

EXCLUSIVE PATENT LICENCE AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN:

THE CSIR

a statutory council, duly established under Act 46 of 1988 of the Republic of South Africa, through its Operating Unit ofherein represented byin his/her capacity as and he/she being duly authorised thereto

("the Licensor")

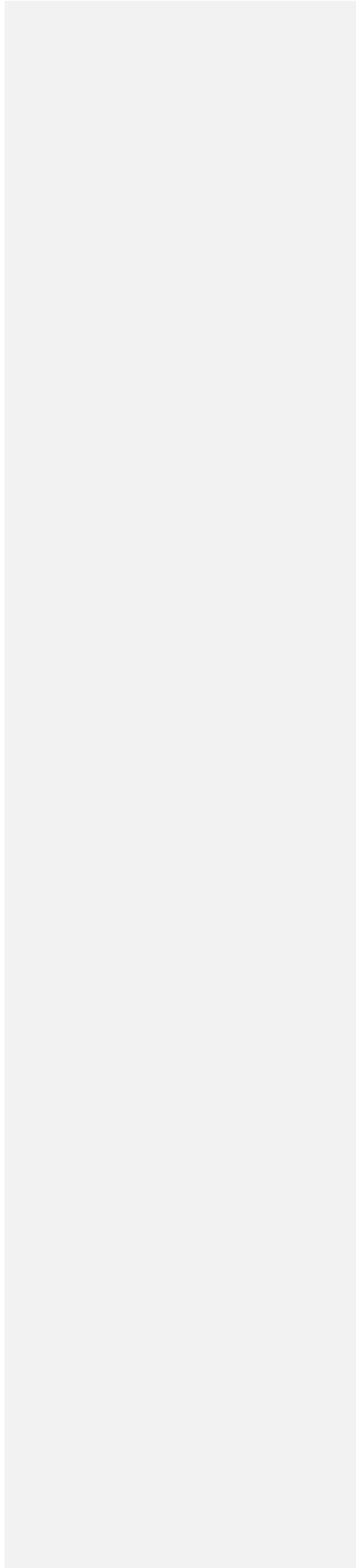
and

.....

Registration number:.....

aduly incorporated and registered in accordance with the laws of having a principal place of business at

("the Licensee")



1. WHEREAS:

- 1.1 The Licensor has developed technology for(insert description);
- 1.2 The Licensee wishes to obtain a licence from the Licensor to exploit the technology;
- 1.3 (Any other information specific to the licence can be added here);
- 1.4 The parties share the common objective of further developing and marketing the technology so that resulting products may be made available for public benefit and use;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- 2.1 "Agreement/this Agreement" means this document and all annexures attached thereto;
- 2.2 "Confidential Information" means information that (a) relates to the Disclosing Party's past, present or future research, development, business activities, products, services and technical knowledge and (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the Receiving Party as confidential. (As used herein, the party disclosing Confidential Information is referred to as 'the Disclosing Party' and the party receiving the Confidential Information is referred to as 'the Receiving Party');
- 2.3. "Effective Date" means.....;
- 2.4 "Licensed Field of Use" means.....;
- 2.5 "Licensed Patent(s)" means the Licensor's Patent/Application, Number:....., filed in....., any foreign patent application corresponding thereto, and any divisional, continuation, or reexamination application, and each patent that issues or reissues from any of these patent applications. Any claim of an unexpired Licensed Patent is presumed to be valid unless it has been held to be invalid by a final judgment of a court of competent jurisdiction from which no appeal can be or is taken;
- 2.6 "Licensed Product(s)" means a product/process in the Licensed Field of Use:
 - (a) the making, using, importing or selling of which, in the absence of this license, would

Comment [RAW@1]: More detail about patents can be provided in an annexure.

infringe, induce infringement, or contribute to infringement of the Licensed Patent(s);
and/ or

(b) which is made with, uses or incorporates any Licensed Technology;

Comment [U@2]: To be included if there are licensed products; if not, all references to the same to be deleted.

2.7 "Licensed Services" means services which are carried out by use or incorporation of any Licensed Technology;

Comment [U@3]: To be included if there are licensed services; if not, all references to the same to be deleted.

