

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**FORM F-1
 REGISTRATION STATEMENT**

*Under
 The Securities Act of 1933*

MESOBLAST LIMITED

(Exact name of Registrant as specified in its charter)

Australia
 (State or other jurisdiction of
 incorporation or organization)

2836
 (Primary Standard Industrial
 Classification Code Number)

Not Applicable
 (I.R.S. Employer
 Identification Number)

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 Melbourne 3000
 Australia

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 (Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

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(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered(1)	Proposed maximum aggregate offering price(2)(3) US\$	Amount of registration fee US\$
Ordinary shares, no par value		

- American depositary shares issuable upon deposit of the ordinary shares registered hereby will be registered under a separate registration statement on Form F-6 (Registration No. 333-). Each American depositary share represents ordinary shares.
- Includes (a) all ordinary shares that may be purchased by the underwriters pursuant to an over-allotment option, and (b) all ordinary shares initially offered and sold outside the United States that may be resold from time to time in the United States either as part of their distribution or within 40 days after the later of the effective date of this Registration Statement and the date the shares are first bona fide offered to the public. The shares are not being registered for the purpose of sales outside the United States.
- Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission acting pursuant to said Section 8(a) may determine.

EXPLANATORY NOTE

This Confidential Submission No. 2 is being submitted solely for the purposes of filing Exhibits 3.1, 3.2, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12, 10.13, 10.14, 10.15, 10.19, 10.20, 10.21 and 21.1 to the previously submitted Draft Registration Statement (CIK No. 0001345099) and to update the Exhibit List accordingly. No changes have been made to Part I of the Draft Registration Statement. Accordingly, it has been omitted.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 6. Indemnification of directors and officers

Australian law. Australian law provides that a company or a related body corporate of the company may provide for indemnification of officers and directors, except to the extent of any of the following liabilities incurred as an officer or director of the company:

- a liability owed to the company or a related body corporate of the company;
- a liability for a pecuniary penalty order made under section 1317G or a compensation order under section 1317H, 1317HA or 1317HB of the Australian Corporations Act 2001;
- a liability that is owed to someone other than the company or a related body corporate of the company and did not arise out of conduct in good faith;
- a liability to pay a pecuniary penalty for a contravention of a provision of Part IV or Part V of the Australian Competition and Consumer Act 2010 which deal respectively with certain restrictive traded practices and carbon price reduction obligations;
- a liability to pay a pecuniary penalty for a contravention of provisions of the Australian Consumer Law dealing with:
 - unconscionable conduct;
 - unfair practices;
 - display notices;
 - unsolicited consumer agreements;
 - lay-by agreements;
 - proof of transaction and itemized bills;
 - prescribed requirements for warranties and repairers;
 - safety of consumer goods and product related services;
 - information standards;
 - substantiation notices; and
 - attempting, abetting, inducing, conspiring with others or being involved in a contravention of those provisions
- liability to pay a pecuniary penalty for a contravention of provisions of the Australian Securities and Investments Commission Act 2001 dealing with:
 - unconscionable conduct in relation to financial services; and
 - certain consumer protection provisions in connection with financial services; or
- legal costs incurred in defending an action for a liability incurred as an officer or director of the company if the costs are incurred:
 - in defending or resisting proceedings in which the officer or director is found to have a liability for which they cannot be indemnified as set out above;
 - in defending or resisting criminal proceedings in which the officer or director is found guilty;
 - in defending or resisting proceedings brought by the Australian Securities & Investments Commission or a liquidator for a court order if the grounds for making the order are found by the

court to have been established (except costs incurred in responding to actions taken by the Australian Securities & Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order); and

- in connection with proceedings for relief to the officer or a director under the Corporations Act, in which the court denies the relief.

Constitution. Our Constitution provides, to the extent permitted by the law and the Corporations Act, for the indemnification of every person who is or has been an officer or a director of the company against liability incurred by that person as an officer or director. This includes any liability incurred by that person in their capacity as an officer or director of any of our subsidiaries (other than to us or a related body corporate that does not arise out of conduct involving a lack of good faith or conduct known to the other person to be unlawful). The indemnity also applies to the extent permitted by the Corporations Act to costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which the courts grant relief to the person under the Corporations Act.

Indemnification Agreements. Pursuant to Deeds of Access, Insurance and Indemnity, the form of which is filed as Exhibit 10.5 to this registration statement, we have agreed to indemnify our directors and certain officers against certain liabilities and expenses incurred by such persons in connection with claims made by reason of their being such a director or officer.

SEC Position. Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Pursuant to the underwriting agreement for this offering, the form of which is filed as Exhibit 1.1 to this registration statement, the underwriters will agree to indemnify our directors and officers and persons controlling us, within the meaning of the Securities Act, against certain liabilities that might arise out of or are based upon certain information furnished to us by any such underwriter.

Item 7. Recent sales of unregistered securities

In the past three years, we have issued and sold to third parties the securities listed below without registering the securities under the Securities Act of 1933, as amended. None of these transactions involved any public offering. All our securities were sold through private placement either (i) outside the United States or (ii) in the United States to a limited number of investors in transactions not involving any public offering. As discussed below, we believe that each issuance of these securities was exempt from, or not subject to, registration under the Securities Act.

- On March 14, 2013, we issued 26,970,979 ordinary shares to institutional investors in a private placement in Australia and certain other countries. Consideration per share was A\$6.30, for aggregate amount of approximately A\$170 million. This issuance was exempt from registration under the Securities Act in reliance on Regulation S.
- On October 29, 2013, we issued 70,164 ordinary shares as consideration for the acquisition of certain assets from Provasculon, Inc. Consideration per share was A\$5.96, for aggregate amount of approximately A\$0.4 million. This issuance was exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act and Regulation S.
- On December 18, 2013, we issued 2,948,729 ordinary shares to Osiris Therapeutics, Inc. as consideration for taking delivery of the assigned and other assets pursuant to the purchase agreement for the acquisition of the entire culture expanded mesenchymal stem cell business of Osiris

Therapeutics, Inc. Consideration per share was A\$5.69, for aggregate amount of approximately A\$17 million. This issuance was exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act and Regulation S.

In addition, we issued the following fully-paid ordinary shares upon exercise of employee options over the past three years, ranging from A\$4.43 to A\$8.48 per share:

- 987,300 ordinary shares in the year ended June 30, 2014;
- 2,552,816 ordinary shares in the year ended June 30, 2013; and
- 3,279,848 ordinary shares in the year ended June 30, 2012.

We believe that the issuance of these securities were exempt from registration under the Securities Act in reliance upon Regulation S or Rule 701 of the Securities Act as transactions pursuant to written compensatory plans or pursuant to a written contract relating to compensation. No underwriters were employed in connection with the foregoing option grants and restricted share unit awards.

Item 8. Exhibits and financial statement schedules

(a) Exhibits

See exhibit index of this registration statement.

(b) Financial statement schedules

All schedules have been omitted because the information required to be presented in them is not applicable or is shown in the consolidated financial statements or related notes.

Item 9. Undertakings

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described in Item 6, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

2. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in _____ on this day of _____ 2014.

MESOBLAST LIMITED

By: _____
Name: **Silviu Itescu**
Title: **Executive Director and Chief Executive Officer**

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Brian Jamieson, Dr. Silviu Itescu, and Peter Howard, and each of them, his or her true and lawful attorneys in fact and agents with full power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended, and all post effective amendments thereto, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys in fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys in fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
_____ Brian Jamieson	Chairman of the Board of Directors	, 2014
_____ Dr. Silviu Itescu	Executive Director and Chief Executive Officer (Principal Executive Officer)	, 2014
_____ Paul Hodgkinson	Chief Financial Officer (Principal Financial and Accounting Officer)	, 2014
_____ William Burns	Director	, 2014
_____ Donal O'Dwyer	Director	, 2014
_____ Eric Rose	Director	, 2014
_____ Ben-Zion Weiner	Director	, 2014
_____ Michael Spooner	Director	, 2014

SIGNATURE OF AUTHORIZED REPRESENTATIVE OF THE REGISTRANT

Pursuant to the Securities Act, the undersigned, the duly authorized representative in the United States of Mesoblast, Inc, has signed this registration statement in _____ on _____, 2014.

By _____
Name: Silviu Itescu
Title: Executive Director and Chief Executive Officer

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement.
3.1	Certificate of Registration of Mesoblast Limited.
3.2	Constitution of Mesoblast Limited.
4.1*	Form of Deposit Agreement between Mesoblast Limited and JPMorgan Chase Bank, N.A., as depository, and Owners and Holders of the American Depository Shares.
4.2*	Form of American Depository Receipt evidencing American Depository Shares (included in Exhibit 4.1).
5.1*	Opinion of Minter Ellison.
10.1†	Development and Commercialization Agreement by and between Angioblast Systems, Inc. and Cephalon, Inc., dated December 7, 2010.
10.2†	Letter Agreement pertaining to the Development and Commercialization Agreement by and between Angioblast Systems, Inc. and Cephalon, Inc., dated August 10, 2011.
10.3†	Amendment to Development and Commercialization Agreement by and between Mesoblast, Inc. as successor to Angioblast Systems, Inc. and Cephalon, Inc., dated September 24, 2013.
10.4	Clinical Trial Agreement by and between The National Heart, Lung, and Blood Institute and Mesoblast, Inc. dated July 28, 2014.
10.5	Subscription Deed by and between Mesoblast Limited and Cephalon International Holdings, Inc., dated December 2010.
10.6†	Manufacturing Services Agreement by and between Mesoblast Limited and Lonza Walkersville, Inc. and Lonza Bioscience Singapore Pte. Ltd., dated September 20, 2011.
10.7	Purchase Agreement by and between Mesoblast International Sàrl and Osiris Therapeutics, Inc., dated October 10, 2013.
10.8†	License Agreement by and between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., dated August 26, 2003.
10.9†	Amendment 1 to License Agreement by and between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co. Ltd., dated June 27, 2005.
10.10	Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated January 1, 1993.
10.11	Amendment No. 1 to the Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated November 3, 1993.
10.12	Amendment No. 2 to the Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated October 18, 1999.
10.13	Amendment No. 3 to the Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated October 27, 2003.
10.14	Intellectual Property Assignment Deed by and between Mesoblast Limited and Medvet Science Pty Ltd, dated October 4, 2004.
10.15	Deed of Option and Assignment and Termination, by and between Mesoblast Limited and Peter MacCallum Cancer Institute, dated August 10, 2010.
10.16*#	Loan Funded Share Plan Rules, as amended, and form of loan agreement thereunder.

<u>Exhibit Number</u>	<u>Description</u>
10.17*#	Employee Share Option Plan Rules, and form of option agreement thereunder.
10.18*#	Employment Agreement, dated August 8, 2014, by and between Mesoblast Limited and Silviu Itescu.
10.19	Sub-Sublease, by and between Mesoblast Limited and Carlo Pazolini (USA), LLC, dated September 23, 2013.
10.20	Sublease, by and between Mesoblast Limited and CIT Group Inc., dated September 27, 2011.
10.21	Sublease, by and between Mesoblast Limited and Collins Place Pty Ltd, AMP Capital Investors Limited, and Australia and New Zealand Banking Group Limited, dated April 21, 2014.
21.1	List of Subsidiaries of Mesoblast Limited.
23.1*	Consent of Pricewaterhousecoopers, Independent Registered Public Accounting Firm.
23.2*	Consent of Minter Ellison (included in Exhibit 5.1).
24.1*	Powers of Attorney (included in page II-4 to the original filing of this registration statement).

* To be filed in a subsequent amendment

† Confidential treatment will be requested with respect to certain portions of this exhibit. Omitted portions will be filed separately with the Securities and Exchange Commission.

Indicates management contract or compensatory plan.



CERTIFICATE

Certificate of Registration of a Company

This is to certify that

MESOBLAST LIMITED

Australian Company Number 109 431 870

is a registered company under the Corporations Act 2001 and
is taken to be registered in Victoria.

The company is **limited by shares**.

The company is a **public** company.

The day of commencement of registration is **the eighth day of
June 2004**.

Issued by the

Australian Securities and Investments Commission on
this eighth day of June, 2004.

Jeffrey Lucy
Acting Chairman

Constitution of Mesoblast Limited

Melbourne office
Ref: AXG.LGT.1753918

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Mesoblast Limited

A Company Limited by Shares

Constitution

1. Definitions and interpretation

1.1. Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

Act means the *Corporations Act 2001* (Cth) and any regulations made under that statute;

Approved Financial Product means any Financial Product issued by the Company including the Shares, options or other securities of the Company for which ASTC approval has been given in accordance with the ASTC Settlement Rules;

ASTC means ASX Settlement and Transfer Corporation Pty Limited approved as a Securities Clearing House under the Act;

ASTC Settlement Rules means the rules of ASTC from time to time;

ASX means Australian Stock Exchange Limited;

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the State of Victoria;

Chairman means the Chairman of Directors appointed under clause 17.4;

CHESS has the meaning given to that term in the ASTC Settlement Rules;

CHESS Subregister has the meaning given to that term in the ASTC Settlement Rules;

Company means Mesoblast Limited;

Constitution means this constitution as altered or added to from time to time;

Director means a person appointed or elected to the office of Director of the Company under this Constitution and includes any alternate Director duly acting as a Director;

Dividend includes an interim dividend;

Financial Products has the meaning given to that term in the ASTC Settlement Rules;

Issuer Sponsored Subregister has the meaning given to that term in the ASTC Settlement Rules;

Listing Rules means the Listing Rules of ASX and any other rules and procedures of ASX that apply while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

Managing Director means a managing director appointed under clause 18;

Member means a person who is entered in the Register as the holder of Shares in the capital of the Company;

Member Present means, in connection with a meeting, the Member being present in person or by proxy, by attorney and, where the Member is a body corporate, by representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing the pre-requisites for a valid meeting at different venues are observed;

Official List means the official list of entities that ASX has admitted and not removed;

Person and words importing persons include partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by law as well as individuals;

Prescribed Rate means the base lending rate offered by the Company's principal banker from time to time in respect of loans of \$100,000 and over, calculated on a daily basis and a year of three hundred and sixty-five days;

Register means the registers and subregisters (if any) of Members to be kept under the Act and the Listing Rules;

Registered office means the registered office of the Company, unless the context otherwise provides;

Restricted Securities has the same meaning given to it in the Listing Rules;

Share means a share in the capital of the Company;

Seal means any common seal, duplicate common seal or official seal of the Company; and

Signature includes the reproduction by mechanical electronic or other means of the handwritten signature of any person empowered or required to sign documents on behalf of the Company, and sign has a corresponding meaning.

1.2. Interpretation

In this Constitution, unless the context requires otherwise:

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

- (c) the headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be done on a day which is not a Business Day then it must be done on the next Business Day;
- (g) the word “person” includes a natural person and any body or entity whether incorporated or not;
- (h) the word “month” means calendar month and the word “year” means 12 months;
- (i) the words “in writing” include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) wherever “include” or any form of that word is used, it must be construed as if it were followed by “(without being limited to)”;
- (m) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body;
- (n) any expression in this Constitution that is defined in the Listing Rules has the same meaning as in the Listing Rules; and
- (o) any expression in a provision of this Constitution that relates to a particular provision of the Act has the same meaning as in that provision of the Act.

1.3. Replaceable rules

The replaceable rules contained in the Act are displaced under section 135(2) of the Act and do not apply to the Company.

1.4. Compliance with the Act

This Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act which is not permissible under the Act, the Act prevails to the extent of the inconsistency.

1.5. Transitional

Everything done under this Constitution of the Company continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

1.6. Listing Rules and ASTC Settlement Rules only apply if Company is listed

In this Constitution, a reference to the Listing Rules or ASTC Settlement Rules only has effect if at the relevant time the Company is admitted to the Official List and is otherwise to be disregarded.

1.7. Constitution subject to Listing Rules if Company is listed

If the Company is admitted to the Official List, the following clauses apply:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

2. Capital

2.1. Power of Directors to issue Shares and other securities

- (a) The issue of Shares, options and other securities of the Company is under the control of the Directors.

(b) Any Share, option or other security may be issued with preferred, deferred or other special rights or restrictions, whether with regard to dividends, voting, return of capital, payment of calls or otherwise, as the Directors decide.

(c) Clause 7.1(a) has effect without prejudice to any special rights conferred on the holders of any issued Shares, options or other securities.

2.2. Classes of Shares

(a) This clause applies when the share capital is divided into different classes of Shares.

(b) The rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied:

(i) with the consent in writing of the holders of at least 75% of the issued Shares of that class; or

(ii) with the sanction of a special resolution passed at a separate general meeting of the holders of the Shares of the class.

(c) The provisions of this Constitution relating to general meetings apply to every separate class except that any holder of Shares of the class present may demand a poll.

(d) The rights conferred on the holders of the Shares of any class issued with special rights are not, unless otherwise provided by this Constitution, or by the terms of issue of the Shares of that class, taken to be varied, abrogated or otherwise affected by the creation or issue of further Shares ranking equally with those Shares.

(e) The issue of any securities ranking in priority, or any conversion of existing securities to securities ranking equally or in priority, to an existing class of preference Share is a variation or abrogation of the rights attaching to those preference Shares and requires approval under clause 2.2(b).

2.3. Brokerage

(a) Subject to the provisions and restrictions contained in the Act and the Listing Rules, the Company may pay brokerage or commission to any person in consideration of the person:

(i) subscribing or agreeing to subscribe (whether absolutely or conditionally) for any Shares in the Company; or

(ii) procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares in the Company.

(b) Any brokerage or commission may be satisfied by:

- (i) the payment of cash;
- (ii) the allotment of Shares of the Company; or
- (iii) a mixture of the above.

2.4. Non-recognition of equitable or other interests

Except as otherwise provided in this Constitution, the Company must treat the registered holder of any Share as the absolute owner of the Share and must not, except as ordered by a court or as required by statute, recognise (even when having notice) any equitable or other claim to or interest in the Share on the part of any other person.

2.5. Register of debenture holders: suspension

Except when any of the debentures of the Company are quoted on ASX, the Company may close its register of debenture holders during a period or periods not exceeding in aggregate 30 days in any calendar year.

3. Restricted Securities

3.1. Compliance with Listing Rules

Restricted Securities issued by the Company cannot be disposed of except as permitted by the Listing Rules.

3.2. Disposals during escrow period

The Company will refuse to acknowledge a disposal of Restricted Securities (including registering a transfer of any Restricted Securities) during the escrow period relating to the Restricted Securities except as permitted by the Listing Rules or by ASX.

3.3. Company's obligations if breach

For the duration of a breach of the Listing Rules relating to Restricted Securities or a breach of a Restriction Agreement, the Company must not:

- (a) pay any dividend or distribution to; or
- (b) permit the exercise any voting rights by,

the holder of the Restricted Securities.

4. Certificates

4.1. Certificated holdings

The provisions of this clause 3 apply only to the extent that the Company is required by the Act, the Listing Rules or the ASTC Settlement Rules to issue certificates for Shares or other marketable securities of the Company, and then only for those Shares or other marketable securities for which certificates are required to be issued.

4.2. Issue of certificates

Subject to this Constitution, where the Company is required by the Act, the Listing Rules or the ASTC Settlement Rules to issue certificates for Shares or other marketable securities of the Company, the certificates must:

- (a) be issued under the Seal and in accordance with the Act, the Listing Rules and ASTC Settlement Rules; and
- (b) include all information required by the Act, the Listing Rules and ASTC Settlement Rules.

4.3. Entitlement of Member to certificate

Subject to this Constitution, every Member is entitled free of charge to one certificate for each class of Shares or other marketable securities registered in its name or to several certificates each for a reasonable proportion of those Shares or marketable securities.

4.4. Certificate for joint holders

Where Shares or other marketable securities are registered in the names of two or more persons, only one certificate is required to be issued for each class of those Shares or marketable securities.

4.5. Cancellation of certificate on transfer

(a) Subject to this Constitution, on every application to register the transfer of any Shares or other marketable securities or to register any person as a Member in respect of any Shares or other marketable securities that may have been transmitted to that person by operation of law:

- (i) the certificate for those Shares or other marketable securities must be delivered up to the Company for cancellation; and

(ii) unless the holding has become uncertificated, a new certificate in similar form specifying the Shares or other marketable securities transferred or transmitted must be delivered to the transferee or transmittee within 3 Business Days after the day of lodgement with the Company of the registrable transfer or transmission notice.

(b) If registration is required for only some of the Shares or other marketable securities specified on the certificate delivered up to the Company, then unless the holding has become uncertificated, a new certificate specifying the Shares or other marketable securities remaining untransferred or untransmitted must be delivered to the transferor.

4.6. Replacement of certificates

(a) The Company must issue a replacement certificate:

(i) if the certificate is worn out or defaced, on production of the certificate to the Company to be replaced and cancelled; or

(ii) if the certificate is lost or destroyed, on the Company being provided with:

(A) evidence that the certificate has been lost or destroyed, and has not been disposed of or pledged, as is required by the Act;

(B) an undertaking to return the certificate, if found, as required by the Act;

(C) if the Directors consider it necessary, a bond or indemnity as the Act authorises the Directors to require; and

(D) if the Directors consider it necessary, a copy of an advertisement published in a daily newspaper, as the Act authorises the

Directors to require.

(b) All replacement certificates must be issued within 3 Business Days after the Company receives the original certificate or evidence of loss or destruction.

5. CHESS

5.1. Participation in CHESS

(a) The Board may at any time resolve that the Company will participate in CHESS.

(b) This clause 5 applies if the Company is granted participation in CHESS.

5.2. Compliance with ASTC Settlement Rules

The Company must comply with the ASTC Settlement Rules if any of its securities are CHESS Approved Securities. In particular the Company must comply with the requirements of the ASTC Settlement Rules and the Listing Rules regarding the maintenance of registers, the issuing of holding statements and transfers in relation to its Approved Financial Products.

5.3. Registers

If the Company's securities are Approved Financial Products, in addition to the CHESSE Subregister, it must provide for any other subregister required to be maintained under the ASTC Settlement Rules.

5.4. No interference with transfer under the ASTC Settlement Rules

The Company must not in any way prevent, delay or interfere with the generation of a transfer under the ASTC Settlement Rules or the registration of a paper-based transfer in registrable form (which satisfies the requirements of clause 8), except as permitted by clause 8.3, the Listing Rules or ASTC Settlement Rules.

6. Lien on Shares

6.1. Company has lien

(a) The Company has an exclusive first lien on every Share for:

(i) any amount due and unpaid in respect of the Share that has been called or is payable at a fixed time;

(ii) any amounts which remain outstanding on loans made by the Company to acquire Shares under an employee incentive scheme; and

(iii) all amounts that the Company has according to law paid in respect of the Share, including reasonable expenses and interest incurred because the amount has not been paid.

(b) The Directors may at any time exempt a Share wholly or in part from the provisions of this clause.

(c) The Company's lien (if any) on a Share extends to all dividends payable and entitlements in respect of the Share. The Company may retain those dividends or entitlements and may apply them in or towards satisfaction of all amounts due to the Company in respect of which the lien exists.

(d) No person is entitled to exercise any rights or privileges as a Member until the Member has paid all monies for the time being payable in respect of every Share held by the Member.

6.2. Exercise of lien

(a) Subject to clause 6.2(b), the Company may sell any Shares on which the Company has a lien, in the manner that the Directors think fit.

(b) A Share on which the Company has a lien may not be sold unless:

(i) a sum in respect of which the lien exists is payable; and

(ii) at least 7 days before the date of the sale, the Company has given to the Member or the person entitled to the Share by reason of the death, mental incapacity or bankruptcy of the Member, a notice in writing demanding payment of the sum.

6.3. Completion of sale

(a) For the purpose of giving effect to a sale of Shares to enforce a lien, the Directors may authorise a person to do everything necessary to effect a transfer of the Shares in favour of the person to whom the Shares are sold.

(b) The Company must register the purchaser as the holder of the Shares comprised in any transfer, after which the validity of the sale may not be disputed by any person and the purchaser is not concerned with the application of the purchase money.

(c) The title of the purchaser to the Shares is not affected by any irregularity or invalidity in connection with the sale.

(d) The purchaser is discharged from liability for any calls which were in default before the purchase of those Shares, unless otherwise expressly agreed.

(e) The remedy of any person aggrieved by any sale is in damages only and against the Company exclusively.

6.4. Application of proceeds of sale

The proceeds of a sale made to enforce a lien must be applied by the Company in the following order:

(a) first, in payment of all costs of or in relation to the enforcement of the lien and of the sale;

(b) next, in satisfaction of the amount in respect of which the lien exists as is then payable to the Company (including interest); and

(c) last, the residue (if any) to or at the direction of the person registered as the holder of the Shares immediately prior to the sale on production of any evidence as to title required by the Directors.

7. Calls on Shares

7.1. Calls

(a) Members must pay all money payable on partly paid Shares in accordance with the defined call program forming part of the terms of issue of those Shares.

(b) The Directors may postpone or may revoke a call.

(c) A call may be payable by instalments.

(d) A call is made at the time when the resolution of the Directors authorising the call is passed.

(e) The Company must send notices of a call to Members in accordance with the terms of the partly paid Shares, but if not prescribed, then within 5 Business Days of the Directors' resolution to make the call.

