

## LICENCE AGREEMENT

### PARTIES

- 1 **AUCKLAND UNISERVICES LIMITED**, a limited liability company established under the laws of New Zealand, company number 373821, of Level 10, 49 Symonds Street, Auckland, New Zealand (**UniServices**)
- 2 *[Insert full legal name and address of Licensee, including company number and registered office, if applicable]* (**Licensee**)

### BACKGROUND

UniServices owns certain intellectual property rights relating to *[insert description of the technology]*.

The Licensee wishes to obtain, and UniServices has agreed to grant, a licence to those intellectual property rights.

### EXECUTED

**SIGNED** for and on behalf of  
**AUCKLAND UNISERVICES  
LIMITED:**

**SIGNED** for and on behalf of  
**LICENSEE** by:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

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Title of Authorised Signatory

\_\_\_\_\_  
Title of Authorised Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions: In this Agreement:

**Affiliate** means, in respect of an entity, a person that directly or indirectly controls, is controlled by or is under common control with, that entity.

**Agreement** means this agreement, including the cover page and signature clauses and any Schedules.

**Business Day** means:

- (a) in clause 21.5, a day on which registered banks are open for business in the location of the recipient, excluding Saturdays, Sundays and public holidays; or
- (b) in any other case, a day on which registered banks are open for business in Auckland, excluding Saturdays, Sundays and public holidays.

**Confidential Information** of a party (**Disclosing Party**) means all information that is about the Disclosing Party, its Affiliates, or its or its Affiliates' affairs, or obtained by the other party (**Recipient**) directly or indirectly from the Disclosing Party or its Affiliates in connection with this Agreement, and includes the terms and conditions of this Agreement, but excludes information:

- (a) which is or becomes public knowledge, other than as a result of any fault of the Recipient or its permitted disclosees;
- (b) developed independently of this Agreement and any information of the Disclosing Party; or
- (c) received by the Recipient from a third party without restriction and without any breach of any obligation of confidentiality.

**Contract Research** has the meaning given in clause 4.2.

**Development Milestone** has the meaning given in clause 4.1(b).

**Field** means *[insert]*.

**Force Majeure Event** means an event beyond the reasonable control of a party (but excluding a lack of funds for any reason).

**GST** means goods and sales tax, value-added tax, sales tax or other equivalent tax payable under any applicable jurisdiction on taxable supplies under this Agreement.

**Improvement** means a modification to a product or process, which modification falls within the scope of a claim of a Licensed Patent under paragraph (a) or (b) of the definition of Licensed Patent.

**Insolvency Event** means, in relation to a party, that the party (other than for the purposes of a solvent restructuring) ceases or threatens to cease to carry on business, or is subject to any form of insolvency proceedings, commits an act of bankruptcy or has been adjudicated bankrupt, has any of its assets seized by a creditor, enters into any arrangement for the benefit of its creditors, has a receiver, liquidator, administrator, statutory manager or similar official appointed, becomes insolvent or is deemed by law to be so, or suffers any analogous event under the laws of any relevant jurisdiction.

**Intellectual Property Rights** means any and all rights to and interests in or protecting (anywhere in the world) industrial or intellectual property of any kind, whether or not in a material form, including copyright, trade marks, design rights, patents (or similar), all rights relating to know-how, confidential information,

names, brands, inventions, discoveries, works, data, databases, designs and circuit layouts.

**Licensed Intellectual Property Rights** means the Licensed Patents and all Intellectual Property Rights owned by UniServices and subsisting in the Licensed Know-How.

**Licensed Know-How** means the technical information which relates to the Licensed Patents and is not generally publicly known, including pre-clinical, clinical, chemical, biochemical, toxicological, manufacturing, formulation and scientific research information, whether or not capable of precise separate description.

**Licensed Patents** means:

- (a) the patents and patent applications described in Schedule 1; and
- (b) from the date of filing, all patents and patent applications owned by UniServices and which claim priority from, are divided from, or are continued from, a patent or patent application referred to Schedule 1; and
- (c) from the date of filing, all patents and patent applications owned by UniServices in respect of Improvements developed by or on behalf of the Research Team.

**Licensed Product** means any product the making, disposition, use, import or keeping of which would, but for the licence granted under this Agreement, infringe any of the Licensed Intellectual Property Rights.