2.8 "Licensed Technology" means the Licensed Patent(s) and additional information, know-how and/or materials listed in Annexure "A" that will be provided by Licensor to Licensee;

2.9 "Licensed Territory" means.....;

2.10 "License Fees" means all payments due to the Licensor under clauses 4 & 8 of this Agreement;

2.11 "Net Sales" means all gross revenue derived by Licensee or sub-licensees from the Licensed Product(s)/Licensed Services, but excludes the following items:

Comment [RAW@4]: Can be modified according to the circumstances.

2.11.1 Import, export, excise, sales tax or VAT (as the case may be) and custom duties;

2.11.2 Costs of insurance, packing, and transportation from the place of manufacture to the customer's premises or point of installation; and/or

2.11.3 Credit for returns, allowances, or trades;

2.12 "Royalty Period" means a period of three months, namely January-March, April-June, July-September, and October-December, for every year of the duration of the license.

Comment [U@5]: Can be adjusted if other periods are more suitable in a particular case.

3. LICENSED RIGHTS

3.1 Subject to the terms and conditions of this Agreement, the Licensor grants the Licensee an exclusive license under the Licensed Technology in the Licensed Field of Use to make, have made, use, import, offer to sell and sell the Licensed Product(s)/Licensed Services in the Licensed Territory.

3.2 The Licensor retains the right to practice the Licensed Patent(s) and use the Licensed Technology for any purpose.

Comment [U@6]: This is the default position, ie. essentially a sole license. Can also be limited to research purposes only.

3.3 The Licensed Technology was created with support from the South African Government awarded by *(identify the Funding Agency or relevant government department where applicable)* and is subject to the requirements of the South African Intellectual Property Rights from Publicly Financed Research and Development Act, Act No 51 of 2008, and its regulations (“the Act”), in accordance with which the South African Government has certain rights to the Licensed Technology in terms of Sections 11(1)(e), 11(2) and 14 of Act 51 of 2008.

Comment [RAW@7]: For technologies governed by the Act.

3.4 More particularly, the parties recognise that:

3.4.1 the South African Government may acquire certain rights in the event of the Licensed Technology and/or Licensed Products not being commercialised for the benefit of South Africa, and/or not being commercialised within a reasonable period, if applicable, which rights include the right to require the granting of a licence in any field of use to any third party on reasonable terms;

3.4.2 the South African Government is entitled to an irrevocable, royalty-free license to use/have used the Licensed Technology and/or Licensed Products/Licensed Services throughout the world, for South Africa’s health, security and/or emergency needs.

3.5 Each party undertakes to use its best efforts to support the other in meeting their respective obligations under the Act.

3.6 If the South African Government should take action which renders it impossible or impractical for the Licensor to continue to grant, or which conditions limit, the rights and licenses granted under this Agreement, the parties agree to negotiate in good faith alternative license terms. Should the parties be unable to reach mutual agreement on such terms within a reasonable time after commencing such good faith negotiations, either party may terminate this Agreement upon thirty (30) days written notice to the other.

4. SUB-LICENSING

4.1 The Licensee may grant sub-licenses in the Licensed Field of Use only with the Licensor’s prior written consent, which consent will not unreasonably be withheld.

4.2 Sub-licenses shall not be further sub-licensed.

- 4.3 If the Licensee is unable or unwilling to serve or develop a potential market or market territory in the Licensed Territory for which there is a company willing to be a sub-licensee, the Licensee will, at the Licensor's request, negotiate in good faith a sublicense with any such sub-licensee.
- 4.4 Any sub-license shall be subject to this Agreement and shall include all relevant provisions hereof, including, without limitation, those dealing with reporting, confidentiality and indemnity, and shall further require the transfer of all obligations, including the payment of license fees specified in the sub-license, to the Licensor, if this Agreement is terminated.
- 4.5 The Licensee will submit to Licensor a copy of each sub-license agreement within a calendar month of date of conclusion of such sub-license.

Alternatively, consider the following 4.5 instead:

"4.5 Licensee will submit to Licensor a copy of each proposed sub-license agreement in advance. Licensor shall have a period ofcalendar days to communicate any required modifications to such proposed sub-license agreement. Should the Licensor provide no such modifications within the stipulated time period, the Licensee may proceed with the sub-license agreement in question."