(f) The Company must make reasonable efforts to ensure that all holders of the partly paid Shares receive notice of each call, but the non-receipt of a notice or the accidental omission to give notice of a call does not invalidate the call.

7.2. Liability of joint holders for calls

The joint holders of a Share are jointly and severally liable to pay all calls in respect of the Share.

7.3. Interest on unpaid amounts

(a) If a sum called or otherwise payable to the Company in respect of a Share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at a rate determined by the Directors but not exceeding the Prescribed Rate together with expenses incurred by the Company by reason of non-payment.

(b) The Directors may waive payment of that interest wholly or in part.

7.4. Fixed sums taken to be called

(a) Any sum that, under the terms of issue of a Share, becomes payable on issue or at or after a fixed or defined date is, for the purposes of this Constitution, taken to have been duly called and is payable on the date payable under the terms of issue.

(b) If any other sum is not paid when due, all the provisions of this Constitution relating to payment of interest and expenses, forfeiture or otherwise apply as if that sum had become payable by virtue of a call duly made and notified.

7.5. Differentiation between Members

The Directors may differentiate between Members as to the amount of calls to be paid and the times of payment.

7.6. Prepayments of calls

(a) The Directors may accept from a Member the whole or a part of the amount unpaid on a Share even if that amount has not been called.

(b) The Directors may authorise payment of interest on the whole or any part of an amount accepted under clause 7.6(a) until the amount becomes payable at a rate, not exceeding the Prescribed Rate, that is agreed between the Directors and the Member paying the sum.

(c) The Directors may at any time repay the whole or any part of any amount paid in advance and any interest agreed abates from the time of payment.

8. Transfer of Shares

8.1. Transferability of certificated Shares

(a) Subject to this Constitution, the Act, the Listing Rules and ASTC Settlement Rules, a Member's Shares may be transferred by instrument in writing in any form authorised by the Act or in any other form that the Directors approve.

(b) No fee may be charged by the Company on the transfer of any Shares.

(c) A transferor of Shares remains the holder of the Shares until the transfer is registered.

8.2. Registration of transfers

(a) Subject to this Constitution, the Act, the Listing Rules and ASTC Settlement Rules, where Shares are transferred, the following documents must be lodged for registration at the registered office of the Company or the location of the relevant Share register:

(i) the instrument of transfer;

(ii) the certificate (if any) for the Shares; and

(iii) any other information that the Directors may require to establish the transferor's right to transfer the Shares.

(b) On compliance with clause 8.2(a), the Company must, subject to any powers of the Company to refuse registration, register the transferee as a Member.

(c) The Directors may waive compliance with clause 8.2(a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

8.3. Restrictions on transfer

Except as otherwise provided for in the Listing Rules and ASTC Settlement Rules, the Directors may in their absolute discretion ask ASTC to apply a holding lock to prevent a transfer under the ASTC Settlement Rules, or refuse to register a paper-based transfer, of a Share where:

(a) the Company has a lien on the Shares the subject of the transfer;

(b) the Company is served with a court order that restricts a Member's capacity to transfer the Shares;

(c) registration of the transfer may break an Australian law and ASX has agreed in writing to the application of a holding lock (which must not breach a ASTC Settlement Rule) or that the Company may refuse to register a transfer;

(d) during the escrow period of Restricted Securities;

(e) if the transfer is paper-based, either a law related to stamp duty prohibits the Company from registering it or the Company is otherwise allowed to refuse to register it under the Listing Rules; or

(f) the transfer does not comply with the terms of any employee incentive scheme of the Company.

8.4. Notice of non-registration

If the Directors decline to register any transfer of Shares, the Company must within 5 Business Days after the transfer is lodged with the Company give to the person who lodges the transfer written notice of, and the precise reasons for, the decision to decline registration.

8.5. Suspension of transfers

The registration of transfers of Shares may be suspended at any time and for any period as the Directors from time to time decide. The aggregate of those periods must not exceed 30 days in any calendar year.

8.6. Cases where registration may be refused

In any case where the Company is entitled to refuse registration of the transfer in accordance with the Act and this Constitution, the Company may do any or all things permitted by the Act.

9. Transmission of Shares

9.1. Entitlement to Shares on death

(a) Where a Member dies:

(i) the surviving Member, where the deceased Member was a joint holder; and

(ii) the legal personal representatives of the deceased Member, where the Member was a sole holder,

are the only persons recognised by the Company as having any title to the Member's interest in the Shares.

(b) The Directors may require evidence of a Member's death as they think fit.

(c) This clause does not release the estate of a deceased joint holder from any liability in respect of a Share that had been jointly held by the holder with another person or persons.

9.2. Registration of persons entitled

(a) Subject to the *Bankruptcy Act 1966* and to the production of any information that properly is required by the Directors, a person becoming entitled to a Share in consequence of the death, mental incapacity or bankruptcy of a Member may elect to:

- (i) be registered personally as holder of the Share; or
- (ii) have another person registered as the transferee of the Share.

(b) All the limitations, restrictions and provisions of this Constitution relating to:

- (i) the right to transfer;
- (ii) the registration of a transfer; and
- (iii) the issue of certificates,

are applicable to any transfer as if the death, mental incapacity or bankruptcy of the Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3. Dividends and other rights

(a) Where a Member dies, becomes mentally incapacitated or bankrupt, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Directors, entitled to the same:

- (i) dividends, entitlements and other advantages; and
- (ii) rights (whether in relation to meetings of the Company or to voting or otherwise),

as the Member would have been entitled to if the Member had not died, become mentally incapacitated or bankrupt.

(b) Where 2 or more persons are entitled jointly to any Share as a result of the death of a Member, they are, for the purposes of this Constitution, taken to be joint holders of the Share.

10. Forfeiture of Shares

10.1. Liability to forfeiture

(a) If a Member fails to pay a call or instalment of a call when due, the Directors may, at any time afterwards while any part of the call or instalment remains unpaid, serve a notice on the Member requiring payment of so much of the unpaid call or instalment, together with any accrued interest and all expenses incurred as a result of the non-payment.

(b) The notice must:

- (i) specify a day at least 10 Business Days after the date of the notice by which and a place at which the payment is to be made; and
- (ii) state that the Shares in respect of which the call was made are liable to be forfeited if payment is not made by the time specified.

10.2. Surrender of Shares

Subject to the Act and the Listing Rules, the Directors may accept the:

(a) surrender of any fully paid Share by way of compromise of any question as to the proper registration of the holder or in satisfaction of any payment due to the Company; and

(b) gratuitous surrender of any fully paid Share.

Any Share so surrendered may be disposed of in the same manner as a forfeited Share.

10.3. Power to forfeit

(a) Subject to the Act and the Listing Rules, if the requirements of a notice under clause 10.1 are not complied with, any Share in respect of which the notice has been given may, at any time afterwards but before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

(b) Such a forfeiture includes all dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture.

10.4. Powers of Directors

(a) A forfeited Share may be sold or otherwise disposed of as the Directors think fit.

(b) The forfeiture may be cancelled on the terms that the Directors think fit at any time before a sale or disposition.

(c) The proceeds of sale of a forfeited Share must be applied in the following order:

(i) first, in payment of all costs of or in relation to the sale;

(ii) next, in satisfaction of the amount in respect of the Shares as is then payable to the Company (including interest); and

(iii) last, the residue (if any) to or at the direction of the person registered as the holder of the Shares immediately prior to the sale or to the person's estate, on production of any evidence as to title required by the Directors.

10.5. Consequences of forfeiture

A person whose Shares have been forfeited:

(a) ceases to be a Member in respect of the forfeited Shares at the time of the Director's resolution approving the forfeiture;

(b) has no claims or demands against the Company in respect of those Shares;

(c) has no other rights to the Shares except any rights expressly provided by the Act or this Constitution; and

(d) remains liable to pay to the Company all money that, at the date of forfeiture, was payable by the person to the Company in respect of the Shares including, if the Directors think fit, interest from the date of forfeiture at the Prescribed Rate on the money for the time being unpaid. The Directors may as they think fit compel the payment of any part of the money for which the Member is liable.

10.6. Notice of forfeiture

(a) Notice of the resolution of forfeiture must be given to the Member in whose name the Share was registered immediately before the forfeiture and an entry of the forfeiture and its date must be made immediately in the register.

(b) The provisions of clause 10.6(a) are directory only and the validity of any forfeiture is not affected in any way by any omission to give the notice or to make the entry.

10.7. Evidentiary matters

Without prejudice to clause 10.6, a statement in writing by a Director or a Secretary of the Company to the effect that:

(a) a Share in the Company has been duly forfeited on a date specified in the statement; or

(b) a particular sum is payable by a Member or former Member to the Company at a particular date in respect of a call or instalment of a call (including interest),

is, in the absence of manifest error, conclusive evidence of the facts set out in the statement as against all persons claiming to be entitled to the Share and against the Member or former Member who remains liable to the Company under clause 10.9.

10.8. Transfers after forfeiture and sale

(a) The Company may:

- (i) receive the proceeds of sale or disposition of a forfeited Share; and
- (ii) transfer the Share to the transferee.

(b) On registration of the transfer, the transferee is not bound to see to the application of any money paid as consideration.

(c) The title of the transferee to the Share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the Share.

10.9. Fixed amounts taken to be calls

The provisions of this Constitution relating to forfeiture apply to non-payment of any sum that becomes payable for a Share at a defined time, as if that sum was payable as a call duly made.

11. Alteration of capital

11.1. Power to alter capital

The Company may, by resolution, do any one or more of the following:

- (a) increase its share capital by the creation of new Shares;
- (b) consolidate all or part of its share capital;
- (c) subdivide all or any of its share capital; and

(d) cancel Shares that at the time of the resolution have not been taken or agreed to be taken by any person or that have been forfeited and reduce its share capital by the amount of the Shares so cancelled.

11.2. Power to reduce capital

(a) Subject to the Act and the Listing Rules, the Company may by special resolution resolve to reduce its share capital.

(b) Subject to the Act and the Listing Rules, a reduction of share capital may be effected in any lawful manner, including by cancellation of Shares, return of funds or distribution of assets in specie, as the Directors may approve.

11.3. Power to buy Shares

The Company may, in accordance with the Act and the Listing Rules, buy its own Shares on any terms and conditions determined by the Directors.

11.4. Share Plans

The Board may establish share plans for Directors and senior executives including non executive Directors (subject to any applicable restrictions under the Act and the Listing Rules).

12. Sale of non marketable parcels

12.1. Company may sell Member's Shares

Subject to the Act, the Listing Rules and the ASTC Settlement Rules the Company may sell the Shares of a Member if:

(a) the total number of Shares of a particular class held by that Member on the date on which notice is given under this clause is less than a marketable parcel;

(b) the Company gives to that Member written notice stating that the Shares are liable to be sold or disposed of by the Company; and

(c) the Member does not give notice in writing to the Company by the date specified in the notice by the Company (being not less than 6 weeks after the date of the Company giving that notice), stating that the Member wishes to retain the holding and the Member has not increased his or her holding to the number of Shares sufficient to constitute or exceed a marketable parcel.

12.2. Limits on Company's power to sell

(a) The Company may only exercise its powers under clause 12.1 once in any 12 month period.

(b) The Company's power to sell under clause 12.1 lapses following the announcement of a takeover bid for the Company. However, the procedure may be started again after the close of the offers made under the takeover.

12.3. Time of sale

The Company may sell the Shares which make up less than a marketable parcel as soon as practicable at a price which the Directors consider to be the best price reasonably obtainable for the Shares at the time they are sold.

12.4. Proceeds of sale

(a) The proceeds of the sale will not be sent to the former Member until the Company has received any certificate relating to the Shares (or is satisfied that the certificate has been lost or destroyed).

(b) All money payable to a former Member under this clause which is unclaimed for 1 year after payment may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed or otherwise disposed of according to law. No money payable under this clause by the Company to a former Member bears interest as against the Company.

12.5. Sale of holdings created on or after 1 September 1999

In addition to the powers of the Company set out above, the Company may sell the Shares of a Member if the Shares of a particular class held by the Member are in a new holding created by a transfer on or after 1 September 1999 of a number of Shares that was less than a marketable parcel at the time:

- (a) a transfer under ASTC Settlement Rules was initiated; or
- (b) a paper based transfer was lodged with the Company.

The Company may give a Member referred to in this clause, notice in writing stating that the Company intends to sell or dispose of the Shares, and that the proceeds of the sale, less the costs of the sale, will be sent to the holder after the sale has been effected.

12.6. Effect of sale

The exercise by the Company of its powers under this clause 11.4 extinguishes all interests in the Shares of the former Member, and all claims against the Company in respect of those Shares by that Member including all dividends (whether final or interim) determined to be paid in respect of those Shares and not actually paid or accrued.

12.7. Further action

The Secretary may take any action on behalf of a Member to give effect to this clause as the Secretary considers necessary.

12.8. Registration of transfer

The Company may register a transfer of Shares whether or not any certificate for the Shares has been delivered to the Company.

12.9. Costs of sale

The Company bears the costs of sale of the transferor of the Shares sold under this clause 11.4 (but is not liable for tax on income or capital gains of the former Member).

12.10. Where Shares of more than one Member sold

If the Shares of 2 or more Members to whom this clause applies are sold to 1 purchaser, the transfer may be effected by 1 transfer.

12.11. Rights of purchaser

(a) A certificate signed by the Secretary stating that Shares sold under this clause have been properly sold discharges the purchaser of those Shares from all liability in respect of the purchase of those Shares.

(b) When a purchaser of Shares is registered as the holder of the Shares, the purchaser:

(i) is not bound to see to the regularity of the actions and proceedings of the Company under this clause or to the application of the proceeds of sale; and

(ii) has title to the Shares which is not affected by any irregularity or invalidity in the actions and proceedings of the Company.

12.12. Limit on Member's remedies

Any remedy of any Member to whom this clause applies in respect of the sale of the Member's Shares is limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

13. Takeover approval provisions

13.1. Interpretation

In this clause 13:

(a) **Associate** in relation to another person has the meaning given to that term in the Act;

(b) **Offeror** means a person making an offer for Shares under a Proportional Bid;

(c) **Proportional Bid** means a proportional takeover bid as defined in section 9 of the Act; and

(d) **Relevant Day**, in relation to a Proportional Bid, means the day that is 14 days before the last day of the bid period.

13.2. Transfers prohibited without approval

Where a Proportional Bid in respect of Shares included in a class of Shares in the Company has been made:

(a) the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the Proportional Bid is prohibited unless and until a resolution (**Approving Resolution**) to approve the Proportional Bid is passed, or is deemed to have been passed, in accordance with Subdivision C of Chapter 6.5 of the Act;

(b) a Member (other than the Offeror or a person associated with the Offeror) who, as at the end of the day on which the first offer under the Proportional Bid was made, held Shares included in that class is entitled to vote on an Approving Resolution and, for the purposes of so voting, is entitled to 1 vote for each such Share;

(c) neither the Offeror or an Associate of the Offeror may vote on an Approving Resolution;

(d) an Approving Resolution must be voted on at a meeting, convened and conducted by the Company, of the Members entitled to vote on the resolution; and

(e) an Approving Resolution is passed if more than 50% of the votes cast on the resolution by Members Present are in favour of the resolution.

13.3. Meetings

(a) The provisions of this Constitution relating to a general meeting of the Company apply, with such modifications as the circumstances require, in relation to a meeting that is convened for the purposes of this clause 13.

(b) The Directors of the Company must ensure that the Approving Resolution is voted on in accordance with this clause before the Relevant Day.

(c) Where an Approving Resolution is voted on in accordance with this clause, then before the Relevant Day, the Company must:

(i) give to the Offeror; and

(ii) serve on ASX,

a written notice stating that a resolution to approve the Proportional Bid has been voted on and that the resolution has been passed or has been rejected, as the case requires.

13.4. Deemed approval

Where, as at the end of the day before the Relevant Day in relation to a Proportional Bid, no Approving Resolution to approve the Proportional Bid has been voted on in accordance with this clause, an Approving Resolution to approve the Proportional Bid is, for the purposes of this clause, deemed to have been passed under this clause 13.

13.5. Proportional Bid rejected

Where an Approving Resolution is voted on and is rejected then:

(a) despite section 652A of the Act, all offers under the Proportional Bid that have not, as at the end of the Relevant Day, resulted in binding contracts are deemed to be withdrawn at the end of the Relevant Day;

(b) the Offeror must immediately, after the end of the Relevant Day, return to each Member any documents that were sent by the Member to the Offeror with the acceptance of the offer;

(c) the Offeror may rescind and must, as soon as practicable after the end of the Relevant Day, rescind each contract resulting from the acceptance of an offer made under the Proportional Bid; and

(d) a Member who has accepted an offer made under the Proportional Bid is entitled to rescind the contract (if any) resulting from that acceptance.

13.6. Duration of clause

This clause 13 ceases to have effect on the later to occur of:

(a) the third anniversary of its adoption; or

(b) the third anniversary of its most recent renewal effected under the Act.

14. General meetings

14.1. Power of Directors to convene

(a) The Directors may convene a general meeting of Members whenever they think fit.

(b) Subject to the Act, the Members may require the Directors to convene a general meeting.

(c) The Directors may, by written notice to all Members, cancel any meeting convened by them, but a meeting convened on the requisition of a Member or Members cannot be cancelled without their consent.

(d) The Directors may postpone a general meeting or change the place at which it is to be held by giving appropriate notice to all persons to whom the notice of the original meeting was given, not later than 72 hours prior to the time of the meeting. The notice must specify the new place, date and time of the meeting.

(e) In relation to meetings of Members, a **meeting** includes:

(i) all adjournments of a meeting; and

(ii) any meeting convened to be held by those entitled to be present, meeting simultaneously in different locations as determined by the

Directors.

(f) The business of a meeting held under clause 14.1(e)(ii) cannot be validly considered, and any resolutions at that meeting have no effect, unless:

(i) the Members Present at each such location can hear and participate in the business of the meeting as it is being conducted both at the venue at which the chairman of the meeting is present and at each other venue; and

(ii) satisfactory provision is made at each venue for the recording of all votes cast,

and on satisfying these conditions, the meeting is taken to be held where the chairman of the meeting conducts the meeting and all proceedings conducted in that manner are as valid and effective as if conducted at a single gathering of a quorum of those entitled to be present.

14.2. Notice of general meetings

(a) Each notice convening a general meeting must specify:

(i) the place, date and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and

(ii) the general nature of any special business to be transacted at the meeting.

(b) Notice of a general meeting must be provided to Members at least 28 clear days before the meeting is to be held.

(c) A notice convening an annual general meeting need not state the general nature of business of the kind referred to in clause 14.2(a) but, if the business includes the election of Directors, the names of the candidates for election must be stated.

(d) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

(e) Subject to the Act the Directors may give notices by any electronic means permitted by the Act and to an electronic address nominated by the relevant Member.

14.3. Annual general meetings

Annual general meetings of the Company must be held in accordance with the Act and the Listing Rules. The business of an annual general meeting is to:

- (a) consider the annual report, Directors' report and the auditor's report;
- (b) elect Directors;
- (c) appoint the auditor;
- (d) fix the remuneration of the auditors; and
- (e) transact any other business that may be properly brought before the meeting.

14.4. Quorum

(a) No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

(b) Except as otherwise provided in this Constitution, a quorum constitutes:

- (i) 5 Members Present; or
- (ii) where the total number of Members is less than 5, all those Members being the Members Present.

14.5. If a quorum not present

If a quorum is not present within 15 minutes after the time appointed for the meeting:

(a) where the meeting is convened on the requisition of Members, the meeting must be dissolved (subject to clause 14.7(a)); and

(b) in any other case:

(i) the meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision is made by the Directors, to the same day in the next week at the same time and place; and

(ii) if at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting must be dissolved.

14.6. Chairing meetings

(a) Subject to clause 14.6(b), the Chairman or, in the Chairman's absence, the deputy Chairman, must preside as chairman at every general meeting.

(b) Where a general meeting is held and:

(i) there is no Chairman or deputy Chairman; or

(ii) the Chairman or deputy Chairman is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chairman of the meeting,

the Directors present must choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present must elect one of their number to chair the meeting.

14.7. Adjournments

(a) The chairman of the meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(b) No business may be transacted at any continuation of an adjourned meeting other than the business left unfinished at the meeting which has been adjourned.

(c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

(d) Except as provided by clause 14.7(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

14.8. Voting at general meetings

(a) Any resolution to be considered at a meeting will be decided on a show of hands unless a poll is demanded at or before the declaration of the result of the show of hands. Before a vote is taken, the chairman of the meeting must inform the meeting of how many proxy votes have been received and how the proxy votes are to be cast on that resolution.

(b) A declaration by the chairman of the meeting that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.

(c) A poll may be demanded:

(i) by the chairman of the meeting;

(ii) by at least 5 Members Present and having the right to vote at the meeting;

(iii) by a Member or Members Present with at least 5% of the votes that may be cast on the resolution on a poll; or

(iv) by a Member or Members Present holding Shares in the Company conferring a right to vote at the meeting on which an aggregate sum has been paid up equal to not less than 5% of the total sum paid up on all the Shares conferring that right.

(d) The demand for a poll may be withdrawn.

(e) A poll may not be demanded on the election of a person to chair a meeting or on a resolution for adjournment.

14.9. Procedure for polls

(a) A poll, when demanded, is to be taken in the manner and at the time the chairman of the meeting directs.

(b) The result of the poll is a resolution of the meeting at which the poll was demanded.

(c) The demand for a poll does not prevent a meeting from continuing for the transaction of any other business.

14.10. Chairman's casting vote

Subject to the Act and the Listing Rules, in the case of an equality of votes on a show of hands or on a poll the chairman of the meeting has a casting vote in addition to any vote to which that chairman may otherwise be entitled.

14.11. Representation and voting of Members

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of Shares:

(a) at meetings of Members or classes of Members each Member entitled to attend and vote may attend and vote in person or by proxy, or attorney and (where the Member is a body corporate) by representative;

(b) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and

(c) on a poll, every Member Present has:

(i) one vote for each fully paid Share; and

(ii) in the case of partly paid Shares, that proportion of a vote as is equal to the proportion which the amount paid up on that Member's Share bears to the total issue price for the Share, excluding calls paid in advance of the due date for payment.

14.12. Joint holders

Where more than one joint holder votes, the vote of the holder whose name appears first in the register of Members must be accepted to the exclusion of the others whether the vote is given personally, by attorney or proxy.

14.13. Members of unsound mind and minors

(a) If a Member is:

(i) of unsound mind;

(ii) a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(iii) a minor,

the Member's committee or trustee or any other person who has proper management or guardianship of the Member's estate or affairs may, subject to clause 14.13(b), exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

(b) Any person with powers of management or guardianship cannot exercise any rights under clause 14.13(a) unless the person has provided the Directors with satisfactory evidence of the person's appointment and status.

14.14. Restriction on voting rights - unpaid amounts

A Member is not entitled to vote in respect of a security giving the holder the right to vote unless all calls and other sums presently payable by the Member in respect of that security have been paid.

14.15. Objections to qualification to vote

(a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.

(b) Any objection must be referred to the chairman of the meeting, whose decision is final.

(c) A vote allowed after an objection is valid for all purposes.

14.16. Number of proxies

(a) A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

(b) An appointment of a proxy may specify the proportion or number of votes that the proxy may exercise.

(c) If a member is entitled to cast two or more votes at a meeting, the Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.

14.17. Form of proxy

(a) An instrument appointing a proxy is valid if it is in the form specified by the Directors from time to time and is:

(i) signed by or on behalf of the Member of the Company making the appointment; and

(ii) contains the following information:

(A) the Member's name and address;

(B) the Company's name;

(C) the proxy's name or the name of the office held by the proxy; and

(D) the meetings at which the appointment may be used.

(b) The proxy form must provide for the Member to vote for or against each resolution and may provide for abstention to be indicated.

(c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy is not entitled to vote on the resolution except as specified in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

(d) An instrument appointing a proxy confers authority to demand or join in demanding a poll.

(e) An instrument appointing a proxy may be in any form that the Directors accept or stipulate.

(f) Despite clause 14.12, where an instrument of proxy is signed by all of the joint holders of any Shares, the votes of the proxy so appointed must be accepted in respect of those Shares to the exclusion of any votes tendered by a proxy for any one of those joint holders.

14.18. Lodgement of proxies

(a) An instrument appointing a proxy is not treated as valid unless:

- (i) the instrument; and
- (ii) the power of attorney or other authority (if any) under which the instrument is signed; or
- (iii) a copy of that power or authority certified in a manner acceptable to the Directors,

are lodged not less than 48 hours (or any shorter period as the Directors may permit) before the time for holding the meeting at the place specified for that purpose in the notice of the meeting or, if none, at the registered office of the Company.

(b) An instrument appointing a representative to act for a Member at all meetings of the Company or at all meetings for a specified period is not treated as valid unless:

- (i) the instrument of appointment or a certified copy of it, duly signed by hand or electronic signature; and
- (ii) any evidence as to the validity and non-revocation of that authority as may be required by the Directors,

are lodged not less than 48 hours (or any shorter period as the Directors may permit) before the time for holding the meeting at the place specified for that purpose in the notice of the meeting or, if none, at the Registered Office.