**Net Sales** means all gross amounts invoiced in respect of Sales, less documented:

- (a) trade and quantity discounts, returns, allowances and wholesaler chargebacks, allowed and taken in amounts customary in the trade;
- (b) import, export, excise, GST and other taxes, tariffs and duties to the extent that such items are included in the gross amount invoiced;
- (c) freight, handling, transportation and insurance to the extent that such items are included in the gross amount invoiced; and
- (d) amounts allowed or credited for retroactive price reductions or rebates in amounts customary in the trade,

provided that the amount invoiced in respect of a Sale to an Affiliate of the seller is deemed to be the greater of (i) the actual amount invoiced, or (ii) the amount which would have been invoiced had the Sale been on an arms' length basis.

**New Technology** means any new technology developed by the Research Team relating to the subject matter of the Licensed Intellectual Property Rights licensed to the Licensee under this Agreement, other than Improvements licensed to the Licensee under this Agreement.

**Publication** has the meaning given in clause 12.1.

**Quarter** means each of the periods:

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September; and
- (d) 1 October to 31 December.

**Report** has the meaning given in clause 7.1.

**Research Team** means *[insert]*.

**Sale** means the sale, hire or other disposition of a Licensed Product by the Licensee or any of its Affiliates to a person who is not an Affiliate of the seller, or to any person who is both an Affiliate of the seller and the end user of the Licensed Product.

**Start Date** means *[insert]*.

**Sublicence** means any transaction (other than a Sale) under which, or in connection with which, a person is granted any right (including an option) to evaluate, have, make, have made, sell, distribute, import or use a Licensed Product or to evaluate or use the Licensed Intellectual Property Rights. **Sublicensee** has a corresponding meaning.

**Sublicensing Income** means all income under or on account of a Sublicence (including the monetary equivalent of the fair value of any non-monetary consideration), excluding amounts received by the Licensee as royalties under clause 5.1(b)(ii).

**Territory** means *[worldwide]*.

**University** means the University of Auckland, a body corporate established under the University of Auckland Act 1961 and the Education Act 1989, of 22 Princes Street, Auckland, New Zealand.

1.2. **Interpretation:** In this Agreement:

- (a) clause and other headings are for ease of reference only and do not affect its interpretation;
- (b) where the context permits, the singular includes the plural and vice versa;
- (c) references to legislation are to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- (d) references to a **person** include an individual, firm, company, corporation or un-incorporated body of persons, any public, territorial or regional authority, or any government, and any agency of any such authority or government;
- (e) references to a **party** mean a party to this Agreement and their successors and permitted assignees;
- (f) references to a party's **personnel** include that party's employees, contractors and agents;
- (g) references to **control** of an entity mean beneficial ownership of more than 50% of the outstanding shares or the ability otherwise to elect a majority of the board of directors or other managing authority;
- (h) no provision shall be construed against a party merely because that party was responsible for its drafting or inclusion;
- (i) all monetary amounts are in New Zealand dollars, and exclude GST, which the Licensee must pay in addition in respect of any taxable supplies under this Agreement; and
- (j) **including** and like terms mean **including, without limitation**.

**2. GRANT OF LICENCE**

2.1. **Grant:** With effect from the Start Date, UniServices grants to the Licensee an exclusive licence under the Licensed Intellectual Property Rights to make, hire, sell, otherwise dispose of, offer to make, hire, sell or otherwise dispose of, use, import or keep for the purpose of doing any of the foregoing, Licensed Products in the Field in the Territory for the term of this Agreement.

- 2.2. **Sublicensing:** The licence granted in clause 2.1 includes the ability to sublicense in accordance with clause 3.
- 2.3. **Academic licence:** Despite this clause 2, UniServices retains the right (including the right to permit the University and its personnel) to do any act under the Licensed Intellectual Property Rights for academic research (including non-commercially funded research) and teaching purposes.