- 4.6 *[Specify payment terms of sub-license income to the CSIR and percentage thereof here.]*

Sample language: [please note that different percentages may apply to different types of payments, and time/mechanism of sub-license payments can also be governed as per the payments clause]

"Within thirty (30) days of receipt by Licensee, Licensee shall pay to Licensor x percent of any fees or payments paid to Licensee by a sub-licensee ("Sub-license Percentage") as consideration for a sub-license grant under this Agreement. Such Sub-license Percentage shall be applied to any payments made to Licensee by a Sub-licensee, including but not limited to any initial licensing fees, milestone fees, royalties, maintenance fees, minimum royalty payments."

5. TITLE TO THE INTELLECTUAL PROPERTY

- 5.1 The Licensee acknowledges that all right, title and interest in and to the Licensed Technology vests in the Licensor and that it has no claim of any nature in and to the Licensed Technology or any associated intellectual property.
- 5.2 The Licensee shall not at any time during or after termination or cancellation of this agreement dispute the validity or enforceability of such rights, or cause to be done any act contesting or in any way impairing or tending to impair any part of that right, title and interest in the Licensed Technology and shall not counsel or assist any other person to do so.

5.3 The Licensor grants the Licensee the right, where and when necessary, to modify the Licensed Technology for its specific needs and applications subject thereto that:

5.3.1 Such modifications of the Licensed Technology will not affect any obligations or benefits of the Licensor or the Licensee in terms of this Agreement;

5.3.2 The Licensee will - for information purposes - provide the Licensor with sufficient detail of any modifications and/or improvements effected by it to the Licensed Technology. In the event of such improvements and/or modifications being separately patentable, the Licensee shall be the owner of the intellectual property in and to such improvements and/or modifications.

[Alternatively:

5.3 *If, while this Agreement is in force, the Licensee makes any improvement to the Licensed Technology, it shall promptly inform the Licensor in writing thereof; shall assign all rights in such improvements to the Licensor, and shall assist the Licensor, at the Licensor's expense to obtain any relevant intellectual property protection desired by the Licensor. All such improvements shall be deemed to form part of the Licensed Technology.]*

6. COMMENCEMENT AND DURATION

This Agreement commences on the Effective Date and will, subject to the terms and conditions hereof, terminate on the date when the last Licensed Patent expires. *(Other options to consider: fixed term and/or license to become non-exclusive after patent expires or after a specified term.)*

7. DILIGENCE

7.1 Within three months from the Effective Date, the Licensee will provide the Licensor with a plan for further development of the Licensed Technology and for the manufacture/provision and marketing of the Licensed Product(s)/Licensed Services, including milestones where appropriate.

7.2 The Licensee represents and warrants that it has the necessary expertise and will, as appropriate, acquire the necessary resources to fully develop and commercialise the Licensed Products/Licensed Services. The Licensee shall use its best efforts, either directly or through sublicensees, throughout the term of this Agreement, to comply with Licensee's development plan (as referred to in 7.1) and to bring Licensed Products/Licensed Services to market through a thorough, vigorous, and diligent program for exploitation of the right and license granted in this Agreement. In no instance shall Licensee's best efforts be less than

Comment [U@8]: This may be technology specific and different provisions may be considered depending on the circumstances.

efforts customary in Licensee's industry.

7.3 The Licensee undertakes to manufacture, process and/or commercialise the Licensed Product(s)/Licensed Services in the Republic of South Africa.

7.4 The Licensee shall use the Licensed Technology for the benefit of the Republic of South Africa.

AND/OR

7.4/5 The Licensee shall ensure that the benefits of the Licensed Technology are accessible to the Republic of South Africa on reasonable terms.

Comment [U@9]: Required for local licence.

Comment [U@10]: Required for off-shore license.

8. LICENSE FEES

8.1 The Licensee will pay to the Licensor a non-creditable, non-refundable upfront license fee of R_____ (VAT inclusive) upon signing this Agreement.

8.2 The Licensee will pay to the Licensor milestone payments on achievement of the stipulated milestones as follows:

[Examples of milestones:

Upon developing a prototype or successful pilot trial; upon achieving a specified technical stage of development; upon receiving regulatory approval; upon first sale; upon achieving annual sales of at least R_x, etc.]