(c) For the purposes of this clause 14:

(i) a legible facsimile of any document which is received at a place specified in the notice is duly lodged at that place at the time when the facsimile is received; and

(ii) Members can appoint a proxy and attorney or a corporate representative using electronic means to deliver the document (or a copy of the document) effecting the appointment and, in the absence of any manifest irregularity, the Company may act on that appointment.

14.19. Validity of proxies

(a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:

- (i) the previous death or mental incapacity of the principal;
- (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or

(iii) the transfer of the Share in respect of which the instrument or power is given,

if no notice in writing of the death, mental incapacity, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting at which the instrument or power is used.

(b) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes on the resolution for which the proxy is proposed to be used.

14.20. Where proxy is incomplete

(a) No instrument appointing a proxy is treated as invalid merely because:

(i) it does not contain the address of the appointor or proxy;

(ii) it is not dated; or

(iii) it does not contain in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.

(b) Where the instrument does not specify the name of a proxy, the instrument is treated as given in favour of the chairman of the meeting.

14.21. Right of officers and advisers to attend general meeting

(a) A Director who is not a Member is entitled to be present and to speak at any general meeting.

(b) A Secretary who is not a Member is entitled to be present and, at the request of the chairman of the meeting, to speak at any general meeting.

(c) Any other person (whether a Member or not) required by the Directors to attend any general meeting is entitled to be present and, at the request of the chairman of the meeting, to speak at that general meeting.

14.22. Use of technology

The Company may hold a general meeting at 2 or more venues using any technology that gives Members a reasonable opportunity to participate.

14.23. Minutes

(a) The Company must keep minute books in which it records within 30 days:

(i) proceedings and resolutions of meetings of the Company's members;

(ii) proceedings and resolutions of Director's meetings; and

(iii) resolutions passed by Members without a meeting.

(b) The Company must ensure that minutes are signed within a reasonable time after date of the meeting or of the resolution being passed by:

(i) the chairman of the meeting; or

(ii) the chairman of the next meeting; or

(iii) in the case of a resolution without a meeting, a Director.

15. Appointment, removal and remuneration of Directors

15.1. Appointment and removal

(a) There must be at least 3 Directors, or such greater number of Directors not exceeding 10 as the Directors think fit, in office at all times.

(b) Subject to the Act, the Company may at any time by resolution passed in general meeting:

(i) appoint any person to be a Director; or

(ii) remove any Director from office.

(c) Subject to the Act, the Directors may at any time appoint any person to be a Director. That person holds office until the end of the next following general meeting and is eligible for election at that meeting.

15.2. No Share qualification

No Share qualification is required of a Director.

15.3. Retirement at each annual general meeting

(a) Subject to clause 18.1 and only when the Company is admitted to the Official List:

(i) no Director except the Managing Director may hold office for a period in excess of 3 years, or beyond the third annual general meeting following the Director's election, whichever is the longer, without submitting himself or herself for re-election; and

(ii) at every annual general meeting one-third of the previously elected Directors, and if their number is not a multiple of three, then the number nearest to but not exceeding one-third, must retire from office and are eligible for re-election.

(b) The Directors to retire in every year under clause 15.3(a), are the Directors longest in office since last being elected. Between Directors who are elected on the same day, the Director to retire is decided by lot to be conducted by the Chairman, or if he or she is a candidate, by the deputy Chairman, unless they agree otherwise.

(c) A retiring Director is eligible for re-election without needing to give any prior notice of an intention to submit for re-election and holds office as a Director until the end of the meeting at which the Director retires.

(d) Any Director appointed and vacating office under clause 15.1(b) is not taken into account in deciding the number or identity of the Directors to retire by rotation under this clause.

(e) No person other than a retiring Director or a Director vacating office under clause 15.1(b) is eligible to be elected a Director at any general meeting unless a notice of the Director's candidature is given to the Company at least 35 Business Days (or in the case of a meeting that Members have requested the Directors to call, 30 Business Days) before the meeting.

15.4. Remuneration

(a) Subject to clause 15.4(b) and the Listing Rules, the Directors are paid for their services as Directors such fees as the Directors determine not exceeding in aggregate a maximum sum that is from time to time approved by the Members in a general meeting. The notice convening a general meeting at which it is proposed to seek approval to increase that maximum aggregate sum must specify the proposed new maximum aggregate sum and the amount of the proposed increase.

(b) Any Director who is remunerated as an executive Director may only be paid fees under clause 15.4(a) if the Directors determine that the Director should be compensated for any special duties, responsibilities which are not recognised in his or her executive remuneration and the Directors may determine the extent, if any, to which such a Directors may participate.

(c) The fees fixed under clause 15.4(a):

(i) are divided among the Directors in the proportions and on the basis as they may agree or, if they cannot agree, equally among them; and

(ii) are exclusive of any benefits which the Company may provide to Directors in satisfaction of legislative schemes including, without limitation, benefits provided under superannuation guarantee or similar schemes or any other benefit permitted by the Act or this Constitution.

(d) Any Director may elect to have his or her fees packaged by way of allocation among fees, superannuation contribution, motor vehicle or communications payments and any other categories, subject always to being within the remuneration practices of the Company.

(e) The Directors are also entitled to be paid or reimbursed (in accordance with the policies applicable to the reimbursement of management expenses) for all travelling and other

expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.

(f) If, with the approval of the Directors, any Director performs extra services or makes any special exertions for the benefit of the Company, the Directors may approve the payment to that Director of special and additional remuneration as the Directors think fit having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration must not include commission on, or a percentage of profits or operating revenue.

(g) A Director may be engaged by the Company in any other capacity (other than as auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

(h) Fees payable by the Company and any entity under its control to non-executive Directors are to be by fixed sum, and not by commission on, or percentage of, profits or operating revenue.

(i) Remuneration payable by the Company and any entity with which it is associated to any executive Director must not include a commission on, or percentage of, operating revenue.

15.5. Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant:

- (a) under the Act;
- (b) because of a resolution under clause 15.1(b)(ii); or
- (c) under clause 15.3,

the office of a Director becomes vacant if the Director:

- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns by notice in writing to the Company;
- (f) dies; or

(g) is absent (and not represented by an alternate Director) from 6 consecutive meetings of the Directors without special leave of absence from the Directors and the Board resolves that his or her office be vacated.

15.6. Retiring allowance for Directors

(a) Subject to the Act, the Company may:

(i) make any payment or give any benefit to any Director or any other person in connection with the Director's retirement, resignation from or loss of office or death while in office;

(ii) make contracts or arrangements with a Director or a person about to become a Director of the Company under which the Director or any person nominated by the Director is paid or provided with a lump sum payment, pension, retiring allowance or other benefit on or after the Director or person about to become a Director ceases to hold office for any reason;

(iii) make any payment under any contract or arrangement referred to in clause 15.6(a)(i); and

(iv) establish any fund or scheme to provide lump sum payments, pensions, retiring allowances or other benefits for:

(A) Directors ceasing to hold office; or

(B) any person including a person nominated by the Director, in the event of the Director's death while in office,

and from time to time pay to the fund or scheme any sum as the Company considers necessary to provide those benefits.

(b) The Company may impose any conditions and restrictions under any contract, arrangement, fund or scheme referred to in clause 15.6(a) as it thinks proper.

(c) The Company may authorise any subsidiary to make a similar contract or arrangement with its Directors and make payments under it or establish and maintain any fund or schemes, whether or not all or any of the Directors of the subsidiary are also Directors of the Company.

16. Powers and duties of Directors

16.1. Powers of Directors

(a) Subject to the Act and this Constitution, the business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the Act or this Constitution, required to be exercised by the Company in a general meeting.

(b) Without limiting the generality of clause 16.1(a), the Directors may exercise all the powers of the Company:

- (i) to borrow money, to charge any property or business of the Company or all or any of its uncalled capital;
- (ii) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (iii) in relation to any Seal and any branch register.

16.2. Appointment of attorneys and representatives

(a) The Directors may, by power of attorney or by general or specific appointment, appoint such person or persons to be an attorney or representative of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the Directors for any period and subject to any conditions as they think fit.

(b) Any appointment under clause 16.2(a) may be made on terms for the protection and convenience of persons dealing with any such attorney or representative as the Directors think fit and may also authorise an attorney or representative to delegate all or any of the powers, authorities and discretions vested in the attorney or representative.

16.3. Negotiable instruments

All negotiable instruments of the Company are to be executed by the persons and in the manner determined by the Directors from time to time.

17. Proceedings of Directors

17.1. Proceedings

(a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

(b) A Director may at any time, and the Secretary must on the request of a Director, convene a meeting of the Directors.

(c) Reasonable notice must be given to every Director for the place, date and hour of every meeting of the Directors using any technology consented to by the Directors. Where any Director is for the time being outside Australia, notice need only be given to that Director if contact details have been given, but notice must always be given to any alternate Director in Australia whose appointment by that Director is for the time being in force.

17.2. Meetings by telecommunications

The Directors may hold a valid meeting using any medium by which each of the Directors can simultaneously hear all the other participants (including telephone and video conferencing), and then:

(a) the participating Directors are taken to be present at the meeting for the purposes of this Constitution concerning meetings of Directors;

(b) the meeting is taken to be held where the chairman of the meeting is; and

(c) all proceedings of the Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present in person.

17.3. Quorum at meetings

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is the number determined by the Directors and, if not so determined, is three Directors entitled to vote.

17.4. Chairman of Directors

(a) The Directors may elect one of their number as their Chairman and may decide the period during which the Chairman is to hold that office.

(b) Where a meeting of Directors is held and:

(i) a Chairman has not been elected as provided by clause 17.4(a); or

(ii) the Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or does not wish to chair the

meeting,

the Directors present must elect one of their number to be chairman of the meeting.

17.5. Proceedings at meetings

(a) Subject to this Constitution, questions arising at a meeting of Directors are decided by a majority of votes of Directors present in person or by their alternate director (if any) and voting and for all purposes any such decision is taken to be a decision of the Directors.

(b) In the case of an equality of votes, the chairman of the meeting has a second or casting vote in addition to the chairman's deliberative vote.

17.6. Disclosure of interests

(a) A Director is not disqualified by the Director's office from contracting with the Company in any capacity.

(b) A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested may not be avoided merely because the Director is a party to or interested in it.

(c) A Director is liable to account to the Company for any profits derived in respect of a matter in which the Director has a material interest, merely because of the Director's office or the fiduciary relationship it entails, unless the Director:

- (i) declares the Director's interest in the matter as soon as practicable after the relevant facts come to the Director's knowledge; and
- (ii) does not contravene this Constitution or the Act in relation to the matter.

(d) A general notice stating:

(i) that the Director is an officer or Member of a specified body corporate or firm; and

(ii) the nature and extent of the Director's interest in that body corporate or firm in a matter involving the Company and that body corporate or firm,

is sufficient declaration of the Director's interest, provided the extent of that interest is at the time of first consideration of the matter by the Directors no greater than was stated in the notice.

(e) Except as permitted by the Act and the Listing Rules, a Director must not:

(i) vote; or

(ii) be present while the matter is being considered,

at a meeting of the Directors at which there is considered any contract or proposed contract or arrangement in which the Director has a direct or indirect material personal interest or any lesser interest.

(f) If the provisions of this clause 17.6 and the Act are observed by a Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signs, affixes or witnesses the affixing of a Seal to the document evidencing the contract or arrangement does not in any way affect its validity.

17.7. Alternate Directors and attendance by proxy

(a) A Director may:

(i) with the approval of a majority of the other Directors, appoint a person (whether a Member of the Company or not); or

(ii) without the need for the approval of the other Directors, appoint another Director,

to be an alternate Director in the Director's place during any period that the Director thinks fit or generally.

(b) An alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in the Director's stead.

(c) An alternate Director may exercise any powers which the appointor may exercise. The exercise of any power by the alternate Director (including, without limitation, executing a document) is taken to be the exercise of the power by the appointor. The exercise of any power by the alternate Director is as agent of the Company and not as agent of the appointor. Where the alternate is another Director, that Director is entitled to cast a deliberative vote on the Director's own account and on account of each person by whom the Director has been appointed as an alternate Director.

(d) The appointment of an alternate Director:

- (i) may be terminated at any time by the appointor even if the period of the appointment of the alternate Director has not expired; and
- (ii) terminates automatically if the appointor vacates office as a Director.

(e) An appointment or the termination of an appointment of an alternate Director is effected by service on the Company of a written notice signed by the Director making the appointment.

(f) Without limiting clause 17.7(e), an appointment of an alternate Director may be suspended or terminated by an electronic message to the Company from the Director making the appointment.

(g) Other than:

- (i) for reimbursement of expenses under clause 15.4(d); or
- (ii) as authorised by the Directors,

an alternate Director is not entitled to any additional remuneration from the Company.

(h) Any additional remuneration that is paid to an alternate Director must be deducted from the remuneration of the appointor.

(i) An alternate Director is not taken into account in determining the number of Directors or rotation of Directors.

(j) A Director may attend and vote by proxy at any meeting of the Directors provided that such proxy is a Director of the Company and has been appointed in writing signed by the appointing Director. Such appointment may be general or for any particular meeting or meetings.

17.8. Vacancies

If the number of Directors is reduced below the minimum set by the Act:

(a) for so long as their number is sufficient to constitute a quorum, the remaining Directors may act; and

(b) if the number of remaining Directors is not sufficient to constitute a quorum, the remaining Director or Directors may act only for the purpose of increasing the number of Directors to the minimum number required under this Constitution to constitute a quorum or for calling a general meeting, but for no other purpose.

17.9. Committees

(a) The Directors may delegate any of their powers to a committee or committees consisting of any number of them and such other persons as the Directors from time to time think fit .

(b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors. A power so exercised is taken to be exercised by the Directors.

(c) Clauses 17.1, 17.2, 17.4 and 17.5 apply to any committee as if each reference in those clauses to the Directors was a reference to the Members of the committee and each reference to a meeting of Directors were to a meeting of the committee.

(d) Except in the case of a committee which consists of one Director only, the number of Members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Directors and, if not so determined, is two.

(e) Subject to clause 17.10(c), minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Act to be made, entered and signed.

17.10. Circular resolutions

(a) If a document:

(i) states that the signatories to it are in favour of a resolution;

(ii) sufficiently identifies the terms of the resolution; and

(iii) is signed by all the Directors entitled to vote on that resolution,

a resolution in those terms is taken to be passed at a meeting of the Directors held at the time when the document was signed by the last Director to do so.

(b) For the purposes of clause 17.10(a):

(i) two or more separate documents containing statements in identical terms each being signed by one or more Directors together are taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents;

(ii) a reference to all the Directors does not include a reference to an alternate Director whose appointor has signed the document, but an alternate Director may sign the document in the place of the appointor; and

(iii) a facsimile which is received by the Company and is expressed to be sent by or on behalf of a Director or alternate Director is taken to be signed by that Director or alternate Director at the time of receipt of the facsimile by the Company in legible form.

(c) Where a committee consists of one Director only, a document signed by that Director and recording a decision of the committee is valid and effective as if it were a decision made at a meeting of that committee and that document constitutes a minute of that decision.

17.11. Defects in Appointments

(a) All acts done by any meeting of the Directors, committee of Directors, or person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a Member of the committee.

(b) Clause 17.11(a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a Member of a committee or to act as a Director or that a person so appointed was disqualified.

18. Managing Director

18.1. Power to appoint Managing Director

(a) The Directors may appoint one or more Directors to the office of Managing Director for the period and on the terms as they think fit, including the grant of power for the Managing Director to delegate all or part of his or her authorities to another Director during any temporary absence. Subject to the terms of any agreement entered into in a particular case, the Directors may at any time revoke any appointment.

(b) A Managing Director's appointment automatically terminates if the Managing Director ceases for any reason to be a Director.

(c) Subject to clause 18.1(a), the provisions of clause 15.3 do not apply to a Managing Director or, if more than 1 Managing Director is appointed, the provisions of clause 15.3 do not apply to only one of the Managing Directors.

18.2. Remuneration

Subject to the terms of any agreement between the Managing Director and the Company, a Managing Director may receive remuneration (whether by way of salary, commission, other than on operating revenue, or participation in profits, or partly in one way and partly in another) as the Directors decide.

18.3. Delegation of powers to Managing Director

(a) The Directors may, on the terms and conditions and with any restrictions as they think fit, confer on a Managing Director any of the powers exercisable by them.

(b) Any powers so conferred may be concurrent with the powers of the Directors.

(c) The Directors may at any time withdraw or vary any of powers conferred on a Managing Director pursuant to clause 18.3(a).

19. Secretaries and other officers

19.1. Secretaries

(a) A Secretary of the Company holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.

(b) The Directors may at any time terminate the appointment of a Secretary.

19.2. Other officers

(a) The Directors may from time to time:

(i) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and

(ii) appoint any person, whether or not a Director, to any position or positions created under clause 19.2(a)(i).

(b) The Directors at any time may terminate the appointment of a person holding a position created under clause 19.2(a)(i) and may abolish the position.

20. Execution of documents

20.1. Manner of execution

(a) If the Company has a Seal, it may execute documents by affixing the Seal to the document and the affixing of the Seal is witnessed by:

(i) two Directors of the Company; or

(ii) at least one Director and a Secretary or a person authorised by the Directors to witness the affixing of the Seal.

(b) If the Company does not have a Seal, it may execute documents by the document being signed by:

(i) two Directors of the Company; or

(ii) at least one Director and a Secretary;

(c) The Company may have a Common Seal, a duplicate Common Seal and one or more other Seals for specific purposes, each appropriately identified on its face.

(d) A Common Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal. Every document to which a Seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a clause of documents in which that document is included.

(e) Subject to the Act, certificates in respect of Shares or other securities may be issued either:

(i) under a Seal; or

(ii) under the signature of an attorney of the Company appointed under clause 16.2.

(f) For the purposes of clause 20.1(c), any impression of any Seal or any Signature may be a facsimile impression or Signature which has been printed, stamped or impressed on the relevant certificate.

21. Inspection of records

21.1. Inspection of records

(a) The Directors may decide whether and to what extent, at which time and places and under what conditions, the accounting and other records of the Company will be open to the inspection of Members.

(b) A Member other than a Director has no right to inspect any document of the Company except as provided by law or as authorised by the Directors.

22. Dividends, interest and reserves

22.1. Power to declare dividends and pay interest

(a) Subject to the Act and to any special rights or restrictions attached to any Shares, the Directors may resolve to:

- (i) pay any dividend they think appropriate;
- (ii) fix the time for payment; and
- (iii) subject to clause 22.1(b), pay interest on any debt due by the Company.

(b) The Company must not pay interest on unpaid dividends.

22.2. Crediting of dividends

(a) Subject to any special rights or restrictions attached to any Shares, every dividend is:

(i) payable according to the amounts credited as paid on the fully paid (not partly paid) Shares in respect of which the dividend is paid;

and

(ii) apportionable and paid proportionately to the amounts paid for the Shares during any part or parts of the period in respect of which the dividend is paid.

(b) An amount paid on a Share in advance of a call is not taken for the purposes of clause 22.2(a) to be paid on the Shares.

(c) Subject to any special rights or restrictions attached to any Shares, the Directors may from time to time resolve that dividends are to be paid out of a particular source or particular sources, and where the Directors so resolve, they may, in their absolute discretion:

(i) allow any Member to elect from which specified sources that particular Member's dividend may be paid by the Company; and

(ii) where such elections are permitted and a Member fails to make such an election, the Directors may, in their absolute discretion, identify the particular source from which dividends are payable.

22.3. Reserves

(a) The Directors at their discretion may, at any time, set aside out of the profits of the Company as reserves any sums as they think proper, which sums may be applied for any proper purpose.

(b) The reserves may either be employed in the business of the Company or be placed in any investments as the Directors decide.

(c) The Directors may, without placing them to any reserve, carry forward any profits which they may think prudent not to distribute by way of dividend.

22.4. Deduction of unpaid amounts

The Directors may deduct from any dividend payable to a Member all sums of money presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

22.5. Distribution in kind

(a) When declaring a dividend the Directors may by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including, without limitation, paid up Shares in the Company or other Shares of the Company or any other body corporate.

(b) Where a difficulty arises in regard to a distribution under clause 22.5(a) the Directors may:

(i) settle the matter as they think fit and fix the value for distribution of the specific assets or any part of those assets;

(ii) decide that cash payments are to be made to any Member or Members on the basis of the value so fixed in order to adjust the rights of all parties; or

(iii) vest any specific assets in trustees.

22.6. Payment of distributions

(a) Any dividend, interest or other money payable in cash in respect of Shares may be paid, at the sole risk of the intended recipient:

(i) by cheque sent through the post directed to:

(A) the address of the Member as shown in the register or, in the case of joint holders, to the address shown in the register as the address of the joint holder first named in that register; or

(B) to any other address as the Member or joint holders in writing directs or direct; or

(ii) by electronic funds transfer to an account with a bank or other financial institution nominated by the Member and acceptable to the Company; or

(iii) by any other means determined by the Directors or otherwise disposed of according to law.

(b) Subject to the Act, all unclaimed dividends may be invested or otherwise used by the Directors for the benefit of the Company until claimed.

23. Capitalisation of profits

23.1. Capitalisation

The Directors may resolve:

(a) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account, profit and loss account or otherwise available for distribution to Members; and

(b) that the sum be applied, in any of the ways mentioned in clause 23.2, for the benefit of Members in full satisfaction of their interest in the capitalised sum, in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend or, if there is no such proportional entitlement, as the Directors determine.

23.2. Manner in which sums applied

The ways in which a sum may be applied for the benefit of Members under clause 0 are:

- (a) in paying up any amounts unpaid on the Shares held by the Members;
- (b) in paying up in full unissued Shares or debentures or debenture stock to be issued to Members as fully paid;
- (c) partly as mentioned in clause 23.2(a) and partly as mentioned in clause 23.2(b);
- (d) in accordance with any bonus share plan adopted by the Company; or
- (e) any other application permitted by the Act.

23.3. Participation by holders of partly paid shares

Where the conditions of issue of a partly paid share so provide, the holder may participate in any application of a sum under clause 23.2 to a greater extent than would have been the case had those funds been distributed by dividend, but not to any greater extent than permitted by the terms of issue.

23.4. Powers of Directors

The Directors must do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Members amongst themselves, may:

- (a) fix the value for distribution of the specific assets or any part of those assets;

(b) make cash payments in cases where Shares or debentures or debenture stock become issuable in fractions or determine that fractions may be disregarded;

(c) vest any cash or specific assets in trustees on trust for the persons entitled as they think fit; or

(d) on behalf of all the Members entitled to any further Shares or debentures or debenture stock on the capitalisation, authorise any person to make an agreement with the Company providing for the issue to such Members, credited as fully paid up, of any further Shares or debentures or debenture stock or for the payment by the Company on their behalf of all or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised and any agreement made under that authority is effective and binding on all the Members concerned.

24. Dividend reinvestment and bonus Share plans

24.1. Directors may establish plans

The Directors may establish one or more plans under which each participating Member may elect, as provided in the plan:

(a) that dividends to be paid in respect of some or all of the Shares from time to time held by the Member may be satisfied by the issue of fully paid ordinary Shares;

(b) that dividends are not to be declared or paid in respect of some or all of the Shares from time to time held by the Member, but that the Member is to receive fully paid ordinary Shares; or

(c) such other options as the Directors consider appropriate,

and the Directors may vary, suspend or terminate any such plan.

24.2. Implementing plan

Any such plan has effect in accordance with its terms and the Directors must do all things necessary and convenient for the purpose of implementing the plan, including the making of each necessary allotment of Shares and of each necessary appropriation, capitalisation, application, payment and distribution of funds that lawfully may be appropriated, capitalised, applied, paid or distributed for the purpose of the allotment.

24.3. Where not all Members or holders participate

For the purpose of giving effect to any such plan, the appropriations, capitalisation, applications, payments and distributions authorised by clause 23.1 may be made and the powers of the Directors under clause 23.4 may be exercised (with such adjustments as may be required) even if only some of the Members or holders of Shares of any class participate.

24.4. Information and advice to Members

(a) In offering opportunities to Members to participate in any such plan, the Directors may give such information as in their opinion may be useful to assist Members in assessing the opportunity and making requests to their best advantage.

(b) The Directors, the Company and its officers are not responsible for, nor are they obliged to provide, any legal, taxation or financial advice in respect of the choices available to Members.

24.5. Limit on Directors' obligations

The Directors are under no obligation:

(a) to admit any Member as a participant in any such plan; nor

(b) to comply with any request made by a Member who is not admitted as a participant in any such plan.

24.6. Duties and powers of Directors

In establishing and maintaining any such plan, the Directors must act in accordance with the provisions of this Constitution and may exercise all or any of the powers conferred upon them by the terms of any such plan, by this Constitution or by the Act.

25. Notices

25.1. No notice if no address provided

Any Member who has not left at or sent to the registered office, a place of address (for registration in the register) at or to which all notices, documents of the Company and Share certificates may be served or sent, is not entitled to receive any notice.

25.2. How notice to be given

(a) A Member may, by written notice to the Secretary left at or sent to the registered office, require that all notices to be given by the Company or the Directors be served on the Member's representative at an address specified in the notice.