**3. SUBLICENSING**

- 3.1. **Affiliates:** The Licensee may Sublicense some or all of the rights granted to the Licensee under this Agreement to an Affiliate of the Licensee (other than a person who becomes an Affiliate of the Licensee after the Start Date) without the consent of UniServices.
- 3.2. **Sublicensing requirements:** Subject to clause 3.1, the Licensee may Sublicense some or all of the rights granted to the Licensee under this Agreement to another person, provided that:
  - (a) the Licensee obtains UniServices’ prior written consent to the proposed Sublicense and proposed Sublicensee;
  - (b) the Sublicense must be in writing; and
  - (c) the Licensee provides UniServices with an unredacted copy of the Sublicense within 30 days of executing that Sublicense.
- 3.3. **No further sublicensing:** Any Sublicense under clause 3.1 or 3.2 must not permit the Sublicensee to further sublicense without UniServices’ prior written consent.
- 3.4. **Liability:** The Licensee remains liable for the performance of its obligations under this Agreement despite any permitted Sublicensing.

**4. NEW TECHNOLOGY**

- 4.1. **Obligation to commercialise:** The Licensee must, and must ensure that any Sublicensees, use commercially reasonable efforts to:
  - (a) develop and commercialise the technology under the Licensed Intellectual Property Rights, within the scope of the terms of this Agreement; and
  - (b) meet each of the following development milestones (**Development Milestones**) by the stated date:

Development Milestone	Date
<i>[insert]</i>	<i>[insert]</i>
<i>etc.</i>	

- 4.2. **Contract Research:** If the Licensee wishes to engage any other person to carry out contract research in respect of any subject matter of the Licensed Intellectual Property Rights (**Contract Research**), it must:
  - (a) notify UniServices of the same, including details of the proposed research known to the Licensee; and
  - (b) on UniServices’ request, use all reasonable efforts for up to 30 days from UniServices’ receipt of the Licensee’s notice to negotiate the terms of a

research agreement for the procurement of that Contract Research from the University.

- 4.3. **Expiry of first right:** If the parties fail to agree terms of an agreement for the procurement of the Contract Research from the University within the specified 30 days, the Licensee will be under no further obligation to UniServices in respect of that research.

## 5. ROYALTIES AND OTHER LICENCE FEES

- 5.1. **Royalties and Sublicensing Income:** In consideration of the rights granted to the Licensee under this Agreement, the Licensee must:

- (a) within 5 Business Days of the Start Date, pay to UniServices the amount of [X];
- (b) within 30 days of the end of each Quarter, pay to UniServices:
  - (i) royalties of [X]% on Net Sales for that Quarter;
  - (ii) [X]% of royalties receivable by the Licensee in respect of any sale, hire or other disposition of a Licensed Product by a Sublicensee to any person; and
  - (iii) [X]% of Sublicensing Income received by the Licensee in that Quarter.
- (c) within 10 Business Days of the Start Date, issue to UniServices that number of ordinary shares required to provide to UniServices [X]% of the issued share capital of the Licensee as at the date of this Agreement on a fully diluted basis.

### 5.2. Equity terms:

- (a) If the Licensee makes any bonus issue, consolidation or subdivision of its shares, or reduces or cancels any of its share capital (or any similar reorganisation of capital) between the Start Date and the issue of shares to UniServices under clause 5.1(c), the Licensee must adjust the number of shares issued to UniServices under that clause to ensure the economic effect of the issued shares is the same.
- (b) The Licensee warrants that:
  - (i) the shares issued to UniServices under clause 5.1(c) and 5.2(a) will be free from all security interests, encumbrances, trusts, third party interests and adverse claims to ownership, will rank in all respects uniformly with all other shares in the capital of the Licensee held as at the date of issue to UniServices, and have been fully paid; and
  - (ii) it has obtained all consents and resolutions required to enable it to issue the shares to UniServices under clauses 5.1(c) and 5.2(a).

## 6. PAYMENTS

- 6.1. **Payment:** The Licensee must pay all amounts payable under this Agreement:

- (a) electronically in cleared funds, without set-off or deduction, to a bank account designated by UniServices; and
- (b) in New Zealand dollars, with any base amount in a currency other than New Zealand dollars converted to New Zealand dollars as at the date for delivery of the applicable Report.