8.3 Beginning _____ and each _____ thereafter, the Licensee will pay the Licensor in advance an annual license maintenance fee of R_____ (VAT inclusive). Annual maintenance payments are non-refundable, but are creditable and may be offset against the running royalty payments due under clause 8.4 below in respect of the year concerned.

8.4 Licensee will pay Licensor running royalties on Net Sales as follows: _____

Alternative clauses if clause 6 is adjusted to provide for a know-how license to continue beyond the expiry of the patent and/or to apply in territories where there is no patent:

8.4 Licensee will pay Licensor running royalties on Net Sales in any territory where Licensed Patent(s) are pending and/or in force as follows: _____

8.5 In any territory where no Licensed Patent(s) are pending and/or in force, running royalties shall be reduced by x %.

Comment [U@11]: To populate and insert a table or other detail where necessary.

Comment [U@12]: For example:
(A) if Licensee pays Licensor a R10 maintenance payment for year Y, and according to 8.4, R15 in earned royalties are due to Licensor for Net Sales in year Y, Licensee will only need to pay Licensor an additional R5 for that year's earned royalties.

(B) if Licensee pays Licensor a R10 maintenance payment for year Y, and according to 8.4, R3 in earned royalties are due to Licensor for Net Sales in year Y, Licensee will not need to pay Licensor any earned royalty payment for that year. Licensee will not be able to offset the remaining R7 against a future year's earned royalties.

Comment [U@13]: Percentage to be inserted.

9. REPORTS, PAYMENTS AND ACCOUNTING

9.1 Thirty (30) days after the end of each Royalty Period, the Licensee will submit the following written reports to the Licensor covering the preceding quarter:

9.1.1 A progress report, which will include information sufficient to enable the Licensor to ascertain progress by the Licensee toward meeting this Agreement's diligence requirements. Each report will, without limitation, describe, referring to the plan envisaged by clause 7.1 above, to the extent relevant: the Licensee's progress with R&D relating to the Licensed Technology; the Licensee's progress towards commercialisation of the Licensed Product(s)/ Licensed Services; milestones achieved; current schedule and anticipated activities, events and/or milestone; market plans for introduction of Licensed Product(s)/Licensed Services; a summary of all reports provided to the Licensee by the Licensee's sub-licensees; and any other information relevant to the Licensee's exercise of its licensed rights under this Agreement.

9.1.2 A financial report indicating all License Fees and other payments, if any, due to the Licensor, in respect of the preceding Royalty Period, accompanied where applicable, with proof of payment of any such amounts. Where such payment includes running royalties under clauses 4.6 and/or 8.4 [and 8.5], it will state the number, description and aggregate Net Sales of the Licensed Product(s)/ Licensed Services during the preceding Royalty Period.

9.2 The Licensee will submit to the Licensor a written report within ninety (90) days after the license terminates and, where applicable, pay all License Fees then due. The Licensee will continue to submit earned License Fees and reports to the Licensor after the license terminates, until all Licensed Product(s) made or imported under the license have been sold.

9.3 All payments by the Licensee to the Licensor in terms of this Agreement shall be made without demand, deductions and set-off and free of bank charges into the Licensor's bank account.

9.4 If the Licensee is compelled by law to make any deductions or pay withholding tax in any country in the Licensed Territory it shall pay such additional amounts as may be necessary

Comment [RAW@14]: CSIR bank account details to be inserted.

so that the net amount received by the Licensor after such deductions or withholdings (including any required deduction or withholding on such additional amounts) equals the amount the Licensor would have received had no such deductions or withholdings been made, and the Licensee shall provide the Licensor with evidence satisfactory to the Licensor that it has paid such deductions or withholding tax, including, without limitation, an original or certified copy of each tax receipt evidencing such payments within thirty (30) days following the date of each such payment.