(b) A notice may be given by the Company to any Member by:

(i) serving it on the Member personally;

(ii) properly addressing, prepaying and posting the notice to the Member or leaving it at the Member's address as shown in the register or the address supplied by the Member to the Company for the giving of notices;

(iii) serving it in any manner contemplated in this clause 25.2 on a Member's representative as specified by the Member in a notice given under clause 25.2(a);

(iv) facsimile transmission to the facsimile number supplied by the Member to the Company for the giving of notices; or

(v) sending it by email to an email address nominated by the Member or via any other electronic means permitted by the Corporations Act and nominated by the Member for the giving of notices; or

(vi) giving it by any other means permitted or contemplated by this clause 25 or the Act.

25.3. When notice is given

A notice is deemed to be given by the Company and received by the Member:

(a) if delivered in person, when delivered to the Member;

(b) if posted, 2 Business Days (or 6, if addressed or posted outside Australia) after the date of posting to the Member, whether delivered or not;

(c) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the Member nominated for the purposes of this clause; or

(d) if sent by email or other electronic means, on the date and time at which it enters the Member's information system (as shown in a confirmation of delivery report from the Company's information system, which indicates that the notice was sent to the email or electronic address of the Member nominated for the purposes of this clause),

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

25.4. Notice of general meeting

(a) Notice of every general meeting must be given in the manner authorised by clause 25.2:

(i) subject to clause 26.1, to every Member and Director;

(ii) to every person entitled to a Share in consequence of the death, mental incapacity or bankruptcy of a Member who, but for the death or bankruptcy, would be entitled to receive notice of the meeting; and

(iii) to any auditor of the Company.

(b) No other person is entitled to receive notice of general meeting.

26. Joint holders

26.1. Notice to be given by joint holders

Joint holders of a Share must give to the Company notice of:

(a) a single address for the purpose of all notices to be given by the Company under clause 25.1, and for the payment of dividends and the making of distributions in accordance with this Constitution; and

(b) a single account for the payment of money by electronic funds transfer in accordance with clause 22.6(a)(ii), if so desired, in respect of that Share.

26.2. Effect of giving notice

Where the Company receives notice under clause 26.1, the giving of notice, the payment of dividends or the making of distributions, to the address or account so notified is deemed given, paid or made to all joint holders of the relevant Share.

26.3. Failure to give notice

Where joint holders of a Share fail to give notice to the Company in accordance with clause 26.1, the Company may give notice, pay dividends and make distributions to the address of the joint holder whose name first appears in the register.

26.4. Receipts

Any of the joint holders of a Share may give effective receipt for all dividends and payments in respect of the Share.

27. Winding up

27.1. Where assets insufficient to repay paid up capital

If the Company is wound up and the assets available for distribution among the Members are insufficient to repay the whole of the paid up capital, the assets must be distributed so that, as nearly as may be, the losses are borne by the Members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up, on the Shares held by them respectively.

27.2. Where assets sufficient to repay paid up capital

If, in a winding up, the assets available for distribution among the Members are more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess must be distributed among the Members in proportion to the capital at the commencement of the winding up paid up, or which ought to have been paid up, on the Shares held by them respectively.

27.3. Powers of liquidator

If the Company is wound up, the liquidator may:

- (a) with the sanction of a special resolution, divide among the Members in kind the whole or any part of the property of the Company;
- (b) for that purpose set a value as the liquidator considers fair on any property to be so divided; and
- (c) decide how the division is to be carried out as between the Members or different classes of Members.

27.4. Vesting of property in trustees

The liquidator may, with the sanction of a special resolution, vest the whole or any part of any property in trustees on any trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any Shares or other Shares in respect of which there is any liability.

28. Indemnity and insurance

28.1. Definition

In this clause **Officer** has the meaning in section 9 of the Act.

28.2. Company must indemnify Officers

To the extent permitted by the Act and without limiting the powers of the Company, the Company must indemnify any person who is or has been an Officer of the Company, or of a related body corporate of the Company against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served in that capacity:

(a) incurred by any other person (other than the Company or a related body corporate of the Company) that does not arise out of conduct involving a lack of good faith or conduct known to the other person to be wrongful; and

(b) for costs and expenses incurred by the person:

(i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

(ii) in connection with any application relating to such proceedings in which the court grants relief to the person under the Act.

28.3. Documentary indemnity and insurance policy

To the extent permitted by the Act and without limiting the powers of the Company, the Directors may authorise the Company to, and the Company may, enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,

a person who is, or has been, an Officer of the Company or of a related body corporate of the Company, which indemnity or insurance policy may be in such terms as the Directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.

28.4 Limit on liability

This clause 28 does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance.

28.5 Extent of indemnity

The indemnity in clause 28:

- (a) is enforceable without the Officer having first to incur any expense or make any payment; and
- (b) applies to Liabilities incurred both before and after the adoption of this Constitution.

28.6 Savings

Subject to the Act, nothing in clause 28:

- (c) affects any other right or remedy that a person to whom this clause applies may have in respect of any Liability referred to in this clause;
- (d) limits capacity of the Company to indemnify or provide or pay for insurance for any person to whom this clause 28 applies; or
- (e) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into prior to the adoption of this Constitution.

28.7. Indemnity continues

The benefit of each indemnity given in this clause 28 continues, even if its terms or the terms of this clause 28 are modified or deleted, in respect of a liability arising out of acts, omissions or events occurring prior to the modification or deletion.

DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

THIS DEVELOPMENT AND COMMERCIALIZATION AGREEMENT ("Agreement") dated as of December 7, 2010 ("Effective Date"), is entered into by and between Angioblast Systems Inc., a Delaware corporation having its principal place of business at 275 Madison Ave., 4th floor, New York, New York 10016 ("Angioblast") and Cephalon, Inc., a Delaware corporation having its principal place of business at 41 Moores Road, Frazer, Pennsylvania 19355 ("Cephalon").

BACKGROUND

A. Angioblast has developed a proprietary technology platform based on MPCs (as defined below) that can produce certain novel therapeutic products for the treatment of various indications including those in the Field (as defined below). Angioblast owns or controls certain patents, know-how and other intellectual property relating to MPCs and Products;

B. Cephalon desires to develop and commercialize the Products in the Field in the Territory (as defined below), and Angioblast desires to have the Products developed and commercialized by and with Cephalon, in accordance with this Agreement; and

C. Cephalon desires to obtain from Angioblast certain rights and licenses for the Products, and Angioblast is willing to grant to Cephalon such rights on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS / INTERPRETATION

1.1 "Accounting Standards" means then current generally accepted accounting principles in the United States, consistently applied.

1.2 "Adverse Drug Reaction" has the meaning as defined in the then-current guidelines and regulations promulgated by the ICH (International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use) and shall include any "Adverse Drug Experience" as defined in the then-current 21 CFR Section 314.80.

1.3 "Affiliate" means, with respect to a Person, any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person, as the case may be, for as long as such control exists. As used in this Section 1.3, "control" means: (a) to possess, directly or indirectly, the power to direct the management and policies of such Person, whether through ownership of voting securities or by contract relating to

voting rights or corporate governance; or (b) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage that is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting share capital in such Person.

1.4 “Angioblast Know-How” means any and all Know-How Controlled by Angioblast during the Term that is (a) useful or necessary for (i) the Development or Commercialization of Products in the Field or (ii) the expansion or other processing of Expanded HPCs in the Oncology Field, in each case in the Territory or (b) otherwise made available to Cephalon hereunder.

1.5 “Angioblast Patents” means any and all Patents Controlled by Angioblast during the Term that: (a) but for the Agreement, would be infringed by using, selling or importing any Product for use in the Field in the Territory; (b) but for the Agreement, would be infringed by processing or manufacturing Expanded HPCs using MPCs for use in the Oncology Field in the Territory, in each case including, but not limited to: (i) compositions of matter of any Product, (ii) methods of use, administration or treatment involving any Product (iii) methods of processing or other manufacture of Expanded HPCs using MPCs; or (c) any Patent reasonably necessary or useful for the Development and Commercialization of Products for use in the Field in the Territory in accordance with this Agreement. Without limiting the foregoing, a list of Angioblast Patents believed to be complete as of the Effective Date is appended hereto as Exhibit 1.5 and will be updated periodically to reflect changes thereto during the Term.

1.6 “Angioblast Technology” means, individually and collectively, the Angioblast Know-How and Angioblast Patents, including any Know-How and Patents consisting of Inventions owned by Angioblast hereunder (including any and all Improvements).

1.7 “Annual Net Sales” means aggregate Net Sales of all Products sold in the Territory in a particular calendar year. For such purposes, units of Product shall be considered sold when such units are shipped to a Third Party or the revenue from the sale thereof is recognized by the Selling Party for financial reporting purposes, whichever occurs first.

1.8 “Asia-Pacific” means the countries and territories listed on Exhibit 1.8.

1.9 “BMT MPCs” means MPCs intended for use [***], which MPCs are packaged and labeled for use in clinical trials or for commercial purposes in accordance with the applicable Specifications and legal requirements in the Territory.

1.10 “Business Day” means any day other than a Saturday, Sunday or any other day on which commercial banks in New York, New York or Melbourne, Australia (as applicable) are authorized or required by law to remain closed.

1.11 “Cardiovascular Field” means use in the following indications: [***] in each case in humans, using any delivery modality; however, the Cardiovascular Field shall exclude [***].

1.12 "Cardiovascular Product" means an MPC Product intended for use (whether in clinical trials or end use) in the Cardiovascular Field.

1.13 "Cephalon Know-How" means any and all Know-How Controlled by Cephalon during the Term that is (a) used for (i) the Development or Commercialization of Products in the Field or (ii) the expansion or other processing of Expanded HPCs in the Oncology Field, or (b) otherwise made available to Angioblast hereunder. Cephalon Know-How shall include all Data and Regulatory Materials generated with respect to the Products by or on behalf of Cephalon hereunder.

1.14 "CNS Field" means use in the following indications: [***], in each case in humans, using any delivery modality.

1.15 "CNS Product" means an MPC Product intended for use (whether in clinical trials or end use) in the CNS Field.

1.16 "Collaboration" means all activities performed by or on behalf of each Party with respect to the Field under this Agreement, including all activities of each Party under any Plan.

1.17 "Commercialization" (including any variations thereof, such as "Commercialize" and "Commercializing") means, with respect to a particular Product in the Field, the conduct of any and all processes and activities to establish and maintain sales for such Product (including with respect to reimbursement and patient access), including offering for sale, selling (including prelaunch and launch), marketing (including education and advertising activities), promoting, storing, transporting, distributing, and importing such Product, in each case with respect to the Field. For clarity, Commercialization shall exclude research and manufacturing activities and processes with respect to the Products.

1.18 "Confidential Information" means, with respect to a Party, all information of such Party that is disclosed to the other Party under this Agreement (a) in any form (oral, written, graphic, electronic or otherwise) and which is of the type generally deemed to be proprietary in the pharmaceutical industry or (b) in any tangible form and which is marked "Confidential" or with other similar designation to indicate its confidential or proprietary nature or (c) in oral form and which is indicated to be confidential or proprietary by the Party disclosing such information at the time of initial disclosure and is confirmed in writing as confidential or proprietary by the disclosing Party within forty-five (45) days after such disclosure. All information disclosed by either Party pursuant to the Mutual Confidentiality Agreement between the Parties dated June 24, 2009 (the "Prior Confidentiality Agreement"), shall be deemed to be such Party's Confidential Information disclosed hereunder.

1.19 "Control" (including any variations thereof, such as "Controlled" and "Controlling"), means with respect to Know-How, Patents or other intellectual property rights, possession by the Party granting the applicable right, license or sublicense to the other Party as provided herein, of the power and authority, whether arising by ownership, license, or other authorization, to disclose and deliver the particular Know-How to the other Party, and to grant and authorize under such Know-How, Patent or other intellectual property rights the right, license or sublicense, as applicable, of or within the scope granted to such other Party in this Agreement without giving rise to a violation of the terms of any written agreement with any Third Party existing as of the Effective Date or any written agreement entered into after the Effective Date with respect to Know-How, Patent, or other intellectual property in-licensed after the Effective Date pursuant to which such Party in-licensed such Know-How, Patents or other intellectual property. Notwithstanding anything to the contrary in this Agreement, the following shall not be deemed to be Controlled by a Party: (i) any Know-How, Patent or intellectual property owned or licensed by any Acquiring Entity immediately prior to the effective date of merger, consolidation or transfer, and (ii) any Know-How, Patent or intellectual property that any Acquiring Entity subsequently develops independently, without accessing or practicing the Angioblast Technology (in the case of an Acquiring Entity of Angioblast) or the Cephalon Know-How (in the case of an Acquiring Entity of Cephalon). For purposes of this Section 1.19, "Acquiring Entity" means a Third Party that merges or consolidates with or acquires a Party, or to which a Party transfers all or substantially all of its assets to which this Agreement pertains, except with respect to Mesoblast Limited, which shall not be considered an Acquiring Entity for purposes of this Agreement.

1.20 "Data" means any and all research data, pharmacology data, preclinical data, clinical data and/or all regulatory documentation, information and submissions pertaining to, or made in association with any Regulatory Materials or the like for any Product, in each case that are Controlled by a Party during the Term.

1.21 "Development" (including any variations thereof, such as "Develop" and "Developing") means, with respect to any Product in the Field, the conduct of any and all clinical trials, regulatory and associated activities such as data analysis necessary to prepare and file for, obtain and maintain any Marketing Approval for such Product. For clarity, Development shall (a) include clinical trials for additional indications in the Field for a Product for which a Marketing Approval has been obtained or other label expansion studies, quality of life assessments, pharmacoeconomics, mandatory post-marketing studies, regulatory affairs (including preparation of CMC (chemistry, manufacturing and controls) and Regulatory Materials and (b) exclude research, non-clinical and preclinical testing, toxicology studies and manufacturing activities and processes with respect to the Products.

1.22 "Dollars" or "\$" means the official currency of the United States.

1.23 "EMA" means the European Medicines Agency, or any successor entity thereto performing similar functions.

1.24 “Europe” means all countries, nations, states or other territories under the jurisdiction of the EMA.

1.25 “Existing Mark” means the trademark “[***]” together with all stylizations thereof and representations thereof in any language.

1.26 “Expanded HPCs” means any and all [***] expanded or otherwise processed using MPCs in a final packaged form and labeled for use in clinical trials or for commercial purposes in accordance with the applicable Specifications and legal requirements in the Territory.

1.27 “FDA” means the United States Food and Drug Administration, or any successor entity thereto performing similar functions.

1.28 “Field” means, with respect to the Cardiovascular Product, the Cardiovascular Field; with respect to the CNS Product, the CNS Field and with respect to the Expanded HPCs, the Oncology Field.

1.29 “GMP” means the then-current good manufacturing practice (or similar standards) for the manufacture, handling and storage of pharmaceutical products with respect to [***] (as applicable) as required by the Regulatory Materials for such [***] in the applicable jurisdiction, including any IND, MAA or Marketing Approval.

1.30 “IND” means any Investigational New Drug Application (including any amendments thereto) filed with the FDA pursuant to 21 C.F.R. §321 before the commencement of clinical trials of a Product, or any comparable filings with any Regulatory Authority in any other jurisdiction.

1.31 “Initiate” (including any variations thereof, such as “Initiation” and “Initiated”) means, with respect to a clinical trial, the first dosing of a subject in such clinical trial in accordance with the protocol therefor.

1.32 “Know-How” means any and all information, tangible materials and other subject matter comprising (i) ideas, discoveries, inventions, improvements or trade secrets, (ii) techniques, methods, formulas, processes and Data, and (iii) compositions of matter, including MPCs. Know-How shall exclude any Patent rights with respect thereto and any and all patient-specific and other similar data to the extent such exclusion is required by applicable Law.

1.33 “Knowledge” means with respect to a Party, the actual knowledge of the Party (and with respect to Angioblast, including the actual knowledge of [***]).

1.34 “Law” means, individually and collectively, any and all laws, ordinances, orders, rules, rulings, directives and regulations of any kind whatsoever of any governmental or regulatory authority within the applicable jurisdiction.

1.35 "Major European Countries" means, collectively, France, Germany, Italy, Spain and the United Kingdom.

1.36 "Marketing Approval" means, with respect to a Product in a particular jurisdiction, all approvals, licenses, registrations or authorizations necessary for the Commercialization of such Product in such jurisdiction, including only where mandatory for Commercialization of such Product, approval of labeling, price or reimbursement.

1.37 "Marketing Approval Application" or "MAA" means an application submitted to a Regulatory Authority for Marketing Approval (together with supporting documentation), including in the United States a biologic license application (as described in 21 CFR 601.2).

1.38 "Marketing Partner" means a Third Party to which Cephalon has granted rights to Commercialize a Product (including any right to promote or co-promote) for use in the Field within the Territory on such Third Party's own behalf. For clarity, Marketing Partner shall exclude distributors, wholesalers and resellers of Products appointed by Cephalon that do not engage in any marketing or promotion of the Products.

1.39 "MHLW" means Ministry for Health, Labor and Welfare of Japan together with the Pharmaceutical and Medical Devices Agency (formerly known as IYAKUHIN SOGO KIKO), in either case or any successor entity thereto performing similar functions.

1.40 "MPC" means [***].

1.41 "MPC Product" means a pharmaceutical product containing a population of MPCs in a final packaged form and labeled for use in clinical trials or for commercial purposes in accordance with the applicable Specifications and legal requirements in the Territory.

1.42 "Net Sales" means [***]:

(a) [***];

(b) [***];

(c) [***];

(d) [***];

(e) [***];

(f) [***], and

(g) [***].

[***]

1.43 "Oncology Field" means [***].

1.44 "Party" means Angioblast or Cephalon, individually, and "Parties" means Angioblast and Cephalon, collectively.

1.45 "Patent(s)" means any patents and patent applications, together with all additions, divisions, continuations, continuations-in-part, substitutions, reissues, re-examinations, extensions, registrations, patent term extensions, supplemental protection certificates and renewals of any of the foregoing.

1.46 "Person" means any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization or government or political subdivision thereof.

1.47 "Phase 2a Clinical Trial" means any human clinical trial conducted in the United States on a sufficient number of patients the primary purpose of which is to identify a dose or range of doses of a Product at a limited number of clinical sites, and which clinical trial meets the standards set forth at 21 CFR Section 312.21(b), or, with respect to a jurisdiction other than the United States, a similar clinical trial.

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1.48 "Phase 2b Clinical Trial" means any human clinical trial conducted in the United States on a sufficient number of patients the primary purpose of which is to make a preliminary or qualitative determination of efficacy of a Product in the patients being studied for the dosage regimes indicated in the related Phase 2a Clinical Trial as required under 21 C.F.R. §312.21(b), or, with respect to a jurisdiction other than the United States, a similar clinical trial.

1.49 "Phase 3 Clinical Trial" means any human clinical trial conducted in the United States with respect to a Product, on a sufficient number of patients, which is prospectively designed to demonstrate statistically whether such Product is effective and safe for use in a particular indication in a manner sufficient to support Marketing Approval of such Product for the indication being investigated by the study as required under 21 C.F.R. § 312.21(c), any other pivotal clinical trial that is intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of a Product in a manner sufficient to support Marketing Approval of such Product in the indication being studied, or, with respect to a jurisdiction other than the United States, a similar clinical trial.

1.50 "Product" means, individually and collectively, the Cardiovascular Product, the Expanded HPCs, and the CNS Product.

1.51 "Prosecution and Maintenance" (including any variations thereof, such as "Prosecute and Maintain" and "Prosecuting and Maintaining") means, with respect to a Patent, the preparing, filing, prosecuting and maintenance of such Patent, as well as continuations, continuations-in-part, divisionals, re-examinations, reissues and requests for patent term extensions and the like with respect to such Patent, together with the conduct of interferences, the defense of oppositions and other similar proceedings with respect to a Patent.

1.52 "Region" means, individually, each of (i) Asia-Pacific, (ii) Europe and (iii) ROT.

1.53 "Regulatory Authority" means, in a particular country or regulatory jurisdiction, any applicable governmental authority involved in granting Marketing Approval in such country or jurisdiction, including, (a) in the U.S., the FDA, (b) with respect to Europe, the EMA, (c) in Japan, the MHLW and (d) in China, the SFDA.

1.54 "Regulatory Materials" means regulatory applications (including INDs and MAAs), submissions, notifications, communications, correspondence, registrations, approvals (including Marketing Approvals) and/or other filings made to, received from or otherwise conducted with a Regulatory Authority (including minutes of meeting with Regulatory Authorities) that are necessary or reasonably desirable to access in connection with the Development, manufacture or Commercialization of any Product in a particular country or regulatory jurisdiction.

1.55 “Rest of Territory” or “ROT” means all countries and territories of the world including the United States, but excluding Asia-Pacific and Europe.

1.56 “SFDA” means the State Food and Drug Administration of China, or any successor entity thereto performing similar functions.

1.57 “Specifications” means, with respect to the BMT MPCs, Cardiovascular Product or the CNS Product those written specifications therefor initially established by Angioblast as may be modified by mutual agreement of the Parties as set forth in this Agreement.

1.58 “Sub-Field” means, individually, each of the Cardiovascular Field, the Oncology Field and the CNS Field.

1.59 “Term” means the period beginning on the Effective Date and, unless terminated earlier, expiring when this Agreement has expired for each of the Cardiovascular Field, the Oncology Field and the CNS Field in accordance with the provisions of Section 13.1.

1.60 “Territory” means all countries and territories of the world.

1.61 “Third Party” means any Person other than Angioblast, Cephalon and their respective Affiliates.

1.62 Additional Definitions. Each of the following terms shall have the meaning described in the corresponding section of this Agreement indicated below:

<u>Term</u>	<u>Section Defined</u>	<u>Term</u>	<u>Section Defined</u>
Agreement	Preamble	Enforcement Action	9.3(b)
Alliance Manager	3.2	[***]	[***]
Angioblast	Preamble	[***]	[***]
Angioblast Competing Activities	2.4(b)	[***]	[***]
Angioblast Indemnities	12.1	[***]	[***]
Angioblast Logos	10.2	General Plan	4.2(a)
BMF	4.6(c)	Improvements	9.1(b)
Cephalon	Preamble	Indemnitee	12.3
Cephalon Competing Activities	2.4(a)	Indemnitor	12.3
Cephalon Indemnities	12.2	Infringing Product	9.3(b)
CMC Information	4.6(c)	Inventions	9.1(a)
[***]	[***]	JAMS Rules	14.3(b)(ii)
	3.1	JMC	7.7
Commercialization Plan	5.2	Joint Steering Committee	3.1
Committee	3.3	Joint Defense Agreement	9.4(a)
Competitive Product	2.4(c)	Joint Interest Agreement	9.5(a)
Conditional Forecast	4.4(c)	Joint Patent	9.2(b)
Costs	9.4(b)	JSC	3.1
Cover	9.5(c)		
Defensive Action	9.4(a)		
Dispute	14.1		
Effective Date	Preamble		

<u>Term</u>	<u>Section Defined</u>
Liabilities	12.1
Noticed Party	9.5(a)
Noticing Party	9.5(a)
Other Dispute	14.3
Other Enforcement Action	9.3(c)
Other Infringing Product	9.3(c)
Participating Party	4.7
Patent Challenge	13.3(c)
Payee	6.6
Payor	6.6
Plan	3.4
Prior Confidentiality Agreement	1.18
Research Plan	4.1
Responsible Party	4.7
[***]	[***]
SFDA	1.56
Specific Angioblast Patent	9.2(a)
[***]	[***]
Supply Agreement	7.1
Territory	1.60
Third Party Claim	12.1
[***]	[***]
[***]	[***]
[***]	[***]

1.63 Interpretation. Unless specified to the contrary, references to Articles, Sections, Paragraphs and Exhibits mean the particular Articles, Sections, Exhibits and Paragraphs to this Agreement and references to this Agreement include all Exhibits hereto. Unless the context clearly requires otherwise, whenever used in this Agreement: (a) the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation,” whether or not such additional words are written; (b) the word “or” shall have its inclusive meaning of “and/or” except when paired as “either/or”; (c) the word “day” or “quarter” or “year” means a calendar day or calendar quarter or calendar year unless otherwise specified; (d) the word “notice” shall require notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other communications contemplated under this Agreement; (e) the words “hereof,” “herein,” “hereunder,” “hereby” and derivative or similar words refer to this Agreement (including the Exhibits hereto); (f) provisions that require that a Party, the Parties or a committee hereunder “agree,” “consent” or “approve” or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter or otherwise; (g) words of any gender include the other gender; (h) words using the singular or plural number also include the plural or singular number, respectively; (i) references to any specific Law, article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement thereof; (j) the phrase “by or on behalf of” or “on behalf of” means, with respect to a Party, all Persons, including such Party’s employees, contractors, and consultants, acting under such Party’s authority and its Affiliates and, in the case of Angioblast, licensees, or in the case of Cephalon, Marketing Partners; provided, however, neither Party or its Affiliates (including their employees, contractors and consultants acting within the scope of their duties as such) shall be deemed to be acting “by or on behalf of” the other Party or its Affiliates hereto. This Agreement has been prepared jointly and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

ARTICLE II GENERAL RIGHTS AND LIMITATIONS

2.1 Grant of Rights to Cephalon.

(a) General. Subject to the terms and conditions of this Agreement (including Angioblast’s right to supply [***], Angioblast hereby grants to Cephalon an exclusive, transferable (in accordance with Section 15.8) right (even as to Angioblast) under the Angioblast Technology to: (i) Develop and [***] for use in the [***] in the Territory; (iii) Develop and Commercialize [***] for use in the [***] in the Territory; and (ii) Develop, expand and otherwise process [***] using [***] supplied hereunder and Commercialize [***] and such [***] for use in the [***] in the Territory. The rights granted under this Section 2.1(a) shall be irrevocable except as provided under Section 13.2 or 13.3.