### 6.2. Withholding tax:

- (a) If the Licensee is required by applicable law to withhold any payment from that made to UniServices under this Agreement, the Licensee must:

- (i) pay to UniServices an additional amount necessary to ensure receipt by UniServices of the full amount which UniServices would have otherwise received;
  - (ii) ensure any withholding payment is paid to the relevant taxation authority in full by the date for payment before penalties attach; and
  - (iii) promptly transmit to UniServices a receipt from the taxation authority evidencing such payment.
- (b) If UniServices is able to take advantage of any tax credit or similar benefit by reason of any withholding made by the Licensee under clause 6.2(a), UniServices will, on receiving that benefit, offset against any future amount payable by the Licensee to UniServices an amount that UniServices considers (acting reasonably) reflects the value to it of that benefit.
- 6.3. **Interest:** UniServices may charge interest on overdue amounts under this Agreement from the day following the due date for payment until payment in full (including interest). Interest will be at the rate of UniServices' overdraft rate applicable as at the due date for payment plus 2% per annum, and compounded monthly.
- 6.4. **Recovery:** The Licensee must pay on demand all costs and expenses on a full indemnity basis (including legal fees on a solicitor and own client basis) incurred by UniServices in recovering any amount payable by the Licensee under this Agreement.

## **7. REPORTING, RECORDS AND AUDITS**

- 7.1. **Reporting:** Within three Business Days of the end of each Quarter, the Licensee must provide to UniServices a written report and statement of amounts payable by the Licensee to UniServices in respect of that Quarter, along with sufficient supporting details to enable UniServices to verify the calculation of those amounts (including details of Sales, Net Sales and Sublicensing Income) (**Report**).
- 7.2. **Records:** The Licensee must maintain, and must procure that each Affiliate and Sublicensee maintains, complete and accurate written records of all information relating to their respective obligations in connection with this Agreement or applicable Sublicence, including records reasonably required to verify the calculation of any amounts payable by any of them to the Licensee or UniServices (collectively, **Records**).
- 7.3. **Audit:**
- (a) On request, the Licensee must make available to UniServices or its designated representative (and allow UniServices or its designated representative to copy) the Records for the purpose of enabling UniServices to verify the Licensee's compliance with its payment obligations under this Agreement.
  - (b) If the audit determines that the Licensee has underpaid UniServices, the Licensee must immediately pay to UniServices the unpaid amount owing.
  - (c) UniServices must pay the costs of any audit under clause 7.3(a) unless that audit determines that the Licensee has underpaid UniServices by an amount of 5% or more for the period being audited, in which case the Licensee must pay the costs of the audit.

## **8. INTELLECTUAL PROPERTY**

- 8.1. **Ownership:** The Licensee acknowledges that UniServices (or its licensors) owns all rights, title and interest (including Intellectual Property Rights) in:
- (a) the Licensed Intellectual Property Rights;

- (b) Improvements, whether developed by or on behalf of the Licensee or UniServices (and whether alone or in conjunction with another person), from the date at which the relevant rights arise; and
- (c) except to the extent expressly provided otherwise in a written agreement for Contract Research pursuant to clause 4.2, any New Technology developed by or on behalf of UniServices or the University.

8.2. **Assignment:** To the extent that any rights do not automatically vest in UniServices in accordance with the intention of clause 8.1, the Licensee assigns, with effect from the date at which the relevant rights arise, those rights so as to give effect to the intention of clause 8.1.

## 9. PROTECTION OF LICENSED PATENTS

9.1. **Patent filing, prosecution, maintenance:** UniServices is responsible, in its discretion, for filing, prosecuting and maintaining the Licensed Patents. Costs and expenses incurred by UniServices in the filing, prosecution and maintenance of the Licensed Patents will be met by the Licensee.

9.2. **Obligation to inform:** UniServices must, in respect of filing, prosecuting and maintaining the Licensed Patents:

- (a) keep the Licensee fully and promptly informed of their status;
- (b) consult with the Licensee on all material respects, including the countries in which patent protection will be sought, reviews of applications, reviews of substantive examination and search reports, and proposed responses; and
- (c) take into account all reasonable representations made by the Licensee to UniServices in relation to clause 9.2(b).

## 10. INFRINGEMENT OF LICENSED INTELLECTUAL PROPERTY RIGHTS

10.1. **Notice:** Each party must notify the other party promptly on becoming aware of any suspected infringement of the Licensed Intellectual Property Rights by a third party.