- 9.5 All License Fees are payable in ZAR. (Where applicable the exchange rate will be calculated by using ABSA Bank's foreign desk's prevailing rate on the date that payment is due.)
- 9.6 Any payments not made by the due date will bear interest at the rate of 15,5 % per annum.
- 9.7 The Licensee shall keep full, true and accurate books of account and records in accordance with generally accepted accounting practice containing all particulars that may be necessary for the purposes of showing the amount of License Fees payable to the Licensor in terms of this Agreement. Such books of account and records shall be kept at the premises where the Licensee's business is carried on.
- 9.9 The Licensee shall permit the Licensor or its representative during business hours to examine all of the aforementioned books of account and records (including information stored in computer-readable form) and to take copies of all such documents, books and records to determine whether all appropriate accounting of royalties hereunder and payments thereof have been made.
- 9.10 The Licensor will pay for any audit performed under clause 9.9, provided that if the audit reveals an underreporting of earned License Fees due to the Licensor of five percent (5%) or more for the period being audited, the Licensee will pay the audit costs as well as any outstanding License Fees identified by such audit.

10. EXCLUSIONS AND NEGATION OF WARRANTIES

10.1 The Licensor warrants and represents that:

10.1.1 It is free to grant the licence conferred by this Agreement; and

10.1.2 It is the owner of the Licensed **Technology**.

Comment [RAW@15]: To be modified in cases where elements are in-licensed from third parties.

10.2 The Licensor does not warrant:

10.2.1 The validity or the scope of the Licensed Patent(s);

10.2.2 That the exploitation of the Licensed Technology by the Licensee or sub-licensees will not infringe third parties' intellectual property rights;

10.2.3 The merchantability or fitness for a particular purpose or use of the Licensed Product(s)/Licensed Services;

10.2.4 That the Licensed Product(s)/Licensed Services will obtain any regulatory approval that may be required.

11. INDEMNITY

11.1 The Licensee acknowledges that it is sufficiently expert in the field of the Licensed Technology to conduct a complete due diligence regarding the application of the Licensed Technology, to exercise quality control and to assess the safety of the Licensed Product(s)/Licensed Services.

11.2 The Licensee accordingly indemnifies the Licensor against all claims of whatsoever nature, real or imagined, which may be made against it arising out of the application of the Licensed Technology and the manufacture, sale and consumption of the Licensed Product(s)/performance of the Licensed Services. The indemnity provided hereunder shall specifically extend to any modifications and/or improvements effected by the Licensee to the Technology, as envisaged by the provisions of clause 5.3 above.

11.3 Notwithstanding the provisions of clause 11.2, any claim for damages, including but not limited to loss of income, and/or consequential or incidental damages, instituted by the Licensee against the Licensor, arising from the consumption or use of the Licensed Products/Licensed Services, shall be limited to a maximum amount which is equal to the total income derived by the Licensor from this license in the year immediately preceding such claim.

11.4 The Licensee shall ensure that it has adequate professional and product liability insurance in place, for the duration of this Agreement, to cover its obligations hereunder and will provide documentary proof thereof to the Licensor at its request.

12. MARKING

Before any Licensed Patent(s) issues, the Licensee will mark Licensed Product(s) with the words "Patent Pending." Once a Licensed Patent(s) is granted, the Licensee will mark the Licensed Product(s) with the number of such issued Licensed Patent(s).

13. CONFIDENTIALITY

13.1 Confidential Information of the Disclosing Party may be used by the Receiving Party only in connection with the purpose(s) set forth in this Agreement. The parties agree to protect the confidentiality of each other's Confidential Information in the same manner they protect the confidentiality of their own proprietary and confidential information of like kind, but in any case using reasonable care.

13.2 The Receiving Party shall not be liable to the Disclosing Party for disclosure of Confidential Information received under this Agreement where:

13.2.1 such Confidential Information is or becomes part of the public domain through no breach of this Agreement;

13.2.2 such Confidential Information is subsequently lawfully obtained by the Receiving Party from a third party who is established as a lawful source of the information, without breach of this Agreement by the Receiving Party;

13.2.3 such Confidential Information was known by the Receiving Party prior to its disclosure by the Disclosing Party and such prior knowledge can be proven by the Receiving Party;

13.2.4 the Disclosing Party has provided its prior written consent to the disclosure of such Confidential Information; or