(b) Affiliates; Marketing Partners. Cephalon shall have the right to exercise any of the rights under Section 2.1(a) through one or more of its Affiliates and permitted Marketing Partners. Angioblast shall have the right to approve any Marketing Partner (such approval not to be unreasonably withheld, conditioned or delayed), if such entity does not have (i) an enterprise value of [***] or more or (ii) revenues from sales of pharmaceutical products in the Territory for indications in the Cardiovascular Field, CNS Field or Oncology Field of [***] or more, or an Affiliate or such Person. Cephalon shall ensure that each of its Marketing Partners is bound by a written agreement consistent with the terms and conditions of this Agreement and containing provisions as protective of Angioblast and the Products as this Agreement; and Cephalon shall remain responsible to Angioblast for all activities of its Affiliates and Marketing Partners to the same extent as if such activities had been undertaken by Cephalon itself. Promptly following the execution of each agreement with a Marketing Partner, Cephalon shall provide Angioblast with a complete copy of such agreement, which may be redacted with respect to provisions not applicable to compliance with the terms and conditions of this Agreement.

2.2 Grant of Rights to Angioblast.

(a) Cephalon Know-How. Subject to the terms and conditions of this Agreement, Cephalon hereby grants to Angioblast a non-exclusive transferable (in accordance with Section 15.8) right to use and exploit the Cephalon Know-How (i) for purposes of carrying out its obligations under this Agreement including performing such Development activities with respect to the Products as provided in Section 4.3 and supplying [***] in accordance with ARTICLE VII and (ii) for purposes of researching, developing, manufacturing, using, selling, offering for sale, importing and otherwise exploiting MPC Products for use outside the Field. The rights granted under this Section 2.2(a) shall be irrevocable.

(b) Covenant Not to Sue. Subject to the terms and conditions of this Agreement, Cephalon (on behalf of itself, its predecessors, successors, Affiliates, and their respective predecessors, successors, parent and subsidiary corporations, together with each of their assigns, including in bankruptcy) covenants not to bring any action or initiate any proceeding against Angioblast (or any Person acting under authority or on behalf of Angioblast) under any claim of a Patent Controlled by Cephalon or its Affiliate alleging infringement (direct or contributory) or inducement of infringement in connection with the manufacture, use, sale, offer for sale, importation or other exploitation of any pharmaceutical product containing MPCs for use outside of the Field.

2.3 Certain Restrictions.

(a) On Cephalon. Cephalon agrees that neither it, nor any of its Affiliates or Marketing Partners, will sell or provide the Products to any Third Party if Cephalon or its relevant Affiliate or Marketing Partner knows, or has reason to believe, that the Products, as the case may be, sold or provided to such Third Party would be sold or transferred, directly or indirectly, for use outside the Field. Cephalon and its Affiliates and Marketing Partners shall promptly notify Angioblast in the event it or its Affiliate or Marketing Partner has reason to believe that any such Product sold or otherwise distributed has been or will be used outside the Field. In addition, except

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as the Parties may mutually agree in writing from time to time, Cephalon and its Affiliates and Marketing Partners shall not, and shall not authorize, facilitate, collaborate with or assist any Third Party to, conduct any clinical trials, testing or other development activities with respect to the Products for use outside the Field. Without limiting the foregoing, Cephalon, its Affiliates and Marketing Partners shall not (i) cooperate with any Third Party to develop or use any Product for applications outside the Field, including providing Products or funding for any physician-sponsored trial for such purpose or sponsoring or endorsing any publication indicating the Products are effective for any application outside the Field or (ii) seek any labeling for any Product outside of the Field.

(b) On Angioblast. Angioblast agrees that neither it, nor any of its Affiliates, will sell or provide MPC Products to any Third Party if Angioblast or its relevant Affiliate knows, or has reason to believe, that the MPC Products sold or provided to such Third Party would be sold or transferred, directly or indirectly, for use in the Field in the Territory. Angioblast and its Affiliates and licensees shall promptly notify Cephalon in the event it or its Affiliate or licensee has reason to believe that any such MPC Product sold or otherwise distributed has been or will be used in the Field. In addition, except as the Parties may mutually agree in writing from time to time or in the fulfillment of their obligations hereunder, Angioblast and its Affiliates shall not, and shall not authorize, facilitate, collaborate with or assist any Third Party to, conduct any clinical trials, testing or other development activities with respect to any product containing MPCs for use in the Field. Without limiting the foregoing, Angioblast and its Affiliates shall not, except in fulfillment of their obligations hereunder, (i) cooperate with any Third Party to develop or use of any products containing MPCs for applications in the Field, including providing such products or funding for any physician-sponsored trial for such purpose or sponsoring or endorsing any publication indicating products containing MPCs are effective for any application in the Field or (ii) seek any labeling for any such product for use in the Field. It is understood that nothing in this Agreement (including this Section 2.3(b)) shall be deemed to limit Angioblast's reservation of rights under Section 2.6(b).

2.4 Exclusivity.

(a) Cephalon. During the Term, on a Product-by-Product basis, except for the conduct of the activities pursuant to this Agreement, Cephalon agrees on its behalf and on behalf of its Affiliates (i) not to conduct, participate in or sponsor, directly or indirectly, any activities directed toward the development, manufacture, sales, marketing, promotion or distribution of any Competitive Product for the Field in the Territory (collectively, such activities "Cephalon Competing Activities") or (ii) not to appoint, license or otherwise authorize any Third Party, whether pursuant to such license, appointment, or authorization or otherwise to perform any Cephalon Competing Activities.

(b) Angioblast. During the Term, on a Product-by-Product basis, except for the conduct of the activities pursuant to this Agreement, Angioblast agrees on its behalf and on behalf of its Affiliates (i) not to conduct, participate in or sponsor, directly or indirectly, any activities directed toward the sales, marketing, promotion or distribution of any Competitive Product for the Field in

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the Territory (collectively, such activities “Angioblast Competing Activities”) or (ii) not to appoint, license or otherwise authorize any Third Party, whether pursuant to such license, appointment, or authorization or otherwise to perform any Angioblast Competing Activities. For clarity, from and after a termination of this Agreement with respect to a Product or Region, Angioblast’s obligations under this Section 2.4(b) shall expire with respect to such Product or Region, as applicable.

(c) Definition of Competitive Product. For purposes of this Section 2.4, “Competitive Product” means (i) with respect to the Cardiovascular Product, a pharmaceutical product comprising any stem cell(s) or MPC(s) being developed or commercialized for use in any of the following indications in humans: [***] (ii) with respect to CNS Products, a pharmaceutical product comprising any [***], and (iii) with respect to the Expanded HPCs, a pharmaceutical product comprising any [***].

(d) Post-Effective Date Affiliate. Notwithstanding anything herein to the contrary, if during the Exclusivity Period, Angioblast or any of its Affiliates is acquired by or merges or is otherwise consolidated with any Person that is performing or thereafter initiates performance of an Angioblast Competing Activity or such Person otherwise becomes an Affiliate of Angioblast after the Effective Date, then such Person may continue such Angioblast Competing Activity (an “Outside Competing Activity”) without breach of the exclusivity obligations under Section 2.4(b); provided that Angioblast shall sequester such Outside Competing Activity to ensure that the Outside Competing Activity is kept separate and independent of the Development, research, manufacture and Commercialization of the Products, including using commercially reasonable efforts to ensure that no personnel involved in such Outside Competing Activity has access to Data or Confidential Information relating to the Products. For clarity, any Data, Know-How, Patent or other intellectual property right resulting from such Outside Competing Activity shall not be included as Angioblast Technology under this Agreement, and nothing in this Agreement shall be construed to grant any rights to Cephalon under such Data, Know-How, Patent or other intellectual property right. Similarly, the Outside Competing Activity shall not make use of any Angioblast Technology.

Notwithstanding anything herein to the contrary, in the event that Angioblast is acquired by or merges or is otherwise consolidated with a Person performing any Other Competing Activity, then Cephalon shall have the right to elect upon written notice to Angioblast referencing this Section 2.4(d) to amend this Agreement such that (i) all rights to the Angioblast Technology granted to Cephalon hereunder shall survive pursuant to the terms hereof, (ii) Cephalon shall have the sole discretion to Develop and Commercialize the Products for use in the Field in the Territory as contemplated hereby, without giving effect to the JSC and other collaborative activities hereunder except as required by Law, (iii) subject to (i) and (ii), Angioblast’s sole obligations under the Agreement would be to supply the BMT MPCs and Cardiovascular Products and CNS Products for

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Puse in the Field in the Territory in accordance with ARTICLE VII and the Supply Agreement (once executed) and (iv) Cephalon's sole obligation under this Agreement would be to pay and report all amounts owed and due in accordance with ARTICLE VI and Exhibit 6.3. For clarity, any right of Angioblast to terminate this Agreement pursuant to Section 13.3(a) and (b) would no longer apply under the Agreement as amended.

2.5 Subcontractors. Except as otherwise provided under Section 2.1(b), either Party may engage Third Party subcontractors (including contract research organizations) in any country within the Territory to exercise the rights or perform the obligations of such Party under this Agreement; provided that such Party shall ensure that each such Third Party subcontractor is bound by a written agreement containing provisions as protective of the Angioblast Technology and the Products as this Agreement; and such Party shall remain responsible to the other Party for all activities of its Third Party subcontractors to the same extent as if such activities had been undertaken by such Party itself.

2.6 No Other Rights.

(a) General. Except for the rights expressly granted in this Agreement, each Party retains all rights under its intellectual property, and no additional rights shall be deemed granted to the other Party by implication, estoppel or otherwise.

(b) Certain Reservations. For clarity, (i) the rights granted in this Agreement shall not be construed to convey any licenses or rights under the Angioblast Technology with respect to any product other than the Products and (ii) Angioblast retains all rights under the Angioblast Technology with respect to (A) manufacture of the Products except as otherwise provided in accordance with ARTICLE VII or any Supply Agreement (once executed) and otherwise fulfill its obligations hereunder, and (B) development, manufacture and commercialization (including marketing, promoting, selling and offering for sale) of products for use outside of the Field.

**ARTICLE III
GOVERNANCE**

3.1 Joint Steering Committee. The Parties shall establish a joint steering committee ("Joint Steering Committee" or "JSC") to govern certain matters in relation to the Parties actions and interactions under this Agreement as set forth in further detail on Exhibit 3.1.

3.2 Alliance Managers. Promptly following the Effective Date, each Party shall appoint a representative ("Alliance Manager") to facilitate communications between the Parties (including coordinating the exchange of Data and Know-How of each Party as required under this Agreement) and to act as a liaison between the Parties with respect to such other matters as the Parties may mutually agree in order to maximize the efficiency of the Collaboration. Each Party may replace its Alliance Manager with an alternative representative satisfying the requirements of this Section 3.2 at any time with prior written notice to the other Party. For clarity, the Alliance Managers may seek the advice and assistance of other personnel of either Party in fulfilling their obligations hereunder.

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3.3 Scope of Governance. Notwithstanding the creation of the JSC and any Subcommittee created by the JSC pursuant to Paragraph 1 of Exhibit 3.1 (each a "Committee"), each Party shall retain the rights, powers and discretion granted to it hereunder, and no Committee shall be delegated or vested with rights, powers or discretion unless such delegation or vesting is expressly provided herein, or the Parties expressly so agree in writing. No Committee shall have the power to (a) amend or modify this Agreement, (b) to determine whether or not a Party has met its diligence or other obligations under the Agreement, or (c) to determine whether or not a breach of this Agreement has occurred, and no decision of any Committee shall be in contravention of any terms and conditions of this Agreement. It is understood and agreed that issues to be formally decided by the JSC and any Subcommittee, as applicable, are only those specific issues that are expressly provided in this Agreement to be decided by the JSC and any such Subcommittee, as applicable.

3.4 Day-to-Day Responsibilities. Each Party shall: (i) be responsible for day-to-day implementation and operations of the Development, manufacturing and Commercialization activities with respect to Products in the Field for which it has or is otherwise assigned responsibility under the applicable Plan or this Agreement, and (ii) keep the other Party reasonably informed as to the progress of such activities, as reasonably requested by the other Party. For purposes of this Agreement, "Plan" means the Development Plan or the Commercialization Plan, in each case then-currently in effect.

3.5 Information Sharing. Without limiting the other provisions of this Agreement, each Party will keep the other reasonably informed on a timely basis as to the plans for and results of the activities of the Collaboration carried out by or under authority of such Party through the JSC and Alliance Managers.

3.6 Conflicts of Interest. If Cephalon or its Affiliate or Marketing Partner sells a Product to a Third Party to which it also provides other products or services, Cephalon or such Affiliate or Marketing Partner (as applicable) shall not price, discount or otherwise offer (including bundling or rebating) any Product in any way that benefits such other products or services at the expense of such Product or otherwise disadvantage the Products in a manner intentionally designed to reduce the amounts payable hereunder. In all events, Cephalon and its Affiliates and Marketing Partners shall price and offer the Products sold by it hereunder in accordance with applicable Law.

ARTICLE IV DEVELOPMENT AND REGULATORY ACTIVITIES

4.1 Certain Research and Preclinical Activities. The Parties acknowledge that the advancement of the use of Products in certain of the indications within the Field is [***] not otherwise included in the General Plan described under Section 4.2(a) below. Accordingly from time to time the Alliance Managers shall prepare and submit a plan and budget for such research and preclinical activities for each of the Products for use in the indications in the Field, including timelines setting forth the prioritization of each indication for each Product for use in the

Field (the "Research Plan"), and the JSC shall meet within thirty (30) days of the submission of such Research Plan to the JSC to review and approve such Research Plan. Each Party shall use commercially reasonable efforts to conduct such research and preclinical activities assigned to it in the Research Plan and [***] of the budgeted Third Party costs incurred by the Parties for conducting such activities in accordance with the Research Plan, the amount so incurred shall be reconciled on a quarterly basis in arrears such that [***]. For clarity, neither Party shall be obligated to perform or reimburse the costs of such activities except pursuant to an approved Research Plan therefor. For clarity, such research and preclinical activities to be performed by Angioblast in accordance with this Section 4.1 shall not include any development work for CMC (chemistry, manufacturing and controls) and Cephalon shall [***].

4.2 Development Plans.

(a) General Plan. A general plan describing overall Development goals, principles and timelines for the Collaboration is attached to this Agreement as Exhibit 4.2 (the "General Plan") and sets out separately certain Development activities to be conducted by each Party. The Parties shall use commercially reasonable efforts to Develop each of the Cardiovascular Product, Expanded HPCs and CNS Product for the Territory in a manner compatible with such goals, principles and timelines.

(b) Establishment of the Development Plan. Within sixty (60) days of the Effective Date, the Alliance Managers shall prepare and submit an initial draft of the Development Plan consistent with the General Plan and all applicable Law, including the standards and review of the FDA and other applicable Regulatory Authorities, and the requirements of Section 4.2(c) for activities to be carried out with respect to Development for each of the Cardiovascular Product, Expanded HPCs and CNS Product for the Territory through the period ending 31 December 2011 to the JSC for review, comment and approval. Accordingly, the JSC shall meet within thirty (30) days of the provision of such Development Plan to the JSC to review and approve such Development Plan. If the JSC is unable to reach consensus with respect to the Development Plan during such thirty (30) day period, then the applicable Party shall have the right to exercise its final decision with respect thereto in accordance with Paragraph 5 of Exhibit 3.1. On or before October 31st of each year, the Alliance Managers shall prepare and submit an updated Development Plan to the JSC for its review and approval following the same procedures. Without limiting the foregoing, the Alliance Managers may propose updates to the Development Plan from time to time and the JSC shall review the Development Plan and the Parties' performance thereunder on an ongoing basis. For clarity, except as otherwise expressly provided herein, any material update to the Development Plan shall be subject to the review and approval of the JSC following the same procedures.

(c) Content. Each Development Plan shall contain a description of the activities to be carried out for the Cardiovascular Product, Expanded HPCs and CNS Product for the Field in the Territory with timelines for the completion of such activities and in a level of detail consistent with practice in the biopharmaceutical industry. Except as otherwise provided herein, the timing and

order of such activities shall be determined by the JSC. Notwithstanding anything herein to the contrary, each Development Plan shall be consistent with the General Plan and the obligations of the Parties under this ARTICLE IV.

(d) Performance. Each Party shall (i) use commercially reasonable efforts to conduct those activities assigned to it under the applicable Development Plan in accordance with this ARTICLE IV and (ii) conduct those activities allocated to such Party under the Development Plan in compliance in all material respects with applicable Law and in accordance with good scientific and clinical practices. For clarity, neither Party shall conduct any Development with respect to Products in the Field for the Territory except in accordance with the Development Plan.

4.3 Development Activities of Angioblast.

(a) Conduct of Development Activities. Angioblast shall use commercially reasonable efforts to conduct those activities assigned to it under the then-current Development Plan in accordance with the timelines specified therein.

(i) If Cephalon provides written notice to Angioblast referencing this Section 4.3(a)(i), (A) requesting that Angioblast conduct a [***] Clinical Trial with respect to any of the following indications [***] and agreeing to conduct a [***], Trial for such indication in accordance with Section 4.4(b), then Angioblast (in consultation with Cephalon) shall prepare and present to the JSC a protocol for the conduct of such [***] Clinical Trial for such indication for the JSC's review and approval. Angioblast shall use commercially reasonable efforts to Initiate such clinical trial as soon as practicable under the circumstances and thereafter use commercially reasonable efforts to continue such clinical trial to completion in a timely manner in accordance with the protocol approved by the JSC. [***] For clarity and subject to the terms and conditions of this Agreement, Angioblast may at its own election, conduct one or more [***] for any indication within the Field.

(ii) Except as otherwise provided herein, the timing and order of [***] Clinical Trials to be conducted pursuant to this Section 4.3 shall be determined by the JSC and set forth in the Development Plan. In this regard, the Alliance Managers will include in the Development Plan submitted to the JSC for its review and approval a plan and budget for Angioblast's conduct of such activities, and the JSC shall meet within [***] of the submission of such Development Plan to the JSC to review and approve such Development Plan. Angioblast shall be responsible for and conduct such Clinical Trials in accordance the Development Plan and at its own expense, [***]. For clarity, Angioblast shall have no obligation to perform and Cephalon shall have no obligation to fund such [***] except pursuant to an approved plan and budget therefor.

(b) JSC Review. Within thirty (30) days of Angioblast's providing to the JSC the data from a [***] Clinical Trial conducted pursuant to Section 4.3(a), the JSC shall meet and review such data and determine how to proceed with respect to the Development of the Product for such indication. If any [***] (as defined in the applicable protocol) for the applicable [***] Clinical Trial is met, then the JSC shall promptly approve an appropriate protocol consistent with applicable Law so that Cephalon can Initiate a [***] Clinical Trial or [***] Clinical Trial, as determined by the JSC, with respect to the corresponding indication, but in no case longer than [***] after Angioblast presenting the data from the underlying [***] Clinical Trial to the JSC; otherwise, if a primary efficacy endpoint is not met, the JSC shall review such data and make a recommendation as to how to proceed with respect to the Development of the applicable Product for such indication (including for Angioblast to perform additional Development) and the timing therefor. If the JSC determines to conduct further Development of a Product for a particular indication, then the Development Plan shall be promptly updated accordingly.

4.4 Development Activities of Cephalon.

(a) [Intentionally Omitted.]

(b) Diligence. Cephalon shall use commercially reasonable efforts to conduct those activities assigned to it under the then-current Development Plan in accordance with the timelines specified therein and with an overall goal to realize the commercial opportunity for the Products for use in the Field in the Territory. Without limiting the foregoing, subject to Section 4.4(c) below, Cephalon shall Initiate (i) a [***] of the JSC's approval of the protocol therefor and thereafter use commercially reasonable efforts to continue such clinical trial to completion in a timely manner in accordance with the protocol approved by the JSC, (ii) a [***] of the JSC's approval of the protocol therefor and thereafter use commercially reasonable efforts to continue such trial to completion in a timely manner in accordance with such protocol; and (iii) a [***], as determined by the JSC, for each indication for which Cephalon has provided prior written notice to Angioblast agreeing to conduct a clinical trial pursuant to this Section 4.4(b) or as determined by the JSC as described in Section 4.3(b) and thereafter use commercially reasonable efforts to continue such trial to completion in a timely manner in accordance with the protocol approved by the JSC. In any such event, Cephalon (in consultation with Angioblast) shall prepare and present to the JSC a protocol for the conduct of such [***], as applicable; however, Cephalon acknowledges that Angioblast has prepared proposed protocols and identified certain potential clinical sites with respect to the conduct of the clinical trials described in clause (i) and (ii) above, and will consider in good faith using such protocols and clinical sites in the conduct thereof. If the data generated from

clinical trials performed pursuant to this Section 4.4(b) reasonably supports a Marketing Approval in the applicable jurisdiction(s) as determined by the JSC, then Cephalon shall use commercially reasonable efforts to file and prosecute an MAA to obtain such Marketing Approval for the Product subject to such clinical trial.

(c) Conditions Precedent. Notwithstanding Section 4.4(b) above, Cephalon shall not have the obligation to Initiate any [***] Clinical Trial or [***] Clinical Trial for a Product for use in the Field in the Territory unless and until (i) the applicable Regulatory Authority has accepted CMC Information necessary to support filing an MAA for such Product, and (ii) Angioblast has established through reasonable supporting documentation that it (or its Third Party contract manufacturer) has reasonably sufficient capability to supply the anticipated commercial requirements of Cephalon, its Affiliates and Marketing Partners for such Product [***] for use in the Field in the Territory. Except as otherwise provided below in this Section 4.4(c), [***] Angioblast's providing to the JSC the data from a [***] Clinical Trial for a Product for an indication in the Field in the Territory conducted pursuant to Section 4.3(a), Cephalon shall provide to Angioblast a reasonable forecast of the anticipated commercial requirements of it, its Affiliates and Marketing Partners for such Product for the indication in the Field in the Territory based on any sales history for products for such indication in the Field in the Territory and realistic forecasted demand (each a "Conditional Forecast"), and such Conditional Forecast shall be used as the basis to establish the capability of Angioblast (or its Third party contract manufacturer) to supply such requirements under subsection (ii) above. With respect to the Cardiovascular Product for congestive heart failure in the Cardiovascular Field, Cephalon shall provide Angioblast with a Conditional Forecast for such Product [***]. It is understood that the failure to satisfy the requirements of subsections (i) or (ii) above shall not be deemed to be a breach of Angioblast's obligations to supply the Products pursuant to ARTICLE VII.

4.5 Clinical Protocols.

(a) Each Party shall provide the JSC with copies of proposed clinical trial protocols, investigator brochures, clinical trial analyses and reports, and material correspondence (including all Regulatory Materials) with Regulatory Authorities with respect to each clinical trial and Product for use in the Field in the Territory. In any event, and without limiting the foregoing, each Party shall provide the JSC with a copy of the clinical plan and protocols for each proposed clinical trial for a Product reasonably in advance of the Initiation thereof for review and approval by the JSC.

(b) In addition, Angioblast agrees to provide to the JSC solely for informational purposes a sufficiently detailed synopsis of protocols to be used for clinical trials of pharmaceutical products containing MPCs for use outside the Field and in the Territory reasonably in advance of the Initiation of such clinical trial to assess whether such clinical trial is likely to present a material adverse risk to the Products for use in the Field in the Territory; however, Angioblast's obligation to so provide the JSC any such synopsis shall be subject to Angioblast's right to do so under its

agreements with any Third Party; provided further that Angioblast shall use good faith efforts to obtain the right to provide such synopsis to the JSC for such informational purposes. In the event a Third Party is unwilling to allow Angioblast provide such synopsis to the JSC, then Angioblast shall use good faith efforts to obtain the right to provide such synopsis to an independent clinical development expert acceptable to Cephalon and such Third Party, which expert shall have the right to provide to Cephalon a report stating only whether he/she believes conduct of the clinical trial described in such synopsis is likely to present a material adverse risk to the Products for use in the Field in the Territory. For clarity, (i) any synopsis provided to the JSC under this Section 4.5(b) shall be deemed to be Angioblast Confidential Information hereunder, (ii) neither Angioblast nor any of its Third Party partner shall be obligated to modify any such protocol and (iii) Cephalon agrees that Angioblast may provide similar synopsis provided under Section 4.5(a) to its Third Party partner(s) for information purposes on a reciprocal basis as such Third Party partner allows access thereto to Cephalon hereunder.