10.2. **Within the licensed rights:** The Licensee is responsible, in its discretion and cost, for enforcing the Licensed Intellectual Property Rights against persons infringing any of the rights licensed to the Licensee under this Agreement, provided that the Licensee must not:

- (a) take any action against another licensee of UniServices; or
- (b) otherwise enforce, settle or compromise any action that adversely affects UniServices' interests,

without UniServices' prior written consent.

10.3. **Obligation to inform:** The Licensee must, in respect of the enforcement of the Licensed Intellectual Property Rights:

- (a) keep UniServices fully and promptly informed of the status of any action or other steps taken;
- (b) consult with UniServices on all material respects; and
- (c) take into account all reasonable representations made by UniServices to the Licensee in relation to clauses 10.3(a) and 10.3(b).

10.4. **Election by Licensee not to enforce:** If the Licensee elects not to enforce any of the Licensed Intellectual Property Rights pursuant to clause 10.2, UniServices may at its discretion and cost, by notice in writing to the Licensee, take control of any such enforcement without further consultation with the Licensee.

**10.5. Monies recovered:** The party responsible for the enforcement under clause 10.2 or 10.4 will retain any monies recovered in any judgment or settlement of the relevant action.

**10.6. Licensee challenge:**

- (a) If the Licensee intends to commence (or to assist any other person to commence) any action to invalidate, or challenge UniServices' ownership of, any of the Licensed Intellectual Property Rights, it must notify UniServices at least three months before commencing that action, including full details of all prior art or other relevant circumstances that it believes supports the claim of invalidity or no ownership.
- (b) If the Licensee commences (or assists any other person to commence) any action to invalidate, or challenge UniServices' ownership of, any of the Licensed Intellectual Property Rights, then:
  - (i) the applicable amounts payable by the Licensee under clause 5.1(b) will be two times the stated rates for Licensed Products Sold during the pendency of the action;
  - (ii) if the outcome of the action determines that any claim of a Licensed Patent is both valid and covers a Licensed Product, the applicable amounts payable by the Licensee under clause 5.1(b) will increase to three times the stated rates for Licensed Products Sold with effect from the date of that determination; and
  - (iii) the Licensee will not be entitled to recover any payments made to UniServices before or during the pendency of the action (irrespective of the outcome of the action).

**11. CONFIDENTIALITY**

**11.1. Confidentiality:** Each party must keep Confidential Information of the other party secure and confidential and not:

- (a) use that information for any purpose other than as required to perform its obligations under this Agreement; or
- (b) disclose that information to any person other than:
  - (i) as permitted under this Agreement;
  - (ii) with the prior written consent of the other party;
  - (iii) to its Affiliates and personnel who have a need-to-know for the purpose of giving effect to this Agreement, or to its professional advisors, provided that the recipient is subject to obligations of confidentiality equivalent to those in this clause 11; or
  - (iv) (in the case of the Licensee) to a potential Sublicensee or potential investor in the Licensee, provided that the recipient is subject to obligations of confidentiality equivalent to those in this clause 11 and is further restricted to using the Confidential Information solely for the purpose of evaluating the potential Sublicence or investment (as applicable).

**11.2. Exclusion:** The obligations of confidentiality in this clause 11 do not apply to any information to the extent that it is required by law to be disclosed (including under the rules of any recognised stock exchange).

**11.3. Publicity:** Neither party may use the names, logos or trade marks of the other party or its personnel, or make any statement regarding the termination of this Agreement, in any publicity, marketing or news release without the other party's prior written consent.

## **12. PUBLICATIONS**

**12.1. Publications:** UniServices may, and may permit the University to, make publications and presentations that include any information relating to the Licensed Intellectual Property Rights (including the Licensed Know-How) (each, a **Publication**) provided that where any such information has not previously been publicly disclosed, UniServices must submit the proposed Publication to the Licensee for review at least 30 days before the intended date for publication. UniServices will, if notified by the Licensee within 20 days of submission of the proposed Publication to the Licensee:

- (a) delay publication by up to 60 days from receipt of the Licensee's notice to enable the filing of patent application(s) to protect any patentable subject matter in which the Licensee has an interest; and/or
- (b) remove any other commercially sensitive Confidential Information of the Licensee from the Publication.