13.2.5 Confidential Information which the Receiving Party is obliged to disclose in terms of a court order, subpoena or other legal process. (In the event, however, that the Receiving Party is required by legal process to disclose any of the Confidential Information, covered by this clause 13, it shall provide the Disclosing Party with prompt notice of such requirement so as to enable the Disclosing Party to seek a protective order or waive compliance with the provisions of this clause. In the

event that a protective order or other remedy is obtained, the Receiving Party shall use all reasonable efforts to ensure that only the Confidential Information covered by such order or other remedy is disclosed. Whether or not a protective order or other remedy is obtained or the Disclosing Party has waived compliance with the provisions of this Agreement, the Receiving Party shall take all reasonable steps to ensure that only that portion of the Confidential Information that it is legally required to disclose is so disclosed.)

13.3 The provisions of this clause 13 shall survive termination of this Agreement for a period of ten (10) years from expiry/termination of this Agreement.

14. LICENSOR NAMES AND LOGOS

14.1 The Licensee shall not make use of the Licensor's name and/or logo for any purposes whatsoever, including without limitation the marketing of any Licensed Product(s)/Licensed Service(s), nor shall it issue any press release in connection with this Agreement, without the Licensor's prior written consent.

14.2 For purposes of this clause 14, the Licensee also recognises that, under the provisions of section 15 (1) of the Merchandise Marks Act, Act No 17 of 1941 of the Republic of South Africa, the use of the abbreviation of the name of the Council for Scientific and Industrial Research, "WNNR" and "CSIR", is prohibited in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to goods, other than with the consent of the CSIR.

15. PROSECUTION AND MAINTENANCE OF PATENTS

[Decisions made jointly]

15.1 Decisions relating to the prosecution and maintenance of the Licensed Patent(s) shall be agreed upon between the parties.

Or

[Decisions rest with Licensee]

15.1 Decisions relating to the prosecution and maintenance of the Licensed Patent(s) shall be made by the Licensee.

Comment [U@16]: TWO options are provided, you need to select the appropriate one and delete the other.

Other combinations, eg shared costs, licensee instructing attorneys, etc. are also possible.

15.2 The Licensor will be responsible for instructing patent attorneys and/or agents for the purpose of prosecution and maintenance of the Licensed Patent(s). The Licensee shall be liable for all associated costs to be incurred and fees charged in this regard.

15.3 The Licensor shall make payment of the aforesaid costs and fees, and shall submit an invoice to the Licensee, which invoice shall be payable by the Licensee within thirty (30) days of the date of such invoice. The Licensor shall ensure that copies of all relevant documentation received from and correspondence with the attorneys or patent agents are sent to the Licensee for its records promptly but in any event in sufficient time to enable it to take whatever action may be required timeously.

15.4 Should the Licensee not support the prosecution and maintenance of any patent or patent application which forms part of the Licensed Patent(s) in any country/region, such patent/patent application shall no longer form part of the Licensed Patent(s) and the license granted in terms of clause 3.1 above shall forthwith terminate in respect of that patent/patent application in that country/region.

16. PROCEDURE IN THE EVENT OF SUSPECTED INFRINGEMENT

16.1 The Licensee will promptly notify the Licensor if it believes that a third party may be infringing the Licensed Patent(s).

16.2 The Licensor shall use its best efforts to mitigate the impact of such infringement in whatever reasonable manner it determines.

16.3 Where applicable, if the Licensor and the Licensee so agree, they may institute action against the perceived infringer jointly. If so, unless otherwise agreed, they will:

16.3.1 prosecute the action in both their names;

16.3.2 bear the legal and associated costs equally;

16.3.3 share any damages recovered equally, whether by an order of court or settlement agreement; and

16.3.4 agree how they will exercise control over the action.

16.4 Should one party wish to institute action against the perceived infringer and the other party

not, such party ("the Plaintiff") shall be entitled, at its own cost, to proceed with such action, provided that it will solely be entitled to any damages recovered through such action. Reasonable assistance will be provided by the other party, at the cost of the Plaintiff.

16.5 If action has been instituted under 16.3 above, and a party subsequently wishes to withdraw such action or withdraw from such action, it will give timely notice to the other party, who may continue prosecution of the action on such terms and conditions as the parties may at that stage agree upon in writing, including without limitation, the distribution of costs and sharing of damages recovered.