4.6 Regulatory Matters.

(a) Assignment of Regulatory Filings. Subject to Section 4.6(b) below, at reasonable times to be mutually agreed by the Parties in order to maximize the efficiency of the Development of the Products in accordance with each Party's responsibilities assigned to it under the Development Plan, Angioblast shall assign and deliver, or cause to be assigned and delivered, to Cephalon all Regulatory Materials (including INDs) obtained and maintained by Angioblast or its Affiliate or licensee for the Development of such Product for use in the Field in the Territory; provided, however, that, prior to the assignment of any such Regulatory Materials, Angioblast shall maintain such Regulatory Materials at its expense and shall take all reasonable actions to make available to Cephalon the benefits of such Regulatory Materials to the extent required by Cephalon in connection with its activities under this Agreement.

(b) Responsibility for Regulatory Filings. Each Party shall be responsible, [***], for filing, obtaining and maintaining approvals for those activities assigned to such Party hereunder in connection with the Development, manufacture and Commercialization of Products for the Field in the Territory. The Parties acknowledge that, as between the Parties, Cephalon shall have the sole right and responsibility for filing any MAA or Marketing Approval, as well as pricing or reimbursement approvals for the Products for the Field in the Territory and maintaining the same. All activities under this Section 4.6(b) shall be done subject to the oversight and in full consultation with the JSC. Prior to the filing any MAA for a Product in the Field in the Territory, Cephalon shall provide a copy thereof to the JSC for its review and approval (including any associated proposed labeling).

(c) BMF; CMC Information. As long as Angioblast is supplying (or having supplied) to Cephalon the BMT MPCs, Cardiovascular Product or CNS Products pursuant to ARTICLE VII or the Supply Agreement, Angioblast shall, on a Product-by-Product and country-by-country basis: (a) file a biologics master file ("BMF") in the Territory (or shall arrange for its contractor manufacturers to do so); or (b) provide to Cephalon Angioblast's then-current CMC

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Information, in each case, with respect to the [***] supplied by Angioblast (or its contractor manufacturer) to Cephalon under this Agreement or the Supply Agreement; to the extent reasonably necessary for Cephalon to file for, obtain and maintain obtain Marketing Approvals for the applicable Products in the Territory. Angioblast shall permit Cephalon to cross-reference any such BMF for the purposes of its Regulatory Materials (including INDs and MAAs) for the Products for use in the Field in the Territory in accordance with this Agreement. Cephalon shall reimburse Angioblast for [***] in accordance with this Section 4.6(c). For purposes of this Section 4.6(c), "CMC Information" means all Data regarding a Party's (or its contract manufacturer's) chemistry, manufacturing and controls filed or required to be filed to in connection with the Development or Commercialization of the Products.

4.7 Regulatory Cooperation. With respect to those Regulatory Materials Angioblast is required to file for, obtain and maintain to perform the Development activities assigned to Angioblast hereunder until such Regulatory Materials are assigned to Cephalon pursuant to Section 4.6(a), Angioblast shall be responsible for liaising with and managing all interactions with Regulatory Authorities with respect to such Product for use in the Field in the Territory, and during the period of time from and after such Regulatory Materials are assigned to Cephalon pursuant to Section 4.6(a), Cephalon shall be responsible for liaising with and managing all interactions with Regulatory Authorities with respect to such Product for use in the Field in the Territory. During the period of time that a Party has responsibility for liaising and managing interactions with Regulatory Authorities (the "Responsible Party"), the other Party (the "Participating Party") shall be entitled to participate in such interactions as provided in this Section 4.7.

(a) Involvement of the Participating Party. To the extent relating to the Products for use in the Field within the Territory or activities under the Agreement, the Responsible Party shall provide the Participating Party with:

(i) reasonable advanced notice (and in no event less than ten (10) Business Days' advance notice whenever feasible) of substantive meetings with any Regulatory Authority within the Territory that are either scheduled with, or initiated by or on behalf of, Responsible Party or its Affiliates, and an opportunity to have a reasonable number (but at least two (2)) representatives participate in all substantive meetings with such Regulatory Authority, and in any case shall keep the Participating Party informed as to all material interactions with such Regulatory Authorities;

(ii) a copy of any material documents, information and correspondence submitted to the FDA or any other Regulatory Authority within the Territory as soon as reasonably practicable, together with English translations and summaries thereof, to the extent such translations and summaries exist; and

(iii) with respect to Cephalon as the Responsible Party, an opportunity to have an observer attend any substantive meetings with Regulatory Authorities that are either scheduled with, or initiated by or on behalf of, the Responsible Party or its Affiliates to the extent

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such meetings are material to the chemistry, manufacturing and controls or the safety of products containing MPCs for use outside the Field or outside the Territory, and for clarity, such observer may be excluded from portions of any such meetings during which such observer's attendance would be inappropriate because of Cephalon's Confidential Information or other matters are discussed.

(b) JSC Approval. The JSC shall approve the overall strategy and positioning of all material Regulatory Materials (including product labeling) prior to their submission or filing, based upon reasonably detailed reports and summaries of such submissions and filings presented to the JSC by the Responsible Party. In connection with such review, the Responsible Party shall promptly provide to the JSC such additional information regarding a proposed filing as the Participating Party may reasonably request.

(c) Other Regulatory Matters. Each Party will promptly provide the other Party with copies of all material documents, information and correspondence received from a Regulatory Authority (including a written summary of any material communications in which such other Party did not participate) within the Territory and, upon reasonable request, with copies of any other documents, reports and communications from or to any Regulatory Authority within the Territory relating to the Products for use in the Field or activities under the Agreement. In addition, Angioblast shall provide to Cephalon reasonable advance notice of any substantive meetings with Regulatory Authorities that are either scheduled with, or initiated by or on behalf of, Angioblast or its Affiliates relating to products containing MPCs for use outside the Field within the Territory to the extent such meetings are material to the chemistry, manufacturing and controls or the safety of the Products for use in the Field within the Territory, and an opportunity to have an observer attend in such substantive meetings with such Regulatory Authority. For clarity, such observer may be excluded from portions of any such meetings during which such observer's attendance would be inappropriate because a Third Party's proprietary information or other matters are discussed.

4.8 Exchange of Data and Know-How.

(a) By Angioblast. Promptly following the Effective Date, Angioblast will make available to Cephalon all Angioblast Know-How described in Section 1.4(a) for Cephalon to Develop or Commercialize the Products and process the Expanded HPCs, in each case for use in Field in the Territory, including all Data from research, preclinical studies, and clinical trials for the Products for use in the Field in the Territory existing as of the Effective Date.

(b) By Either Party. During the Term, each Party shall provide to the other Party all such Party's Know-How (i.e., in case of Angioblast, Angioblast Know-How described in Section 1.4(a), and in the case of Cephalon, Cephalon Know-How described in Section 1.13(a)) that is Controlled by such Party and that has not previously been provided hereunder, in each case promptly upon request by the other Party. The Party providing such Party's Know-How shall provide the same in electronic form to the extent the same exists in electronic form, and shall provide copies as reasonably requested and an opportunity for the other Party or its designee to inspect (and copy) all other materials comprising such Know-How (including for example, original patient report forms

and other original source data, to the extent access is allowed under applicable Law). The Parties, through the Alliance Managers, will cooperate and reasonably agree upon formats and procedures to facilitate the orderly and efficient exchange of the Angioblast Know-How and the Cephalon Know-How. This Section 4.8(b) shall be the sole obligation of Angioblast and the sole remedy of Cephalon for any breach of the obligation to provide Know-How pursuant to Section 4.8(a) above.

(c) Provision of Data to JSC. Upon request by the JSC, each Party shall promptly provide the JSC with summaries in reasonable detail of all Data generated or obtained in the course of such Party's performance of activities under the Development Plan.

4.9 Sharing of Regulatory Filings. Without limiting Section 4.8, each Party shall permit the other Party to access, and shall provide the other Party with sufficient rights to reference and use in association with exercising its rights and performing its obligations under this Agreement, all of such Party's, its Affiliates' and, to the extent it has the right to do so, its Marketing Partners' Regulatory Materials (including Data), with respect to the Products in the Field in the Territory.

4.10 Inspection Right.

(a) Inspection by a Party. Each Party shall permit an independent (i.e., having no prior or existing relationship with either Party) Third Party or internal regulatory consultant reasonably acceptable to such Party, to enter the relevant facilities of such Party and its Affiliates during normal business hours and upon reasonable advance notice to inspect and verify compliance with applicable regulatory and other requirements as well as with this Agreement, with respect to matters relating to the Products for use in the Field in the Territory, all Know-How to be provided to the other Party pursuant to Section 4.8 and the activities under the Collaboration. Such inspection right shall include the right to examine any internal procedures or records of the inspected Party relating to the Products for use in the Field in the Territory. The inspected Party shall give such Third Party all necessary and reasonable assistance for a full and correct carrying out of the inspection. Such inspection shall not relieve the inspected Party of any of its obligations under this Agreement.

(b) Diligence. Each Party shall use commercially reasonable efforts to secure for the other Party the rights set forth in Section 4.10(a) from Third Parties acting on its behalf, including trial sites and other contractors with respect to the Product for use in the Field (including in the case of Cephalon, any Marketing Partner). In the event a Party is unable to secure such inspection rights from any such Third Party, the Party agrees to secure such rights for itself and, if requested by the other Party, shall exercise such rights, at its own expense, for the other Party and fully report the results thereof to such other Party.

4.11 Reporting; Adverse Drug Reactions.

(a) Pharmaco-Vigilance Agreement. In conjunction with this Agreement, the Parties shall enter into a pharmaco-vigilance agreement on reasonable and customary terms, including: (i) providing detailed procedures regarding the maintenance of core safety information and the exchange of safety data relating to the Products; and (ii) ensuring compliance with the reporting requirements of all applicable Regulatory Authorities on a worldwide basis.

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(b) Adverse Event Reporting. As between the Parties, Cephalon shall be responsible for the timely reporting of all Adverse Drug Reactions, complaints and safety data relating to the Products for use in the Field in the Territory to the appropriate Regulatory Authorities in all countries in the Territory in accordance with the Law. Cephalon shall ensure that its Affiliates and Marketing Partners comply with such reporting obligations in the Territory. To the extent required by applicable Law or as requested by the applicable Regulatory Authority, Angioblast shall provide Cephalon with timely reporting of any Adverse Drug Reactions, complaints and safety data relating to MPC Products for use outside the Field.

4.12 Delays Outside of a Party's Control. In addition to the provisions of Section 15.1, neither Party will be responsible for failure to meet timelines with respect to the Development of the Products for the Field caused by factors beyond its reasonable control (e.g., regulatory delays, changes in regulatory timelines, being placed on clinical hold) and despite its commercially reasonable efforts to accomplish the objective within the applicable time therefor.

ARTICLE V COMMERCIALIZATION AND PROMOTION

5.1 Commercialization of the Products. Cephalon shall be responsible for, and shall use commercially reasonable efforts to Commercialize Products in the Field throughout the Territory in a prompt and expeditious manner and meet the sales and other goals set forth in the then-current Commercialization Plan. It is understood and agreed that, except as otherwise expressly provided herein, all Commercialization efforts for the Products in the Field in the Territory shall be at the sole expense of Cephalon.

5.2 Commercialization Plan. At such time as Cephalon prepares a plan for Commercialization of a Product for its own internal purposes (the "Commercialization Plan") and update such plan on an annual basis, which plan and updates shall be presented by Cephalon to the JSC for review and approval. Cephalon shall use commercially reasonable efforts to carry out all marketing, promotion and commercialization of the Products in the Territory in accordance with the then-current Commercialization Plan therefor.

ARTICLE VI PAYMENTS

6.1 Initial License Fee. Cephalon shall pay to Angioblast an initial license fee in the amount of One Hundred Thirty Million United States Dollars (US\$130,000,000) as follows:

- (i) One Hundred Million United States Dollars (US\$100,000,000) within five (5) days following the Effective Date; and

(ii) Thirty Million United States Dollars (US\$30,000,000) within five (5) days following the date on which all Conditions Precedent (as defined in that certain Subscription Deed by and between Mesoblast Limited and Cephalon effective as of even date herewith) have been met.

The initial license fee set forth in this Section 6.1 shall be paid in accordance with the payment provisions of this ARTICLE VI and shall not be refundable or creditable against any other payments by Cephalon to Angioblast under this Agreement.

6.2 Equity Purchase. Simultaneous with the execution of this Agreement Cephalon and Angioblast have entered into that certain Stock Purchase Agreement dated as of even date herewith by and among Angioblast, Cephalon and the individuals and entities listed on the exhibits thereto pursuant to which Cephalon shall purchase certain currently outstanding equity securities of Angioblast in accordance with the terms of such agreement.

6.3 Other Payments. Cephalon shall make the other payments to Angioblast as set forth in Exhibit 6.3.

6.4 Payment Method. All payments under this Agreement shall be made by bank wire transfer in immediately available funds to an account designated by the Party to which such payments are due. Any payments or portions thereof due under this Agreement that are not paid by the date such payments are due under this Agreement shall bear interest at a rate equal to: [***]. This Section 6.4 shall in no way limit any other remedies available to the Parties.

6.5 Currency Conversion. Unless otherwise expressly stated in this Agreement, all amounts specified in this Agreement are in Dollars, and all payments by one Party to the other Party under this Agreement shall be paid in Dollars. If any currency conversion shall be required in connection with the payment of the transfer price under this Agreement, such conversion shall be calculated using the average exchange rate for the conversion of foreign currency into Dollars, quoted for current transactions for both buying and selling Dollars, as reported in The Wall Street Journal (U.S. Internet version at www.wsj.com) for the last Business Day of each month of the calendar quarter to which such payment pertains.

6.6 Withholding Taxes. If Law requires withholding of any taxes by the Party making payment (the "Payor") of any amount hereunder imposed upon the Party receiving payment (the "Payee") on account of any payments paid or payable under this Agreement, such taxes shall be deducted by Payor as required by Law from such payment and shall be paid by Payor to the proper taxing authorities. Official receipts of payment of any such taxes shall be secured and promptly provided to Payee as evidence of such payment together with other documentation reasonably

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requested by Payee in connection therewith. The Parties shall cooperate in any lawful manner to reduce or eliminate any such taxes imposed to the extent possible under the provisions of any applicable tax treaty, and shall cooperate in filing any forms required for such reduction or elimination.

6.7 Records; Inspection. Cephalon shall keep, and require its Affiliates and Marketing Partners to keep, complete, true and accurate books of accounts and records for the purpose of determining the amounts payable to Angioblast pursuant to this Agreement. Such books and records shall be kept for at least five (5) years following the end of the calendar year to which they pertain. Such records will be open for inspection by an independent (i.e., having no prior or existing relationship with either Party) auditor chosen by Angioblast and reasonably acceptable to Cephalon for the purpose of verifying the amounts payable by Cephalon hereunder. Such inspections may be made [***], at reasonable times and on reasonable prior written notice. The records for any particular calendar quarter shall be [***]. The auditor shall be obligated to execute a reasonable confidentiality agreement prior to commencing any such inspection. Any inspection conducted under this Section 6.7 shall be at the expense of Angioblast, [***].

ARTICLE VII MANUFACTURING AND SUPPLY

7.1 Supply. Subject to the terms and conditions of this Agreement, Angioblast shall use commercially reasonable efforts to supply or have supplied (by an Affiliate or Third Party) to Cephalon all requirements of (a) [***], (b) [***] and (c) [***], in each case in the Territory, in accordance with this ARTICLE VII and in accordance with a separate written agreement to be negotiated between the Parties pursuant to Section 7.3 (the "Supply Agreement"). Except as otherwise agreed by the Parties in the Supply Agreement, as between the Parties: (i) Cephalon shall [***] purchase from Angioblast [***]; and (ii) Angioblast shall have the [***] to manufacture and have manufactured the [***]. It is understood that Angioblast shall supply to Cephalon (or its designee) the [***] in accordance with the Specifications therefor. For clarity, Cephalon shall be responsible for obtaining any import or export approvals required by Regulatory Authorities in the Territory to import or export the [***] to any country or other jurisdiction within the Territory.

7.2 Formulation / Specifications. Angioblast shall be responsible for determining the appropriate formulation for the [***] and CNS Products and associated Specifications (which with respect to activities after the Effective Date shall be done in consultation with Cephalon and subject to the oversight of the JSC); however, upon Cephalon's reasonable request and agreement to [***], Angioblast shall use commercially reasonable efforts to accommodate any changes in formulation or the Specifications for the [***].

7.3 Clinical Supply. Angioblast shall use commercially reasonable efforts to supply to Cephalon the [***] for use in Development of Products for use in the Field in the Territory in accordance with this Section 7.3.

(a) Angioblast shall supply Cephalon with such quantities of the [***] as are reasonably required by Cephalon in order to conduct Development of the Products for use in the Field in the Territory in accordance with the then-current Development Plan.

(b) Such supply shall be at [***] to Cephalon; however, Cephalon shall be responsible for all costs of shipping, handling, transit, taxes (including VAT), packaging, storage and the like in connection with the transport of [***] from the facilities where Angioblast manufactures or has manufactured the same to the location designated by Cephalon. Accordingly, Cephalon shall choose the carrier and be responsible for all payments thereto. It being understood that Angioblast shall not be responsible for any loss or damage of [***] in carriage, use or otherwise not caused by Angioblast or a Person acting by or on behalf of Angioblast; however, in the event of such loss or damage, the Parties shall promptly discuss how to address such situation, including Cephalon reimbursing Angioblast's costs associated with replacing such lost or damaged [***] and any expedite fees associated therewith.

(c) The Parties shall establish reasonable procedures for Cephalon to forecast and submit to Angioblast, and for Angioblast to fill, orders for [***] for use for Development. Such procedures shall include reasonable schedules for delivery of [***] ordered by Cephalon pursuant to this Section 7.3 consistent with the Development Plan then in effect. Notwithstanding the foregoing, Angioblast shall not be obligated to supply any quantities of the Product in excess of the Product necessary for Cephalon to conduct the Development activities assigned to it under the Development Plan. Cephalon agrees that [***] supplied pursuant to this Section 7.3 shall be used solely for purposes of performing Development of the Products for use in the Field in the Territory in accordance with the Development Plan and, unless otherwise agreed by the Parties, for no other purpose. Accordingly, Cephalon acknowledges that Angioblast shall have the right to package or otherwise mark such [***] in a manner that distinguishes them from those intended for Commercialization.

(d) [***] supplied to Cephalon pursuant to this Section 7.3 shall be manufactured in compliance with all applicable GMP and the Specifications therefor and other requirements therefor established by the applicable Regulatory Authorities.

7.4 Commercial Supply. Upon the written request of Cephalon before a Product receives the first Marketing Approval in the Territory, the Parties shall negotiate and execute a Supply Agreement for the supply by Angioblast to Cephalon of [***] for Commercialization in the Territory, and such Supply Agreement shall include the terms and conditions set forth on Exhibit 7.4 and shall not otherwise be inconsistent with the terms and conditions of this Agreement. The transfer price for all BMT MPCs, Cardiovascular Products and CNS Products supplied for Commercialization in the Territory shall be as set forth in Section 6.3 above.

7.5 Quality Agreement. Angioblast and Cephalon shall execute a mutually acceptable quality agreement that allocates roles and responsibilities to each Party with respect to quality control and regulatory compliance with respect to supply of Products to Cephalon for the Development and Commercialization of the Products pursuant to Sections 7.3 and 7.4 above.

7.6 Supply Protection. Angioblast and Cephalon shall cooperate to establish reasonable plans and procedures to avoid any shortage of supply of [***]. Additionally, in order to mitigate the risk of shortage of supply the JSC may establish requirements for safety stock inventories to be maintained by the Parties and plans to extend the shelf life of [***] including stability trials to be performed by the Parties.

7.7 Shortage of Supply. Angioblast shall promptly notify the JSC of any occurrence of which it becomes aware that it expects will result in a likely shortage or prevent Angioblast from providing on-time delivery of quantities of the Products ordered by Cephalon and accepted by Angioblast in accordance with the terms and conditions of this ARTICLE VII or the Supply Agreement. In such event, the JSC shall immediately establish a joint manufacturing subcommittee with an equal number of senior manufacturing personnel from each Party (“JMC”) to address the issue, including locating one or more alternative suppliers or manufacturing sites to increase production and identifying other actions necessary to resolve the issue. The JMC shall determine appropriate measures to prevent any shortage of supply and shall promptly implement such measures. In any such event Angioblast shall allocate the quantities of such Product that Angioblast has in inventory, and that Angioblast is able to produce, on a reasonable worldwide basis (based upon sales history and realistic forecasted demand), so that Cephalon receives its portion. In any event, both Parties agree to respond with the level of speed and diligence commensurate with the severity of the problem.

7.8 Back-Up Manufacturing Right. If, despite the foregoing measures undertaken by the Parties pursuant to Sections 7.6 and 7.7 above, Angioblast, as a result of its failure to use commercially reasonable efforts, is unable to supply quantities of the [***],

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as applicable, ordered by Cephalon and accepted by Angioblast for commercial sale in accordance with the terms and conditions of the Supply Agreement (once executed) and such inability interrupts or is likely to interrupt Cephalon's ability to meet the market demand for the applicable Products (a "Supply Failure"), then Cephalon shall have the right to qualify a Third Party back-up contractor manufacturer, to which Angioblast has no reasonable objection (each, a "CMO") for such Product for commercial supply in the Territory and to have its and its Affiliates' and Marketing Partners' requirements for such Product manufactured and supplied to Cephalon for commercial sale in the Territory for the remaining Term of the Agreement. If Cephalon so elects to exercise its rights under this Section 7.8, then Cephalon shall identify and qualify a CMO, and Angioblast shall have the right to participate in and approve such qualification therefor, not to be unreasonably withheld, conditioned or delayed. Upon Angioblast's approval of such CMO, Angioblast shall transfer (or cause its existing contract manufacturer to transfer) all relevant Data and other Know-How related to the manufacture and supply of such Product to such CMO in accordance with the provisions set forth in Exhibit 7.8. Upon completion of such transfer of Data and other Know-How, Angioblast shall no longer have the obligations to supply the requirements for such Product for commercial sale as provided for under this ARTICLE VII and the Supply Agreement. This Section 7.8 shall be the sole obligation of Angioblast and the sole remedy of Cephalon for a failure to supply any commercial requirements of the Products as set forth in this ARTICLE VII and the Supply Agreement if such exercise is prior to the expiration of Angioblast's right to terminate pursuant to Section 13.3(a) or 13.3(b), as applicable. If Cephalon so elects to exercise its rights under this Section 7.8, Cephalon shall not [***]; *provided, however*, that if Angioblast's right to terminate pursuant to Section 13.3(a) or 13.3(b), as applicable, has expired, then Cephalon shall [***]. For clarity, such payments shall be made on calendar quarterly basis in arrears consistent with the reconciliation process as provide for under Exhibit 6.3 and provide reports with respect to such sales as set forth under ARTICLE VI and otherwise in accordance with ARTICLE VI.

ARTICLE VIII CONFIDENTIALITY

8.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, each Party agrees that it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement any Confidential Information furnished to it by the other Party pursuant to this Agreement. The confidentiality and non-use obligations set forth above shall terminate [***] except with respect to any Confidential Information that constitutes a trade secret under applicable Law. In any event, the confidentiality and non-use obligations set forth above shall not apply with respect to any portion of the other Party's Confidential Information that the receiving Party can demonstrate by competent written proof:

(a) was already known to the receiving Party or its Affiliate, other than under an obligation of confidentiality, at the time of disclosure by the disclosing Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure by the disclosing Party;

(c) becomes generally available to the public or otherwise part of the public domain after its disclosure by the disclosing Party, other than through any act or omission of the receiving Party in breach of this Agreement;

(d) is disclosed to the receiving Party or its Affiliate by a Third Party who has a legal right to make such disclosure and who did not obtain such information directly or indirectly from the disclosing Party; or

(e) is independently discovered or developed by employees or contractors of the receiving Party or its Affiliate who have not actually received or have no actual knowledge of the other Party's Confidential Information.

8.2 Authorized Disclosure. Each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following situations:

(a) Prosecuting and Maintaining Patents in accordance with Section 9.2;

(b) complying with the requirement of Regulatory Authorities with respect to filing for, obtaining and maintaining Marketing Approval for the Products in accordance with this Agreement (including conducting Development of the Products);

(c) prosecuting or defending litigation as contemplated by, or arising out of, this Agreement;

(d) complying with applicable Laws and regulations promulgated by security exchanges, court order or administrative subpoenas or orders or otherwise submitting information to tax or other governmental authorities;

(e) disclosure to its or its Affiliates' employees, agents, consultants, advisors (including financial advisors, lawyers and accounts) and contractors (and Marketing Partners in the case Cephalon and other licensees or sublicensees in the case of Angioblast), in each case only on a need-to-know basis for the sole purpose of performing its or its Affiliates' obligations or exercising its or its Affiliates' rights under this Agreement, provided that in each case the recipient of such Confidential Information are bound by written obligations of confidentiality and non-use at least as equivalent in scope as those set forth in this ARTICLE VIII prior to any such disclosure; and

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(f) disclosure to existing and potential investors, merger partners or acquirors, including their respective consultants and professional advisors (including financial advisors, lawyers and accounts), solely on a need-to-know basis in order to evaluate an actual or potential investment, acquisition or similar business transactions; and provided that in connection with such disclosure, the disclosing Party shall inform each disclosee of the confidential nature of such terms and cause each disclosee to treat such information as confidential consistent with the nature of the Confidential Information so disclosed.

