any such proceedings or Patent Challenge (including in relation to risks, standing, likely costs and damages) and must use their reasonable endeavours to agree upon the best means of prosecuting or defending any action (including jointly or a Party individually) and the treatment of costs and damages relating to that matter.

(c) If the Parties do not reach agreement on a course of action, the University may determine the course of action in relation to the Licensed IP, including undertaking or defending proceedings in its own name and at its own cost and retaining all damages, awards or settlement arising from such proceeding.

(d) Each Party must keep the other reasonably informed and provide reasonable assistance in relation to any proceedings concerning the Licensed IP.

(e) The Licensee is responsible for defending any third party claims brought against it in relation to the Products.

19 Termination

19.1 Separate and distinct Licences

This agreement operates as separate and distinct options and licences to each component of the Intellectual Property Rights comprised in the Licensed IP and each country within the Territory. To the maximum extent permitted by law, the invalidity, non-renewal or other expiration of part of the Licensed IP in a country in the Territory will not impact the remainder of the licence to that Licensed IP in that country nor in other countries.

19.2 Licensee right to terminate for convenience

The Licensee may terminate this agreement on ninety (90) days' prior written notice to the University.

19.3 Mutual rights to terminate

A Party may terminate this agreement with immediate effect by giving the other Party written notice if any of the following events occur:

(a) if the other Party commits or allows to be committed a material breach of any of its obligations in this agreement and, if the breach is capable of remedy, does not remedy the breach within 30 days of receipt of written notice from the terminating Party;

(b) if the other Party commits or allows to be committed a material breach of any of the obligations set out in this agreement and that breach is not capable of remedy; or

(c) if an Insolvency Event occurs in relation to the other Party.

19.4 University additional right to terminate

The University may terminate this agreement immediately by giving the Licensee written notice, if the Licensee or any of its officers, employees, agents or Sublicensees:

(a) does not Exploit the Licensed IP for a continuous period of 6 months following receipt of written notice from the University noting that the Licensee has ceased Exploiting the Licensed IP;

(b) does not achieve a Development Milestone by the applicable milestone date set out in the Details Schedule, or any later date approved by the Licensor under clause 5.11;

(c) ceases to carry on a business that involves Exploitation of the Licensed IP; or

(d) commits fraud, misconduct or engages in conduct or behaviour that does or is reasonably likely to cause reputational harm to the University or its Affiliates.

Additionally, the University may terminate this agreement immediately by giving the Licensee written notice if:

(e) UM Commercialisation, the University or its nominee (as applicable) and the Licensee have been unable to agree terms in respect of the issue of Equity, including any in respect of any shareholders agreement or deed or constitution pursuant to clause 5.6, within twenty (20) Business Days after the date that the Licensee is required to issue the Equity under this agreement; or

(f) the Licensee does not issue the Equity to UM Commercialisation, the University or its nominee (as applicable), within forty (40) Business Days of the date that it is required to do so under this agreement.

19.5 Effect of termination

(a) Termination of this agreement (including the Commercialisation Licence or the Evaluation Licence) will be without prejudice to any rights or obligations that have accrued and are owing prior to termination.

(b) If this agreement expires or is terminated:

(1) subject to clause 19.6, all rights and licences granted to the Licensee under this agreement cease and the Licensee must cease all Exploitation of the Licensed IP;

(2) the Licensee must promptly pay to the University payments outstanding as at the date of termination;

(3) any Sublicences must automatically terminate unless novated to the University by agreement between the Parties; and

(4) each Party must at all times thereafter strictly maintain the confidentiality of the terms of this agreement and any Confidential Information of the other Party in accordance with clause 13, which survives termination of this agreement;

and the Licensee must, at its cost:

(5) return to the University or destroy, as the University directs:

(A) all general copies of any materials that contain, refer to or store information relating to the Licensed IP in existence, whether created by the University or by or for the Licensee, which are in the possession, power or control of the Licensee or its authorised persons (the Licensee may keep confidential copies of such information for compliance purposes and may retain its general business records);

(B) any equipment, tools or manufacturing aids owned by the University; and

(C) any design prototypes relating to the Licensed IP and the Products, whether complete or incomplete;

(6) delete any information relating to the Licensed IP and Products in existence that have been entered into a computer, database or other electronic means of data or information storage by the Licensee or its authorised persons, provided that the Licensee may retain such information strictly to the extent required to enable it to comply with its record keeping or other obligations at law and may use such information only for such purpose; and

(7) provide the University with:

(A) a termination report within 90 days after this agreement expires or terminates addressing the completion of matters specified in clause 19.5 and providing updated reports in accordance with clause 5.10; and

(B) ongoing annual reports relating to any revenue pursuant to clause 19.6, until all Products are sold and all revenue accounted for.

19.6 Fulfillment of Existing Orders and Sell Down of Products

If this agreement is terminated, for a period of six (6) months following the termination of this agreement, the Licensee may:

(a) fulfil any bona fide purchase orders for Products made in good faith during the term of the Evaluation Licence;

(b) complete the manufacture of, and sell, any Products which were partially manufactured during the term of the Commercialisation Licence, and sell its stock of completed Products made during the term of the Commercialisation Licence; and

(c) fulfil any bona fide binding orders for Products made in good faith during the term of the Commercialisation Licence,

and the terms of this agreement will survive and remain in force and effect to the extent reasonably required in order to give effect to this clause 19.6.