17. TERMINATION

17.1 The Licensee may terminate this Agreement by giving the Licensor be entitled to terminate this Agreement by giving the Licensor [xxx months/days] written notice to such effect.

Comment [U@17]: Select appropriate time period.

17.2 The Licensor may, subject to 17.4 below, at its sole discretion either terminate this Agreement, or convert the license granted hereunder to a non-exclusive license, if Licensee:

17.2.1 fails to provide any report or payment timeously or issues a false report;

17.2.2 fails to diligently develop and/or commercialise the Licensed Product(s)/Licensed Services;

17.2.3 misses a milestone described in the plan envisaged by clause 7.1 above;

17.2.4 disputes the validity or enforceability of the Licensor's rights in the Licensed Technology or causes to be done any act contesting or in any way impairing or tending to impair any part of the Licensor's right, title and interest in the Licensed Technology and/or counsels or assists any other person to do so; or

17.2.5 is in breach of any other material provision of this Agreement.

17.3 Either party may terminate this Agreement at any time by giving to the other ("the defaulting party") notice of such termination if:

17.3.1 the defaulting party is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under

judicial management or under receivership or under the equivalent of any of the foregoing;

17.3.2 a final and unappealable judgement against the defaulting party remains unsatisfied for a period of fourteen (14) days or more after it comes to the notice of the management of the defaulting party; or

17.3.3 the defaulting party makes any arrangement or compromise with its creditors generally, or ceases, or threatens to cease, to carry on business.

17.4 In the event of either of the parties (the aggrieved party) wishing to terminate this Agreement pursuant to 17.2 or 17.3 it shall provide written notice to the other party (the defaulting party). In the event of the defaulting party remaining in default for a period of seven (7) days after receipt by it of written notice from the aggrieved party calling for such breach to be remedied, the aggrieved party shall be entitled, without prejudice to any other rights it may have in terms of this Agreement or in law, to terminate this Agreement by written notice to that effect given to the defaulting party

17.5 This Agreement may at any time be terminated by mutual written consent of the parties.

17.6 The Licensee's obligation to pay accrued or accruable License Fees, all confidentiality provisions, as well as any other provision that by its nature is intended to survive, shall survive any termination/expiry of this Agreement.

18. CONSEQUENCES OF TERMINATION

Upon termination of this Agreement:

18.1 The Licensor shall not be obliged to refund to the Licensee any License Fees received by it from the Licensee.

18.2 The Licensee shall within thirty (30) days after termination pay to the Licensor all License Fees due and payable to the Licensor up to the date of termination.

18.3 The Licensee shall be entitled to dispose of its stocks of the Licensed Product(s) which it has on hand to complete orders which it has received but has not yet executed, subject to payment to the Licensor of License Fees on the basis specified in Clauses 4, 8 and 9.

18.4 Upon termination of this agreement for any reason, Licensee shall provide the Licensor, at its request, full and complete copies of all development information, including without limitation and to the extent applicable [eg *toxicology, pharmacokinetic, efficacy, clinical and other*] technical data and all correspondence to and from regulatory agencies relating to approval of Licensed Product(s) (hereinafter “development information”). In the event that the Licensor enters into a license agreement for such licensed products with a third party, Licensee shall grant such third party the right to make unlimited use of the development information.

Comment [U@18]: Specify according to industry concerned, as appropriate – this provision might not be relevant in all cases.

18.5 Should Licensee have developed any know-how or other intellectual property covering any Licensed Product(s) and/or Licensed Services during the term of this Agreement, Licensee shall grant such third party referred to in clause 18.4 above a license to such know-how or intellectual property, for development, use or sale of the Licensed Product(s) or performance of the Licensed Services.

19. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa and any dispute arising there from shall be adjudicated by a competent high court in South Africa (unless otherwise agreed to between the parties at the time).

20. WHOLE AGREEMENT

20.1 This document and any annexures attached hereto constitute the whole of the agreement (to the exclusion of all else) between the parties relating to the subject matter hereof.

20.2 No amendment, alteration, addition, variation or consensual cancellation of this document will be valid unless in writing and signed by the parties.