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to clause (i), (ii) or (iv) of this Section 8.2, it shall promptly notify the other Party of such required disclosure and shall use reasonable efforts to obtain, or to assist the other Party in obtaining, a protective order or confidential treatment limiting or preventing the required disclosure, and disclose only the minimum information necessary for such disclosure; provided that such Confidential Information disclosed accordingly shall only lose its confidentiality protection for purposes of such disclosure. In any event, each Party agrees to take all reasonable action to avoid disclosure of Confidential Information of the other Party hereunder.

8.3 Prior Non-Disclosure Agreements. Upon execution of this Agreement, the terms of this ARTICLE VIII shall supersede the Prior Confidentiality Agreement in their entirety.

8.4 Publicity; Terms of Agreement.

(a) General. Each of the Parties agrees not to disclose to any Third Party the terms and conditions of this Agreement without the prior approval of the other Party, except to advisors (including financial advisors, attorneys and accountants), potential and existing investors, financial or commercial partners, merger partners and acquirers and others on a need-to-know basis, in each case under circumstances that reasonably protect the confidentiality thereof, or as otherwise provided in the special authorized disclosure provisions set forth below in this Section 8.4. The Parties shall make a joint public announcement of the execution of this Agreement, such public announcement to be mutually agreed by the Parties within two (2) Business Days of the Effective Date and released promptly thereafter by the Parties in a coordinated manner.

(b) Future Releases. After release of such press release, if either Party desires to make a public announcement concerning the material terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval (except as otherwise provided herein), such approval not to be unreasonably withheld or delayed. A Party commenting on such a proposed press release shall provide its comments, if any, within two (2) Business Days after receiving the press release for review. To the extent required by applicable Laws, including regulations promulgated by applicable securities exchange, each Party shall have the right to make a press release announcing the achievement of each milestone under this Agreement as it is achieved, and the achievements of Marketing Approvals in the Territory as they occur, subject only to the review procedure set forth in the preceding sentence. In relation to a Party's review of such an announcement, such Party may make specific, reasonable comments on such proposed press release within the prescribed time for commentary, but shall not withhold its consent to disclosure of the information that the relevant milestone has been achieved and triggered a payment hereunder. Neither Party shall be required to

seek the permission of the other Party to repeat any information regarding the terms of this Agreement that has already been publicly disclosed by such Party, or by the other Party, in accordance with this Section 8.4, provided that such information remains accurate as of such time.

(c) Regulatory Disclosures. The Parties acknowledge that a Party may at some point in time be obligated to file a copy of this Agreement with applicable governmental authorities having regulatory authority over such Party securities or the exchange thereof. In such case, such Party shall be entitled to make such a required filing, provided that it requests confidential treatment of the commercial terms and sensitive technical terms hereof to the extent such confidential treatment is reasonably available to such Party and permitted by such governmental authority. In the event of any such filing, such Party will provide the other Party with a copy of the Agreement marked to show provisions for which the filing Party intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's comments thereon to the extent consistent with the legal requirements governing redaction of information from material agreements that must be publicly filed. The other Party will as promptly as practical provide any such comments. The other Party recognizes that applicable Laws, including regulations promulgated by applicable governmental authorities, to which the filing Party is and may become subject to may require the filing Party to publicly disclose certain terms of this Agreement that the other Party may prefer not be disclosed, and that the filing Party is entitled hereunder to make such required disclosures to the minimum extent necessary to comply with such Laws.

8.5 Technical Publications. Neither Party may publish peer reviewed manuscripts, or give other forms of public disclosure such as abstracts and presentations, of data or results of activities under this Agreement with respect to Products for use in the Field in the Territory, without the opportunity for prior review by the other Party, except to the extent required by applicable Laws. A Party seeking publications shall provide the other Party the opportunity to review and comment on any proposed manuscripts or presentations which relate to any Product at least sixty (60) days prior to their intended submission for publication or presentation. The other Party shall provide the Party seeking publication with its comments in writing, if any, within thirty (30) Business Days after receipt of such proposed manuscripts or presentations. The Party seeking publication shall consider in good faith such comments thereto provided by the other Party and shall remove from the proposed manuscripts or presentations any and all of the other Party's Confidential Information at the request of such other Party. In addition, the Party seeking publication shall delay the submission for a period up to ninety (90) days in the event that the other Party can demonstrate reasonable need for such delay, including the preparation and filing of a Patent application. If the other Party fails to provide its comments to the Party seeking publication within such thirty (30) Business Day period, such other Party shall be deemed not to have any comments, and the Party seeking publication shall be free to publish in accordance with this Section 8.5 after the sixty (60) day period has elapsed. The Party seeking publication shall provide the other Party a copy of the manuscript or presentation at the time of the submission. The Party seeking publication shall not have the right to publish or present the other Party's Confidential Information without prior written consent of the other Party, except as expressly permitted in this Agreement. The contribution of each Party shall be noted in all publications or presentations by acknowledgment or co-authorship, whichever is appropriate.

8.6 Equitable Relief. Each Party acknowledges that its breach of this ARTICLE VIII may cause irreparable harm to the other Party, which cannot be reasonably or adequately compensated in damages in an action at law. By reasons thereof, each Party agrees that the other Party shall have the right to seek, in addition to any other remedies it may have under this Agreement or otherwise, preliminary or permanent injunctive and other equitable relief to prevent or curtail any actual breach of the obligations relating to Confidential Information set forth in this ARTICLE VIII by such Party.

ARTICLE IX INTELLECTUAL PROPERTY

9.1 Ownership.

(a) General. As between the Parties and subject to the terms and conditions of this Agreement, all right, title and interest to inventions and other subject matter conceived or created or first reduced to practice in connection with this Agreement (together with all intellectual property rights therein) ("Inventions") (i) by Persons acting on behalf of Angioblast, independently of Persons acting by or on behalf of Cephalon, shall be owned by Angioblast, (ii) by Persons acting on behalf of Cephalon, independently of Persons acting on behalf of Angioblast, shall be owned by Cephalon and (iii) by Persons acting on behalf of Angioblast and Cephalon shall be jointly owned by Angioblast and Cephalon. Except as expressly provided in this Agreement, it is understood that neither Party shall have any obligation to obtain any approval of nor pay a share of the proceeds to the other Party to practice, enforce, license, assign or otherwise exploit such jointly-owned Inventions, and each Party hereby waives any right it may have under the Laws of any country to require such approval or sharing. Notwithstanding anything to the contrary in this Agreement, neither Party is obligated to assign any title or interest in inventions and other subject matter (together with all intellectual property rights therein) conceived or created or first reduced to practice before the Effective Date.

(b) Improvements. Notwithstanding Section 9.1(a), any and all Inventions that are conceived or created or first reduced to practice by Persons acting on behalf of Cephalon or its Marketing Partners in connection with this Agreement (i) comprising a modification or enhancement of or to a Product or the manufacture, use or formulation thereof; or (ii) enabled by use of the Confidential Information of Angioblast and in each case, all intellectual property rights therein and thereto ("Improvements") shall be owned solely by Angioblast. Cephalon agrees to assign and hereby assigns to Angioblast all its rights, title and interests in and to such Improvements, and shall cause its Marketing Partners, as applicable, to do the same. Cephalon shall promptly notify Angioblast of any such Improvements and disclose to Angioblast any Data or other Know-How related to such Improvements.

(c) Further Assurances. Cephalon agrees to execute such documents, render such assistance, and take such other action as Angioblast may reasonably request, to apply for, register, perfect, confirm, and protect Angioblast's rights in all such Improvements. Cephalon agrees that if Angioblast is unable because of Cephalon's unavailability, dissolution or incapacity, or for any other

reason, to secure Cephalon's signature to apply for or to pursue any application for any Patents or copyright registrations covering, in whole or in part, Improvements assigned to Angioblast under Section 9.1(b), then Cephalon hereby irrevocably designates and appoints Angioblast and its duly authorized officers and agents as Cephalon's agent and attorney in fact, to act for, and in Cephalon's behalf and stead, to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of Patents and copyright registrations thereon with the same legal force and effect as if executed by Cephalon.

9.2 Prosecution and Maintenance of Patents.

(a) Angioblast Patents. As between the Parties, Angioblast shall control, in its discretion, the Prosecution and Maintenance of all Angioblast Patents within the Territory; provided that Angioblast agrees to: (i) keep Cephalon reasonably informed with respect to such activities; (ii) consult in good faith with Cephalon regarding such matters and consider all Cephalon's comments with respect thereto in good faith; and (iii) with respect to any Angioblast Patent that [***] a Product for use in the Field in the Territory (a "Specific Angioblast Patent"), incorporate any reasonable comments provided by Cephalon to Angioblast in any filings or responses made to any patent authority provided by Cephalon to Angioblast in a reasonable amount of time in advance of submitting such filings or responses. If Angioblast determines not to file any Patent, or to abandon any Patent, within the Angioblast Patents within the Territory, as applicable, Angioblast shall provide Cephalon with written notice at least sixty (60) days (or if less, as long as reasonably practicable) prior to taking such action, or the date on which such abandonment would become effective. In such event, Cephalon shall have the right, at its option, to control the Prosecution and Maintenance of such Angioblast Patent, [***] in Angioblast's name within the Territory; provided that Cephalon shall have the right to [***] for the Prosecution and Maintenance of such Angioblast Patent against any Transfer Payments. In such case, Cephalon shall keep Angioblast reasonably informed of its activities with respect to such Prosecution and Maintenance.

(b) Joint Patents. Without limiting any rights under this Section 9.2(b), prior to the filing of any Patent claiming Inventions that are jointly owned pursuant to Section 9.1(a) above (any, a "Joint Patent"), the Parties shall agree on a strategy for the Prosecution and Maintenance thereof, including the particular countries to file for a Patent and scope of the claims to be filed and each Party agrees to take all reasonable action to cooperate fully in this regard. Each Party shall bear [***] in connection with such activities as they are incurred, provided that if either Party provides the other Party with sixty-(60) days written notice specifying that it no longer desires to bear such costs and expenses with respect to a particular Joint Patent, then upon the other Party's receipt of such notice, such notifying Party shall not be responsible for any further costs or expenses under this Section 9.2(b) related to any such Joint Patent; provided however that such notifying Party shall be responsible for any costs and expenses incurred up to and as of the date the other Party receives such notice, and all right, title and interest in and to such Joint Patent (together with any Patents issuing thereon or therefrom) shall be and is hereby assigned, without further consideration, to the other Party (subject to the rights granted under Sections 2.1 and 2.2 above).

(c) Cooperation. Each Party shall cooperate with the other Party in connection with all activities relating to the Prosecution and Maintenance of the Angioblast Patents undertaken by such other Party pursuant to this Section 9.2, including: (a) making available in a timely manner any documents or information such other Party reasonably requests to facilitate such other Party's Prosecution and Maintenance of the applicable Patents pursuant to this Section 9.2; and (b) if and as appropriate, signing (or causing to have signed) all documents relating to the Prosecution and Maintenance of any applicable Patents by such other Party. Each Party shall also promptly provide to the other Party all information reasonably requested by such other Party with regard to such Party's activities pursuant to this Section 9.2.

9.3 Enforcement.

(a) Notice. In the event that either Party reasonably believes that any Angioblast Patent within the Territory is being infringed by a Third Party, or is subject to a declaratory judgment action arising from such infringement, such Party shall promptly notify the other Party.

(b) Initiating Enforcement Actions. Angioblast shall have the initial right (but not the obligation), at its own expense, to enforce the Angioblast Patents against any infringement of any Angioblast Patents with respect to the manufacture, sale or use within the Territory of a product for use in the Field (an "Infringing Product"), or to defend any declaratory judgment action arising from such infringement, within the Territory (for purposes of this Section 9.3, an "Enforcement Action") provided, however, that Cephalon may participate in such Enforcement Action at its own expense. In the event that Angioblast fails to initiate an Enforcement Action under this Section 9.3(b) within [***] days in accordance with the Patient Protection and Affordable Care Act of a request by Cephalon to initiate such Enforcement Action in other circumstances, Cephalon may initiate an Enforcement Action against such infringement, at its own expense, with Angioblast's consent, not to be unreasonably withheld, conditioned or delayed. For clarity, it will not be unreasonable for Angioblast to withhold such consent if such Enforcement Action could likely result in such Angioblast Patent being held unpatentable or unenforceable. In such case, Angioblast shall cooperate in such Enforcement Action at Cephalon's expense. In any event, each Party agrees to keep the other Party hereto reasonably informed of all material developments in connection with any Enforcement Action and each Party may provide input and comments related to the strategy for any Enforcement Action and the other Party shall consider such input and comments in good faith. Each Party agrees not to settle any Enforcement Action, or make any admissions or assert any position in any Enforcement Action, in a manner that would have a material adverse affect on the other Party's rights or interests in any Angioblast Patent or Product for use in the Field in the Territory, without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.

(c) Initiating Other Enforcement Actions. In addition to Section 9.3(b) above, Angioblast shall have the sole and exclusive right (but not the obligation), at its own expense, to enforce the Angioblast Patents against any infringement of any Angioblast Patents with respect to the manufacture, sale or use within the Territory of a product other than an Infringing Product (“Other Infringing Product”), or to defend any declaratory judgment action arising from such infringement, within the Territory (for purposes of this Section 9.3(c), an “Other Enforcement Action”); provided that Cephalon may request that Angioblast initiate an Other Enforcement Action to enforce the Angioblast Patents against an infringement by a Third Party in a country within the Territory that has a commercially significant impact on the sales of the Products in such country within the Territory, and Angioblast upon such request will reasonably consider initiating such Other Enforcement Action, or granting Cephalon the right to bring such Other Enforcement Action, and will not unreasonably deny such request, taking into consideration the effect or likely effect of the sales of such Other Infringing Product on the sales of such Products and Angioblast’s obligations to Third Parties.

(d) Cooperation. In addition to each Party’s right to participate and provide input and comments on any Enforcement Actions pursuant to Section 9.3(b), the Party initiating or defending any action pursuant to this Section 9.3 shall keep the other Party reasonably informed of the progress of any such action. In addition, the Parties shall assist one another and cooperate in any such action at the other’s reasonable request and expense (including joining as a party plaintiff to the extent necessary to bring or maintain such action).

(e) Recoveries. Any damages or other monetary awards recovered from an Enforcement Action within the Territory shall be allocated first to reimburse the costs and expenses of the Party who initiates the Enforcement Action and, if the other Party joins as a party plaintiff, then the unreimbursed costs and expenses of the other Party. Any amounts remaining shall be [***]. For clarity, as between the Parties, all amounts received in connection with or allocated to an Other Enforcement Action shall inure to the benefit and be retained by Angioblast.

9.4 Third Party Infringement Claims.

(a) Notice. If any Product manufactured, used or sold by or on behalf of a Party, becomes the subject of a Third Party’s claim or assertion of infringement of a Patent granted by a jurisdiction in the Licensed Territory (any such claim or assertion, a “Defensive Action”), the Party first having notice of the Defensive Action shall promptly notify the other Party. Without limiting the rights of the Parties in Section 9.4(b) below, the Parties shall promptly agree on and enter into a joint defense agreement wherein such Parties agree to their shared, mutual interest in the outcome of such potential dispute (any, a “Joint Defense Agreement”), and thereafter, the Parties shall promptly meet to consider the Defensive Action and the appropriate course of action.

(b) Control. The Party subject to such Defensive Action shall have the right to direct and control the defense thereof; provided, however, that the other Party may participate in the defense and/or settlement thereof at its own expense with counsel of its choice. Notwithstanding the foregoing, the provisions of Section 9.3 shall govern the right of a Party subject to such Defensive Action to assert a counterclaim of infringement of any Angioblast Patent or Joint Patent in

connection with such Defensive Action. In any event, each Party agrees to keep the other Party hereto reasonably informed of all material developments in connection with any such Defensive Action. Each Party agrees not to settle any Defensive Action, or make any admissions or assert any position in any Defensive Action, in a manner that would materially adversely affect the Products or the manufacture, use or sale of the Products for the Field in the Territory, without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed; provided that any determination to acquire a license or other rights under any Patent asserted in such Defensive Action shall be governed by Section 9.5 below. Without limiting the foregoing, each Party shall be responsible for [***] Costs incurred by a Party as a result of such Defensive Action. As used herein, "Costs" shall mean out-of-pocket costs incurred by a Party, including reasonable attorney's fees, damages and other liabilities that are part of any final judgment awarded against such Party, and any amounts paid by such Party in a settlement of the action (except for any payments to a Third Party as a result of acquiring a license or other rights under the Patent asserted in such Defensive Action pursuant to Section 9.5 below and either Party's exercise of such rights under such Patents, which payments shall be shared by the Parties in accordance with Section 9.5 below).

9.5 Third Party Technology.

(a) Third Party Technology. If a Party identifies (or if a Third Party notifies a Party of) any Patent owned or controlled by a Third Party that it reasonably believes Covers the Development, Commercialization, other use or manufacture (including processing) of any Product for use in the Field in the Territory, then such Party (the "Noticing Party") shall provide notice of such Third Party's Patent to the other Party (the "Noticed Party") through the Noticed Party's members on the JSC. In addition, the Noticing Party shall disclose to the Noticed Party through its members on the JSC other relevant information with respect to such Third Party Patent in the Noticing Party's control; provided that prior to the disclosure of such information, the Parties shall enter into a joint interest agreement in order to protect the attorney-client and other similar privileges and confidentiality with respect to such matters on standard and customary terms and conditions (any, a "Joint Interest Agreement"). In such case, the JSC shall promptly (and in no case later than thirty (30) days after the date of such notice) meet to determine the appropriate strategy(ies) with respect to such Third Party Patent (including seeking appropriate licenses or other rights or developing appropriate work arounds with respect thereto). In the event the JSC agrees to seek a license or other right under such Patent from the Third Party, Angioblast shall take the lead with respect thereto; however, it shall keep Cephalon reasonably informed with respect to the negotiation of any such license or right including notifying Cephalon in advance of meetings with such Third Party and allow Cephalon to reasonably participate therein. Additionally, Angioblast shall provide Cephalon a copy of any proposed agreement with respect to such Patent prior to its execution for its review and comment, and Angioblast will consider such comments in good faith. Angioblast shall ensure that under any such agreement it will Control (in accordance with Section 1.19) such Patent so that such Patent shall be an Angioblast Patent for purposes of this Agreement. Each Party shall be responsible [***] of all amounts payable to such Third Party as a result of Angioblast's entering into such license agreement or either Party's exercise of any rights under such Patents (including any milestones and royalties) in accordance with the terms and conditions of this Agreement.

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(b) Dispute. If the JSC disagrees as to whether any such Third Party Patent Covers the Development, Commercialization, other use or manufacture (including processing) of any Product for use in the Field in the Territory or whether to develop appropriate work arounds with respect thereto, then the Parties shall resolve any such dispute in accordance with this Section 9.5(b) (notwithstanding ARTICLE XIV below). Accordingly, the Parties shall promptly refer such dispute to an independent patent attorney appointed by the JSC, which attorney has at least fifteen years of experience in pharmaceutical product development. If the JSC cannot select such an attorney by consensus, then the Noticed Party shall promptly provide the Noticing Party a list of at least five (5) such patent attorneys meeting such qualifications with their curriculum vitae describing their qualifications, and the Noticing Party shall select one (1) from such list. Such selected patent attorney shall, after reasonable investigation and review, render a written decision selecting one or the other Party's position on the matter, which decision shall be binding upon the JSC in determining an appropriate strategy with respect to such Third Party Patent under Section 9.5(a) above. Without limiting the foregoing, the Parties and the selected patent attorney shall use good faith efforts to complete the dispute resolution process within thirty (30) days of the appointment of the patent attorney. Each Party shall pay its own expenses in connection with the dispute resolution procedures set forth in this Section 9.5(b), provided, that the fees, costs, and expenses of the selected patent attorney shall be borne by the Party against whom the decision is made.

(c) For purposes of this Section 9.5, "Cover" means, with respect to particular claim of a Patent, that the manufacture, use, sale, offer for sale or importation of particular subject matter infringes (either direct or contributory) or induces the infringement of such claim. For clarity, Cover includes with respect to pending claims, that the manufacture, use, sale, offer for sale or importation of particular subject matter would likely so infringe if such claim were to issue.

9.6 Patent Marking. The JSC shall establish, on a country-by-country basis, any requirements for marking patented Products to be sold or distributed pursuant to this Agreement as the then-current Commercialization Plan contemplates launch of such Product in such country within the Territory; provided that Cephalon agrees to mark, and have its Affiliates and Marketing Partners mark, all patented Products they sell or distribute pursuant to this Agreement in the same manner as Cephalon marks, and has its Affiliates and Third Party partners mark, its other products of similar nature and commercial potential in accordance with the applicable patent statutes or regulations in the country or countries of sale thereof.

**ARTICLE X
TRADEMARKS**

10.1 General. Cephalon shall have the sole right to determine the trademarks, trade dress, style of packaging, labeling and the like with respect to the Commercialization of Products in the Field in the Territory (such trademarks used or intended for use by Cephalon with the Products (except the Existing Mark), including representations thereof in any language, the "Product Marks"). Unless otherwise agreed, Cephalon shall have the sole right (but not the obligation) to register and enforce (and retain all recoveries therefrom) the Product Marks, at its own expense, in the Territory. For clarity, Cephalon shall have the right in accordance with the license set forth in Section 10.3 to use the Existing Mark in connection with its Commercialization of Cardiovascular Products in the Cardiovascular Field in the Territory.

10.2 Angioblast Logos. Cephalon hereby agrees (and shall cause its Affiliates and Marketing Partners) to the extent allowable under applicable Law to include on all labels of and package inserts and marketing materials for Products sold by or under authority of Cephalon to include Angioblast's trade name and logo, collectively, the "Angioblast Logos"). It is understood that the size and placement of the Angioblast Marks shall be consistent with Cephalon's practices with respect thereto, or, if Cephalon is not then including Third Party logos, current pharmaceutical industry practices for similarly situated Third Party logos. Unless otherwise agreed, Angioblast shall have the sole right (but not the obligation) to register and enforce the Angioblast Logos, at its own expense.

10.3 Grant of License. Subject to the terms and conditions of this Agreement, Angioblast hereby grants to Cephalon (a) an exclusive license to use the Existing Mark in each country of the Territory for the packaging, marketing, distributing, sale and promotion of the Cardiovascular Products for use in the Cardiovascular Field and (b) a non-exclusive license to use the Angioblast Logos in each country of the Territory for the packaging, marketing, distributing, sale and promotion of the Products for use in the Field, in each case accordance with this Agreement. The ownership and all goodwill from the use of the Existing Mark and Angioblast Logos shall vest in and inure to the benefit of Angioblast. Cephalon shall ensure that use of the Existing Mark and Angioblast Logos is consistent with high levels of business professionalism, product standards and Cephalon's use of its own trademarks. Notwithstanding anything herein to the contrary, upon Angioblast's written request, Cephalon, its Affiliates and Marketing Partners agree to cease the use of the Angioblast Logos; provided that (i) Cephalon, its Affiliates and Marketing Partners may continue to use any labels, package inserts and marketing materials in existence or on order as of the receipt of such notice and (ii) in such case, Cephalon's obligation to include the Angioblast Logos on labels, package inserts and marketing materials for Product(s) shall terminate.

10.4 Registration of Trade Marks. Angioblast shall have the right (but not the obligation) to file, register and maintain, for the Term, at Angioblast's expense, appropriate registrations for the Existing Mark in each country of the Territory, as requested by Cephalon, in which Products are or will be sold. Such registrations for the Existing Mark shall be obtained in Angioblast's name, to the

extent permitted by applicable Law in each country within the Territory. In the event Angioblast elects not to file, register or maintain appropriate registrations for the Existing Mark in a country within the Territory in which Products are or will be sold, Angioblast shall provide Cephalon with written notice of such election within such reasonable time period necessary to preserve such right to file, register or maintain such registrations for the Existing Mark, and Cephalon shall have the right, at its option and expense, to file, register or maintain such registrations for the Existing Mark in such country on behalf of Angioblast, in Angioblast's name, to the extent permitted by applicable Law in such country.

10.5 Ownership. As between the Parties, Angioblast shall own, and is hereby assigned, all right, title and interest in and to (a) the Existing Mark and the Angioblast Logos throughout the Territory and (b) Cephalon shall own, and is hereby assigned all right, title and interest in and to the Product Marks throughout the Territory.

10.6 Recordation of Licenses. In those countries where a trademark license must be recorded, Angioblast will provide to Cephalon, on Cephalon's written request, a separate trademark license for the Existing Mark and Angioblast Logos and Cephalon will arrange for the recordation of such trade mark license with the appropriate governmental agency, at Cephalon's expense, promptly following receipt of such license from Angioblast. Cephalon shall cooperate in the preparation and execution of such documents.

10.7 Approval of Packaging and Promotional Materials. Cephalon shall submit representative promotional materials, packaging and Products displaying the Product Marks and/or Angioblast's trade name to Angioblast for Angioblast's review and approval (which approval shall not be unreasonably withheld, conditioned or delayed) prior to the first use of such promotional materials, packaging or Products and prior to any subsequent change or addition to such promotional materials, packaging or Product; provided that if Angioblast has not responded within thirty (30) days after the submission of such promotional materials, packaging or Product, Angioblast's approval will be deemed to have been received.