20 Disputes

20.1 Disputes

A Party must not commence court proceedings or arbitration relating to any Dispute without first complying with this clause 20, except where:

(a) a Party seeks urgent interlocutory relief; or

(b) the Dispute relates to compliance with this clause 20.

20.2 Dispute Notice

If a Party claims that there is a Dispute, that Party must give written notice of the details of the Dispute to the other Party (**Dispute Notice**).

20.3 Consultation

Promptly following the provision of a Dispute Notice, the Parties must meet (either in person or by telephone) in good faith and use their best endeavours to resolve such Dispute to their mutual satisfaction.

20.4 Mediation

If the Parties have not resolved the Dispute within fifteen (15) Business Days after the date on which the Dispute Notice was given (or such longer period as the Parties agree in writing), then regardless of whether the meeting referred to in clause 20.3 has occurred:

(a) either Party may give written notice to the other Party to refer the Dispute to mediation (**Notice of Mediation**) conducted by a mediator appointed:

(1) by mutual agreement within five (5) Business Days of the date of the Notice of Mediation; or

(2) failing agreement within the period specified in clause 20.4(a)(1), by the Law Institute of Victoria on the application of either Party; and

(b) the mediation must be conducted in accordance with an engagement agreement that the Parties must enter into with the mediator on terms reasonably required by the mediator;

(c) the mediation must be held in Melbourne, Victoria unless otherwise agreed by the parties to the Dispute and the mediator;

(d) a Party may terminate a mediation under this clause 20.4 at any time, by giving written notice to the other Party and to the mediator (if a mediator has been appointed), if the Dispute has not been resolved within 40 days after the date that the Notice of Mediation was given; and

(e) a Party must not appoint the mediator as its arbitrator, advocate or adviser in any arbitral or judicial proceedings relating to the Dispute or any part of it, except with the written consent of the other party to the Dispute.

20.5 Costs

The parties involved in a Dispute will bear their own costs incurred under this clause, except that they will share equally the costs relating to any mediator appointed under this clause relating to the Dispute.

21 Notices

(a) Where notice must be given under this agreement it must be in writing and may be sent by post, email or delivery to the business, postal or email address specified in the Details Schedule, or as otherwise notified by a party in writing to the other party during the Term.

(b) Posted notices will be taken to have been received three (3) Business Days within Australia and ten (10) Business Days internationally, after the day of posting unless proved otherwise.

(c) Notices:

(1) sent by email; or

(2) delivered,

will be taken to have been received on the same day if no error message is received provided that if transmission is on a day which is not a Business Day or is after 5.00 pm (addressee's time) on the next Business Day.

22 General

22.1 Governing Law and Jurisdiction

This agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

22.2 Survival

Clauses and 8.8 (Taxes, deductions and set-off), 9 (Records), 11 (Quality Control), 12 (Compliance with laws), 13 (Confidentiality), 14 (Media and University Name), 15.5 (Liability), 15.6 (Indemnity), 16 (Insurance), 17.2(c) (Patent Costs Repayment), 18 (Infringement), 19.5 (Effect of Termination), 19.6 (Fulfillment of Existing Orders) and 20 (Disputes) survive the expiration or termination of this agreement along with any other provision which by its nature survives termination or expiration of this agreement.

22.3 Legal Costs

Each Party must pay its own costs of negotiating, preparing and executing this agreement and performing its obligations under this agreement.

22.4 Further Steps

Each Party agrees to promptly do all things necessary to give full effect to this agreement.

22.5 Relationship

The Parties are independent contracting parties, and nothing in this agreement will make any Party the agent, partner or legal representative of the other Party for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.

22.6 Successors and assigns

This agreement will endure to the benefit of and be binding upon each of the parties and their respective successors, authorised assigns, attorneys and legal personal representatives.

22.7 No waiver or variation

(a) A provision of or a right created under this agreement may not be waived or varied except in writing signed by the Party or parties to be bound by the waiver or variation.

(b) No single or partial exercise by any Party of any right, power or remedy under this agreement will preclude any other or further exercise of that or any other right, power or remedy.

22.8 Entire Agreement

This agreement constitutes the entire agreement between the Parties about its subject matter and supersedes all previous written agreements or term sheets between the Parties in relation to its subject matter.

22.9 Amendments

This agreement may only be amended in writing signed by all Parties.

22.10 Severance

If any provision of this agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this agreement. The invalid or unenforceable provision will be treated as severed from this agreement.

22.11 Assignment of agreement

(a) Each of the Commercialisation Licence and the Evaluation Licence is personal to the Licensee and may not be assigned by the Licensee to any other person without the University's prior written consent.

(b) The University may assign its rights and obligations in connection with this agreement to an Affiliate, Related Body Corporate or third party nominee.

22.12 Counterparts

This agreement may be signed in any number of counterparts, including scanned electronic counterparts. All signed counterparts taken together constitute one agreement.

Signing Page

Executed as an Agreement.

Signed for and on behalf of **The University of Melbourne** by its duly authorised representative:

Signature of Authorised Representative

Name of Authorised Representative (print)

Date

Signed by **[insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director	Signature of director / company secretary
Name of director (please print)	Name of director / company secretary (please print)
Date	Date

Schedule 1 – Licensed IP Description

[Insert/ Not Used].