**12.2. Theses:** The Licensee acknowledges that in respect of any proposed Publication that is a student thesis, clause 12.1(b) will not apply, however the Licensee may require that the thesis:

- (a) be examined by examiners bound by obligations of confidentiality; and/or
- (b) be embargoed from being publicly available in any library for up to 12 months, until all other commercially sensitive Confidential Information of the Licensee has been made available to the public.

## **13. WARRANTIES AND REPRESENTATIONS**

**13.1. Mutual warranties:** Each party warrants that it:

- (a) is a company duly organised, validly existing and in good standing, under the laws of its jurisdiction of incorporation;
- (b) has full power and authority to enter into and perform its obligations under this Agreement; and
- (c) has taken all necessary corporate action to authorise the execution of this Agreement.

**13.2. Licensed Patents:** UniServices warrants that, except as otherwise disclosed in writing to the Licensee, to the best of its knowledge, the Licensed Patents existing as at the Start Date are the unencumbered property of UniServices.

**13.3. General exclusions:** To the extent permitted by law, UniServices' warranties are limited to those expressly set out in clauses 13.1 and 13.2 and all other warranties, conditions and guarantees (including any implied at law) are excluded.

**13.4. Specific exclusions:** Without limiting clause 13.3, UniServices excludes all warranties that:

- (a) any patent will issue from any application included within the Licensed Intellectual Property Rights;
- (b) any Licensed Patent will be valid; and
- (c) the use of the Licensed Intellectual Property Rights, including the exercise by the Licensee of any of the rights granted under this Agreement, will not infringe the rights (including Intellectual Property Rights) of any other person.

## **14. INDEMNITIES**

**14.1. Licensee indemnity:** The Licensee shall indemnify and hold harmless UniServices, its directors, officers, employees, agents and Affiliates against all claims, proceedings

and demands (including those brought by third parties), liabilities, damages, losses, costs and expenses (**Claim**) arising from:

- (a) the making, hiring, selling, other disposition of, offering to make, hire, sell or otherwise dispose of, using, importing or keeping for the purpose of doing any of the foregoing, Licensed Products by the Licensee, its Affiliates or Sublicensees;
- (b) the exercise of any of the Licensee's other rights under this Agreement; and
- (c) any breach by the Licensee of this Agreement (including any warranty).

**14.2. UniServices indemnity:** UniServices shall indemnify and hold the Licensee, its directors, officers, employees, agents and Affiliates harmless against all claims, proceedings and demands (including those brought by third parties), liabilities, damages, losses, costs and expenses (also, a Claim) arising from a breach by UniServices of any of its warranties under clause 13.1.

**14.3. Procedure:** An indemnified party must:

- (a) give prompt written notice to the indemnifying party of the Claim, but failure to so notify will not relieve the indemnifying party of its obligation under this clause 14 except and to the extent that the failure materially impacts on the ability of the indemnifying party to defend the Claim;
- (b) not make any admission of liability and not otherwise prejudice or settle the Claim without the indemnifying party's prior written consent (not to be unreasonably withheld);
- (c) give the indemnifying party complete authority and information required for the indemnifying party to conduct and/or settle the Claim (at the indemnifying party's cost), provided that:
  - (i) the indemnified party is entitled to be represented by its own counsel at its own cost; and
  - (ii) if the indemnifying party declines to assume control of the Claim, the indemnified party is entitled to assume the control of the Claim (at the indemnifying party's cost).

**14.4. Negligence:** Neither party will be liable under this clause 14 to the extent that the liability arises from the other party's failure to comply with its obligations under this Agreement, or from the negligence or misconduct of any indemnified party or its personnel.

## **15.INSURANCE**

**15.1. Insurance:** The Licensee must take out and maintain insurance policies with a reputable insurer for general liability and product liability to levels appropriate for a prudent person in the business of the Licensee for the term of this Agreement and a further period of two years following the termination or expiry of this Agreement.

## **16.LIABILITY**

**16.1. Exclusion of indirect losses, etc:** UniServices will not be liable to the Licensee under or in connection with this Agreement for any loss of data, profit, revenue, savings, business or goodwill, or for any consequential, indirect, incidental or special damage or loss of any kind.