21. WAIVER

21.1 No waiver of any of the terms or conditions of this Agreement will be binding for any purpose unless expressed in writing and signed by the party giving the same and any such waiver will be effective only in the specific instance and for the purpose given.

21.2 No failure or delay on the part of either party in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege

preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

22. SEVERABILITY

In the event that any of the provisions of this Agreement are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

23. DOMICILIUM AND NOTICES

23.1 The parties hereby choose *domicilium citandi et executandi* for all purposes in terms hereof as follows:

23.1.1 THE LICENSOR

CSIR
Meiring Naude Road,
Scientia, Brummeria,
Pretoria, 0002
For attention:.....

23.1.2 THE LICENSEE

.....
.....
For attention:.....

23.2 Either party shall be entitled to change its *domicilium citandi et executandi* by giving written notice thereof to the other, provided that such change shall not take effect until receipt by the other party of such notice.

23.3 All notices to be given by hand by the parties to each other in terms hereof shall be given to the aforesaid addresses by delivery thereto, or if by posting by prepaid registered mail, or by telefax to the following addresses:

23.3.1 THE LICENSOR

P O Box 395

Pretoria

0001

Fax No. : (012) 841

For attention:.....

23.3.2 LICENSEE

PO Box

.....

.....

Fax No. : (011)

For attention:.....

24. COSTS

Both parties shall pay their own costs relating to the negotiation, preparation and settlement of this Agreement.

25. ASSIGNMENT

This Agreement shall be for the specific benefit of each of the parties and may not be assigned in whole or in part by any party without the prior consent of the other parties, except that a party's interest shall be assignable without the consent of the others in pursuance of any merger, consolidation or reorganization or voluntary sale or transfer of all or substantially all the assigning party's assets where the merged, consolidated or reorganized corporation or entity resulting therefrom or the transferee of such sale or transfer has the authority and power effectively to perform that party's obligations to the other under this Agreement.

26. PRIOR AGREEMENTS SUPERCEDED

This Agreement supercedes all prior agreements and any arrangements purporting to be an agreement between the parties, whether oral or in writing, relating to the subject matter hereof.

Signed at ... on this ... day of ... 2012

As witnesses:

1.

2.

.....

For **LICENSOR**

Signed at ... on this ... day of ... 2012

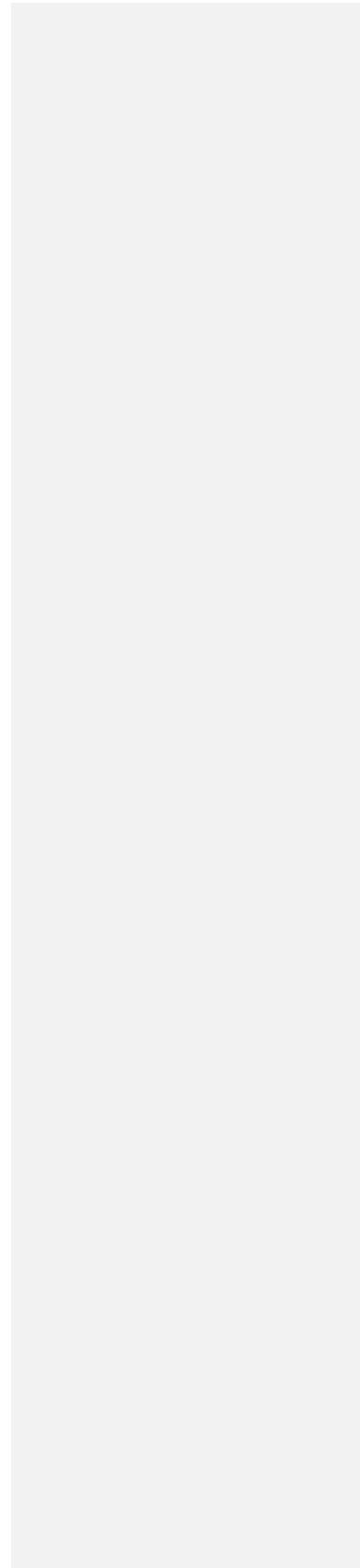
As witnesses:

1.

2.

.....

For **LICENSEE**



ANNEXURE "A": LICENSED TECHNOLOGY