**16.2. Maximum liability:** The maximum aggregate liability of UniServices to the Licensee under or in connection with this Agreement is limited to an amount equal to the total amounts paid by the Licensee to UniServices under this Agreement in the 12 month period immediately preceding the date of the first event giving rise to liability.

## **17.TERM**

17.1. **Term:** This Agreement starts on the Start Date and, unless terminated earlier in accordance with its provisions, expires automatically on the expiry of the last Licensed Patent or [X] years from the first commercial Sale of a Licensed Product, whichever occurs last.

## 18. TERMINATION AND OTHER REMEDIES

18.1. **Termination by UniServices:** UniServices may terminate this Agreement on immediate notice to the Licensee if the Licensee:

- (a) fails on request to demonstrate its compliance with clause 4.1(a) to the satisfaction of UniServices (acting reasonably), provided that the earliest time at which termination may take effect under this provision is the date that is [X years/months] from the Start Date;
- (b) notifies UniServices it does not wish to retain some or all of the rights licensed to it under this Agreement; or
- (c) fails to meet a Development Milestone by the stated date.

18.2. **Breach, etc.:**

- (a) A party (**first party**) may terminate this Agreement immediately on notice to the other party if the other party:
  - (i) commits a material breach of this Agreement and either the breach is incapable of remedy or the other party fails to remedy that breach within 30 days of the first party notifying it of the breach; or
  - (ii) is subject to an Insolvency Event.
- (b) A failure by the Licensee to pay any amount to UniServices by the due date for payment is deemed to be a material breach capable of remedy for the purposes of clause 18.2(a).

18.3. **Alternative remedies:** UniServices may at its discretion, on notice to the Licensee, instead of exercising any right it has to terminate this Agreement:

- (a) convert a territory within the Territory to non-exclusive;
- (b) reduce the scope of the Field or the Licensed Products;
- (c) remove the Licensee's rights in respect of Improvements; and/or
- (d) in respect of a failure to meet a Development Milestone, defer the date for compliance, subject to approval by the Licensor of a plan to remedy the default submitted by the Licensee within 30 days of a written request from the Licensee.

18.4. **Accrued rights:** Termination or expiry of this Agreement does not affect a party's rights or obligations that have accrued before termination or expiry.

18.5. **Consequences of termination:** On termination or expiry of this Agreement for any reason:

- (a) all rights of the Licensee under the Licensed Intellectual Property Rights cease;
- (b) each party must promptly return to the other all documents, materials and other items belonging to the other party and in its possession at the time of termination or expiry;
- (c) the Licensee must transfer to UniServices:
  - (i) all technical information (and any subsisting Intellectual Property Rights) relating to the Licensed Products and which is not generally publicly known, including pre-clinical, clinical, chemical, biochemical, toxicological, manufacturing, formulation and scientific research information, whether or not capable of precise separate description; and

- (ii) all rights and responsibility in respect of any Licensed Products, including transferring or destroying (at UniServices' option) any stocks of Licensed Products in existence as at the date of termination or expiry.
- (d) clauses 5.2, 7 (for a period of one year from the date of termination or expiry), 8, 11, 14, 15, 16, 18.4, 18.5 and 20, and any other clauses intended to survive, continue in force.

## **19.FORCE MAJEURE**

19.1. A party will not be liable for any failure or delay in the performance of its obligations under this Agreement to the extent such failure or delay is due to a Force Majeure Event, provided that it:

- (a) notifies the other party as soon as practicable of the nature and expected duration of the Force Majeure Event;
- (b) uses all reasonable efforts to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement to the extent practicable; and
- (c) resumes full performance as soon as practicable.

## **20.DISPUTES**

20.1. **Proceedings deferred:** A party must not issue any legal proceedings (other than for urgent interlocutory and/or injunctive relief) in respect of any dispute in connection with this Agreement, unless it has first complied with this clause 20.

20.2. **Notice of dispute:** A party claiming a dispute has arisen under or in connection with this Agreement must notify the other party of the dispute (**Dispute**), along with reasonable detail of the Dispute.

20.3. **Negotiation:** Each party must use all reasonable efforts to resolve the Dispute through an authorised representative with authority to settle the Dispute on its behalf.

20.4. **Alternative dispute resolution:** If the Dispute remains unresolved after a period of 20 Business Days from the receipt of the notice under clause 20.2 (or such longer period as the parties' authorised representatives agree), the parties must use all reasonable efforts to agree on a process for resolving the Dispute through means other than litigation, including:

- (a) a procedure and timetable for any exchange of documents and other information relevant to the Dispute;
- (b) procedural rules and timetable for the conduct of the selected mode of proceedings; and
- (c) a procedure for the selection of any person to be engaged to determine or help resolve the Dispute.

20.5. **Termination:** A party may, on notice to the other party, commence any legal proceedings in respect of the Dispute where the other party fails to comply with any procedures or timetables agreed pursuant to clause 20.4, provided the first party has to date complied with those procedures and timetables.

20.6. **Licensee challenge:** UniServices is not required to comply with this clause 20 if the Licensee commences (or assists) any other person to commence) any action to invalidate, or to challenge UniServices' ownership of, any of the Licensed Intellectual Property Rights, or notifies UniServices of its intention to do so.

## **21.GENERAL**

- 21.1. **Governing law and jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 21.2. **Assistance:** Each party must, at the other party's request and cost, provide all assistance including execute all documentation, reasonably required to enable the other party to perform its obligations and exercise its rights under this Agreement, including those under clauses 9 and 10.
- 21.3. **Assignment, etc.:** Except as expressly provided otherwise in this Agreement, this Agreement must not be assigned, subcontracted or otherwise delegated by the Licensee (in whole or in part) without the prior written consent of UniServices.
- 21.4. **Costs:** Except as otherwise provided in this Agreement, each party will meet its own costs incurred in the negotiation, preparation and implementation of this Agreement.
- 21.5. **Notices:** Any notice given under this Agreement must be in writing in English and must be delivered in person, by pre-paid post or by email (provided that in the case of email the sender does not receive any notice of non-delivery) to the party's address in Schedule 2 (or as may be updated by that party in writing from time to time). Any notice sent by prepaid post is deemed received two Business Days from the date of posting (or seven Business Days from the date of posting if sent to or from a place outside New Zealand, and provided that the notice is sent via an internationally recognised courier specifying express delivery). Any notice delivered in person, or by email, after 5pm on a Business Day or delivered on a non-Business Day is deemed received on the next Business Day.
- 21.6. **Contract privity:** No person other than a party to this Agreement has any right to a benefit under, or to enforce, any provision of this Agreement.
- 21.7. **Rights and remedies:** Except as expressly provided otherwise in this Agreement, the rights and remedies of each party under this Agreement are cumulative and not exclusive of any other rights or remedies under this Agreement or at law.
- 21.8. **Entire agreement:** This Agreement constitutes the entire understanding between the parties and supersedes any prior oral or written agreement or understanding between the parties, in relation to its subject matter. Both parties acknowledge and agree that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to this Agreement or its subject matter, and that these exclusions are fair and reasonable.
- 21.9. **Severability:** If any provision of this Agreement is or becomes invalid, unenforceable or illegal, the provision is deemed to be modified to the extent required to remedy the invalidity, unenforceability or illegality. If such modification is not possible, the provision is deemed to be severed and will not affect the validity, enforceability or legality of the remainder of this Agreement.
- 21.10. **Waiver:** No waiver of any right under this Agreement is effective unless in writing and signed by the waiving party. A waiver of a right under this Agreement does not limit or waive any other right of that party.
- 21.11. **Variation:** Except as expressly provided otherwise in this Agreement, no variation to this Agreement is effective unless in writing and signed by an authorised signatory of each party.
- 21.12. **Relationship:** The parties are independent contracting parties. No other relationship (including that of joint venture, employment, agency, trust or partnership) exists between the parties under this Agreement. Neither party is authorised to act as agent for or to bind the other party for any purpose and must not make any contrary representation to any person.
- 21.13. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement.

A party may enter this Agreement by signing (including electronically) and sending (including by email) a counterpart copy to the other party.

**SCHEDULE 1**

**PATENTS**

**Part A – Licensed Patents**

*[insert details of the licensed patents]*

**SCHEDULE 2**  
**ADDRESSES FOR NOTICES**

*[insert]*