ARTICLE XI REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 General Representations. Each Party hereby represents and warrants to the other Party as of the Effective Date as follows:

(a) Duly Organized. Such Party is a corporation duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification and failure to have such would prevent such Party from performing its obligations under this Agreement; and

(b) Due Execution; Binding Agreement. This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by such Party have been duly authorized by all necessary corporate action and do not and will not: (i) require any consent or approval of its stockholders; (ii) to such Party's actual knowledge, violate any Law, order, writ, judgment, decree, determination or award of any court, governmental body or administrative or other agency having jurisdiction over such Party; nor (iii) conflict with, or constitute a default under, any agreement, instrument or understanding, oral or written, to which such Party is a party or by which it is bound. It has the full right and authority to grant the rights as provided herein and not previously granted any right, license or interest that is in conflict with the rights granted to the other Party under this Agreement.

11.2 Representations and Warranties of Angioblast. Angioblast represents, warrants to Cephalon that, as of the Effective Date:

(a) it has not received any written notice of any threatened claims of litigation seeking to invalidate or otherwise challenge the [***] or its rights therein;

(b) to its Knowledge, there is no actual, pending, alleged or threatened (in writing) infringement, misappropriation or other unauthorized use by a Third Party of any of the [***] or the [***];

(c) to its Knowledge, the issued [***], are valid and subsisting, and, to its Knowledge, there are no pending or threatened (in writing) interference, re-examination, opposition or cancellation proceedings involving the [***];

(d) [***] Angioblast owns all right, title and interest in or licenses to each of the [***] identified in Exhibit 1.5 and of the [***] including the Patents [***]. By way of example and not by way of limitation, Angioblast represents and warrants [***];

(e) Angioblast owns all right, title and interest in and to [***] as of the Effective Date to select for MPCs;

(f) Angioblast has not received any formal or informal notice (in writing) of any claim that making, using, selling or importing (or having a Third Party conduct those activities) [***] infringes, misappropriates or otherwise use without authorization any intellectual property right, including Patents, of any Third Party and, to the Knowledge of Angioblast, there is no basis for any such claim;

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(g) To its Knowledge, there are no written contracts, agreements, assignments and indemnities that affect Angioblast's ownership of or ability to license (according to the terms herein), prosecute and/or enforce, any [***] to Cephalon in accordance with the terms and conditions hereof. By way of example and not by way of limitation, Angioblast represents and warrants that to its Knowledge, [***] and also to its Knowledge that [***];

(h) All registrations for [***] are in force, all applications to register [***] are pending and all associated fees therefor are current;

(i) To its Knowledge, Angioblast has the sole and exclusive right to bring actions for infringement or unauthorized use of the [***];

(j) To its Knowledge, Angioblast is not in breach of any agreement affecting Angioblast's ownership of or ability to license (according to the terms herein), prosecute and/or enforce, as applicable, the [***];

(k) To its Knowledge, the subject matter of [***] have not been developed or otherwise invented using any funding or other resources provided by any governmental or regulatory authority or institution of higher education that would prevent Angioblast from granting to Cephalon the rights under the [***] according to the terms herein;

(l) [***];

(m) Angioblast has entered into agreements with employees, agents and other Third Parties sufficient to maintain the confidentiality of the [***] consistent with customs in the biopharmaceutical industry. There is no breach or violation by Angioblast under, and, to the Knowledge of Angioblast, no breach or violation by any other party to, any such agreement that would have a material adverse affect on the value of the [***] (in its entirety). Angioblast has taken adequate steps to prevent the unauthorized disclosure or use of all [***] consistent with customs in the biopharmaceutical industry, and to the Knowledge of Angioblast, all disclosure of such [***] has been made solely pursuant to written confidentiality agreements governing the use and disclosure thereof, except to the extent Angioblast was or is required to disclose such [***] in connection with making filings with any governmental or regulatory authority or would otherwise not have a material adverse effect on the value of the [***] (in its entirety);

(n) [***];

(o) [***]; and

(p) [***].

11.3 Representations and Warranties of Cephalon. Cephalon represents and warrants to Angioblast that, as of the Effective Date, it has the full right and authority to grant the rights granted herein.

11.4 **DISCLAIMER**. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR VALIDITY OF ANY PATENTS ISSUED OR PENDING.

ARTICLE XII INDEMNIFICATION

12.1 Indemnification by Cephalon. Cephalon shall indemnify and hold harmless each of Angioblast and its Affiliates and the respective directors, officers and employees of such entities and the respective successors and assigns of any of the foregoing (the "Angioblast Indemnitees"), from and against any and all liabilities, damages, penalties, fines, costs and expenses (including, reasonable attorneys' fees and other expenses of litigation) (collectively, "Liabilities") from any claims, actions, suits or proceedings brought by a Third Party (a "Third Party Claim") incurred by any Angioblast Indemnitee arising from or occurring as a result of: (a) the development, manufacture, storage, handling, use, marketing, distribution, offer for sale, sale or promotion of the Products by or on behalf of Cephalon, its Affiliates or Marketing Partners; (b) any material breach of any representations, warranties or covenants given by Cephalon in ARTICLE XI above; or (c) the gross negligence or intentional misconduct of a Cephalon Indemnitee. Cephalon's obligation to indemnify the Angioblast Indemnitees pursuant to this Section 12.1 shall not apply to the extent any such Liabilities arise from: (i) the gross negligence or intentional misconduct of any Angioblast Indemnitee; or (ii) any breach by Angioblast of this Agreement.

12.2 Indemnification by Angioblast. Angioblast shall indemnify and hold harmless each of Cephalon, its Affiliates and Marketing Partners and the respective directors, officers and employees of Cephalon, its Affiliates and Marketing Partners and the respective successors and

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assigns of any of the foregoing (the "Cephalon Indemnitees"), from and against any and all Liabilities from any Third Party Claims incurred by any Cephalon Indemnatee arising from or occurring as a result of: (a) the development, manufacture, storage, handling, or use of the Products (and any Commercialization of the Products post-termination of this Agreement) by or on behalf of Angioblast or its Affiliates or licensees (other than Cephalon, its Affiliates and Marketing Partners); (b) any material breach of any representations, warranties or covenants given by Angioblast in ARTICLE XI above; (c) such claims described in Exhibit 12.2; or (d) the gross negligence or intentional misconduct of a Angioblast Indemnatee. Angioblast's obligation to indemnify the Cephalon Indemnitees pursuant to this Section 12.2 shall not apply to the extent any such Liabilities arise from: (i) the gross negligence or intentional misconduct of any Cephalon Indemnatee; or (ii) any breach by Cephalon of this Agreement.

12.3 Procedure. A Party that intends to claim indemnification under this ARTICLE XII (each, an "Indemnatee") shall promptly notify the other Party (the "Indemnitor") in writing of any Third Party Claim, in respect of which the Indemnatee intends to claim such indemnification, and the Indemnitor shall have sole control of the defense and/or settlement thereof. The indemnity arrangement in this ARTICLE XII shall not apply to amounts paid in settlement of any action with respect to a Third Party Claim, if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld or delayed unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any action with respect to a Third Party Claim, if prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnatee under this ARTICLE XII, but the omission to so deliver written notice to the Indemnitor shall not relieve the Indemnitor of any liability that it may have to any Indemnatee otherwise than under this ARTICLE XII. The Indemnatee under this ARTICLE XII shall cooperate fully with the Indemnitor and its legal representatives in the investigation of any action with respect to a Third Party Claim covered by this indemnification.

12.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 12.4 IS INTENDED TO OR SHALL LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 12.1 OR 12.2, OR DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN ARTICLE VIII OR ARISING FROM A PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT (I.E., WILLFUL WRONGDOING OR OMISSION).

ARTICLE XIII TERM AND TERMINATION

13.1 Term. This Agreement will commence upon the Effective Date and, except to the extent terminated pursuant to this ARTICLE XIII, shall continue in full force and effect on a Sub-

Field-by-Sub-Field basis (i.e., for the Cardiovascular Field, CNS Field and Oncology Field) until none of Cephalon, its Affiliates or Marketing Partners is Developing or Commercializing a Product in the Territory in such Sub-Field. In the event of an expiration of this Agreement the provisions of Paragraphs 1, 2 and 4 of Exhibit 13 shall apply.

13.2 Termination by Cephalon.

(a) Termination of the Agreement in its Entirety. Cephalon may terminate this Agreement in its entirety upon [***] written notice to Angioblast referencing this Section 13.2(a) and specifying that it is terminating this Agreement in its entirety. In the event of such termination the provisions of Paragraphs 1, 2, 3, 4 and 5 of Exhibit 13 shall apply.

(b) Termination with respect to a Sub-Field. Cephalon may terminate this Agreement as to a particular Sub-Field in its entirety upon [***] written notice to Angioblast referencing this Section 13.2(b) and specifying the Sub-Field for which this Agreement is terminated. In the event of such termination the provisions of Paragraphs 1, 2, 3, 4 and 6 of Exhibit 13 shall apply.

(c) Termination with respect to a Region. Cephalon may terminate this Agreement as to a particular Region in its entirety upon [***] written notice to Angioblast referencing this Section 13.2(c) and specifying the Region for which this Agreement is terminated. In the event of such termination the provisions of Paragraphs 1, 2, 3, 4 and 7 of Exhibit 13 shall apply.

13.3 Termination by Angioblast.

(a) Cardiovascular Field with respect to a Region. Angioblast may terminate this Agreement as to the Cardiovascular Field with respect to a particular Region for the failure of Cephalon to achieve the following:

(i) with respect to the [***], to Initiate a [***] Clinical Trial or [***] Clinical Trial for the Cardiovascular Product for use in either [***] of (A) the determination of the JSC to proceed pursuant to Section 4.4(b) above and (B) the satisfaction of all conditions precedent pursuant to Section 4.4(c) above, whichever occurs later, and thereafter use commercially reasonable efforts to continue such trial to completion in a timely manner in accordance with the protocol approved by the JSC therefor and to file for and prosecute an MAA with the [***] for such Cardiovascular Product for use in such indication subject to such [***] Clinical Trial or [***] Clinical Trial;

(ii) with respect to [***], to Initiate a [***] Clinical Trial or [***] Clinical Trial for the Cardiovascular Product for use in either [***] of (A) the determination of the JSC to proceed pursuant to Section 4.4(b) above and (B) the satisfaction of all conditions precedent

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pursuant to Section 4.4(c) above, whichever occurs later, and thereafter use commercially reasonable efforts to continue such trial to completion in a timely manner in accordance with the protocol approved by the JSC therefor and to file for and prosecute an MAA with the [***] for such Cardiovascular Product for use in such indication subject to such [***] Clinical Trial or [***] Clinical Trial;

(iii) with respect to [***], to schedule and meet with the [***], during the time the first [***] Clinical Trial or [***] Clinical Trial is being conducted for the Cardiovascular Product for use in either [***], to establish a plan for clinical development of such Cardiovascular Product to support Marketing Approval therefor in [***] and to use commercially reasonable efforts to Initiate such clinical development [***] of obtaining Marketing Approval from the [***] with respect to such Cardiovascular Product for use in either [***] in accordance with the established plan therefor.

Without limiting the foregoing, the right of Angioblast to terminate the Agreement pursuant to this Section 13.3(a) shall expire (I) with respect to subsections (i) and (ii), the earlier of (A) obtaining Marketing Approval from the [***], as applicable, with respect to such Cardiovascular Product for use in either [***] or (B) generation of data resulting from the Phase 2b Clinical Trial or Phase 3 Clinical Trial for the Cardiovascular Product for use in each of [***], as applicable, that does not support the filing for or obtaining Marketing Approval therefor, whether determined by the JSC pursuant to Section 4.4(b) or the [***], as applicable; and (II) with respect to subsection (iii), the earlier of (C) expiration of the right of Angioblast to terminate under subsections (i) and (ii) pursuant to clause (B) of this paragraph or (D) Initiation of such clinical development for [***] of the Cardiovascular Product for use in either [***] in accordance with the established plan therefor. In addition, the right of Angioblast to terminate the Agreement pursuant to this Section 13.3(a)(i) and (ii) shall expire in both cases with respect to the Cardiovascular Product for use in one of such indications (*i.e.*, [***]) in the event either right of termination pursuant to this Section 13.3(a)(i) or (ii) expires pursuant to clause (B) of this paragraph; and for clarity, the right of Angioblast to terminate the Agreement pursuant to this Section 13.3(a)(i) or (ii) shall remain in force and effect with respect to the Cardiovascular Product for use in the other indication. For example, if a [***] Clinical Trial or [***] Clinical Trial for the Cardiovascular Product does not support filing for or obtaining Marketing Approval for one of either [***], in either the [***], then Cephalon's obligation to Initiate a [***] Clinical Trial or [***] Clinical Trial for the Cardiovascular Product in the [***] under Section 13.3(a)(i) or (ii), as applicable, shall be for the other indication.

Such termination shall be effective upon [***] written notice to Cephalon referencing this Section 13.3(a) and specifying it is terminating this Agreement with respect to the Cardiovascular

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Field in the applicable Region in its entirety; unless, to the extent Cephalon's failure to meet any of the requirements under this Section 13.3(a) can be cured, Cephalon submits to Angioblast a plan setting forth specific actions to be performed by Cephalon to cure such failure within such thirty (30) days' period, and actively and diligently pursues such plan to cure such failure within one hundred eighty (180) days from Angioblast's receipt thereof. If Cephalon complies with the previous sentence and does so cure, then the termination notice shall have no effect. In the event of such termination the provisions of Paragraphs 1, 2, 3, 4 and 8 of Exhibit 13 shall apply.

(b) CNS Field. Angioblast may terminate this Agreement as to the CNS Field in its entirety for the failure of Cephalon to achieve the following: (i) to request Angioblast to conduct [***] Clinical Trial for the CNS Product for use in an indication in the CNS Field pursuant to Section 4.3(a)(i) above or (ii) to Initiate [***] Clinical Trial or [***] Clinical Trial for the CNS Product for use in such indication in the CNS Field [***] of (A) the determination of the JSC to proceed pursuant to Section 4.4(b) above and (B) the satisfaction of all conditions precedent pursuant to Section 4.4(c) above, whichever occurs later. Without limiting the foregoing, the right of Angioblast to terminate the Agreement pursuant to this Section 13.3(b) shall expire upon the earlier to occur of (I) the [***] Clinical Trial for the CNS Product for use in the CNS Field pursuant to Section 4.3(a)(i) above is unsuccessful as determined by the JSC or (B) Initiation of a [***] Clinical Trial or [***] Clinical Trial as described in clause (ii) of this Section 13.3(b). Such termination shall be effective upon [***] written notice to Cephalon referencing this Section 13.3(b) and specifying it is terminating this Agreement with respect to the CNS Field in its entirety; unless, to the extent Cephalon's failure to meet any of the requirements under this Section 13.3(b) can be cured, Cephalon submits to Angioblast a plan setting forth specific actions to be performed by Cephalon to cure such failure [***], and actively and diligently pursues such plan to cure such failure [***] from Angioblast's receipt thereof. If Cephalon complies with the previous sentence and does so cure, then the termination notice shall have no effect. In the event of such termination the provisions of Paragraphs 1, 2, 3, 4 and 6 of Exhibit 13 shall apply.

(c) Termination for Patent Challenge. Angioblast may terminate this Agreement at any time if Cephalon or any of its Affiliates or Marketing Partners commence, participate in or actively support or directly or indirectly (except to the extent required by applicable Law) assist in any way any challenge to the validity, ownership, enforceability or scope of any Patents within the Angioblast Patents (a "Patent Challenge") in any court or before any governmental authority with authority to determine the validity, ownership, enforceability or scope of such Patents, or cause or request a review of the same by any such court or governmental authority. Such termination shall be effective thirty (30) days after written notice by Angioblast to Cephalon referencing this Section 13.3(c), unless Cephalon, within such thirty (30) days, causes such Patent Challenge to terminate prior to any determination by the applicable governmental authority adverse to the Patents and takes no other actions to facilitate such challenge; provided, however, that if any delay in such termination is caused by delay by Angioblast or its Affiliate in a Patent Challenge proceeding, such thirty (30)-day period shall be extended for the delay caused by Angioblast or its Affiliate. In the event of such termination the provisions of Paragraphs 1, 2, 3, 4 and 5 of Exhibit 13 shall apply.

(d) Sole Termination Rights. The termination rights contained in this Section 13.3 shall be the sole termination rights of Angioblast under this Agreement.

ARTICLE XIV DISPUTE RESOLUTION

14.1 Dispute Resolution. The Parties agree that any dispute arising with respect to the interpretation, enforcement, termination or invalidity of this Agreement, or the failure of the JSC or any Subcommittee to reach unanimous agreement on any issue within its respective authority under this Agreement, any alleged failure to perform, or breach of, this Agreement, or any issue relating to the interpretation or application of this Agreement (each a "Dispute"), shall first be resolved through the procedures set forth in this ARTICLE XIV.

14.2 Committee Disputes. Disputes as to matters within the authority of the JSC or any Subcommittee will be resolved as set forth in Paragraph 5 of Exhibit 3.1; provided that any dispute as to the application of such Paragraph 5 of Exhibit 3.1 shall be subject to the provisions of this ARTICLE XIV.

14.3 Other Disputes. Other than those Disputes resolved as described in Section 14.2 (each, an "Other Dispute") shall be subject to the provisions of this Section 14.3.

(a) Initial Escalation. With respect to all Other Disputes, if the Parties are unable to resolve any such Other Dispute [***] after such Other Dispute is first identified by either Party in writing to the other, either Party shall have the right to refer such Other Dispute to the Senior Executives for attempted resolution by written notice to the other Party referencing the particular Other Dispute and this Section 14.3(a). In such case, the Senior Executives shall conduct good faith negotiations and seek to resolve the Other Dispute [***] after such notice is received, including having at least one (1) in person meeting of the Senior Executive [***] after such notice is received. If the Senior Executive officers resolve such Other Dispute, a memorandum setting forth their agreement to resolve the Other Dispute will be prepared and signed by both Parties if requested by either Party. In all events, the Parties shall cooperate in an effort to limit the issues for consideration in such manner as narrowly as reasonably practicable in order to resolve the Other Dispute.

(b) Binding Arbitration. If the Senior Executive are not able to resolve such Other Dispute referred to them under Section 14.3(a) within such [***], such Other Dispute shall be resolved through binding arbitration, which arbitration may be initiated by either Party by written notice to the other Party referencing the particular Other Dispute and this Section 14.3(b) at any time after the conclusion of such period, on the following basis:

- (i) The place of arbitration shall be New York, New York and all proceedings and communications shall be in English.

(ii) The arbitration shall be administered by JAMS pursuant to the Comprehensive Arbitration Rules and Procedures of JAMS then in effect (the "JAMS Rules").

(iii) The arbitration shall be conducted by a single arbitrator mutually agreed by the Parties, or if the Party's are unable to agree on a single arbitrator, then a panel of three arbitrators. In each case, the arbitrators shall be neutral, independent individuals with experience in the pharmaceutical business related to the matter of the Other Dispute. Within thirty (30) days after the notice initiating the arbitration, each Party shall appoint one arbitrator meeting the foregoing criteria by written notice to the other Party and the two Party-appointed arbitrators shall select the third arbitrator within thirty (30) days of their appointment. If the Party-appointed arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be appointed by JAMS.

(iv) Judgment upon the award rendered by such arbitrator(s) shall be binding on the Parties and may be entered by any court or forum having jurisdiction.

(v) Either Party may apply to the arbitrator(s) for interim injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Further, either Party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any injunctive or provisional relief necessary to protect the rights or property of such Party pending the arbitration award.

(vi) The arbitrator(s) shall have no authority to award punitive or any other type of damages not measured by a Party's compensatory damages; except as allowed under Section 12.4.

(vii) Each Party shall bear its own costs and expenses and attorneys' fees and an equal share of the arbitrator(s)' and any administrative fees of arbitration, unless the arbitrator(s) determine that a Party has incurred unreasonable expenses due to vexatious or bad faith position taken by the other Party, in which event, the arbitrator may make an award of all or any portion of such expense so incurred.

(viii) Reasons for the arbitrators' decision should be complete and explicit, including determinations of law and fact. The written reasons should also include the basis for any damages awarded and a statement of how the damages were calculated. Such written decision should be rendered by the arbitrator(s) following a full comprehensive hearing, as soon as practicable but in no event later than [***] following the selection of the arbitrator(s) under Section 14.3(b)(iii).

(ix) Except to the extent necessary to confirm an award or as may be required by law, neither Party nor any arbitrator may disclose the existence, content, or results of an arbitration without the prior written consent of both Parties.

(x) In no event shall an arbitration be initiated after the date when commencement of a legal or equitable proceeding based on the dispute, controversy or claim would be barred by the applicable statute of limitations; provided that such limitation shall be tolled as of the date a Party notifies the other Party of such Other Dispute pursuant to this ARTICLE XIV.

14.4 Patent and Trademark Dispute Resolution. Any dispute, controversy or claim relating to the ownership, scope, validity, enforceability or infringement of any Patent rights covering the manufacture, use or sale of any Product or of any trademark rights relating to any Product shall be submitted to a court of competent jurisdiction in which such Patent or trademark rights were granted or arose.

14.5 Interim Relief. Notwithstanding anything in this ARTICLE XIV to the contrary, Angioblast and Cephalon shall each have the right to apply to any court of competent jurisdiction for appropriate interim or provisional relief, as necessary to protect the rights or property of that Party, pending the selection of the arbitrator or arbitrator's determination of the merits of any Dispute.

ARTICLE XV GENERAL PROVISIONS

15.1 Force Majeure. A Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party referencing this Section 15.1. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the control of the affected Party, including without limitation, an act of God, war, civil commotion, terrorist act, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe, and failure of plant or machinery (provided that such failure could not have been prevented by the exercise of skill, diligence, and prudence that would be reasonably and ordinarily expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances). Notwithstanding the foregoing, a Party shall not be excused from making payments owed hereunder because of a force majeure affecting such Party.

15.2 Governing Law; Venue. This Agreement and all questions regarding its validity or interpretation, or the breach or performance of this Agreement, shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without reference to conflict of law principles.

15.3 Waiver of Breach. Except as otherwise expressly provided in this Agreement, any term or condition of this Agreement may be waived only by a written instrument executed by a duly authorized representative of the Party waiving compliance. The delay or failure of either Party at any time to require performance of any provision of this Agreement shall in no manner affect such Party's rights at a later time to enforce the same. No waiver by either Party of any condition or term in any one or more instances shall be construed as a further or continuing waiver of such condition or term or of another condition or term.

15.4 Modification. No amendment or modification of any provision of this Agreement shall be effective unless in writing signed by a duly authorized representative of each Party. No provision of this Agreement shall be varied, contradicted or explained by any oral agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by a duly authorized representative of each Party.

15.5 Severability. In the event any provision of this Agreement should be held invalid, illegal or unenforceable in any jurisdiction, the Parties shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties and all other provisions of this Agreement shall remain in full force and effect in such jurisdiction. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

15.6 Entire Agreement. This Agreement (including the Exhibits attached hereto), Joint Interest Agreement(s), Joint Defense Agreement(s), Supply Agreement(s) and Quality Agreement(s) (in each case, once entered into) constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous agreements, understandings or representations, either written or oral, between Angioblast and Cephalon with respect to such subject matter, including, without limitation, the Prior Confidentiality Agreement. The foregoing shall not be interpreted as a waiver of any remedies available to either Party as a result of any breach, prior to the Effective Date, by the other Party of its obligations pursuant to the Prior Confidentiality Agreement. For clarity, this Agreement and the Stock Purchase Agreement are independent.

15.7 Notices. Unless otherwise agreed by the Parties or specified in this Agreement, all communications between the Parties relating to, and all written documentation to be prepared and provided under, this Agreement shall be in the English language. Any notice required or permitted under this Agreement shall be in writing in the English language: (a) delivered personally; (b) sent by registered or certified mail (return receipt requested and postage prepaid); (c) sent by express courier service providing evidence of receipt, postage pre-paid where applicable; or (d) sent by facsimile (receipt verified and a copy promptly sent by another permissible method of providing notice described in paragraphs (b), (c) or (d) above), to the following addresses of the Parties or such other address for a Party as may be specified by like notice:

To Angioblast:

Angioblast Systems Inc.
275 Madison Ave 4th floor
New York City, NY 10016
phone: 212-880-2060
Fax : 212-880-2061
Attention Michael Schuster

To Cephalon:

Cephalon, Inc.
41 Moores Road
Frazer, PA 19355
Telephone: (610) 738-6337
Facsimile: (610) 738-6258
Attention: General Counsel

With a copy to:

Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 493-9300
Facsimile: (650) 493-6811
Attention: Ian B. Edvalson

With a copy to:

Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
Attention : Pran Jha

Any notice required or permitted to be given concerning this Agreement shall be effective upon receipt by the Party to whom it is addressed or within five (5) Business Days of dispatch whichever is earlier.

15.8 Assignment. This Agreement shall not be assignable by either Party to any Third Party hereto without the written consent of the other Party hereto; except either Party may assign this Agreement without the other Party's consent to an entity that acquires substantially all of the business or assets of the assigning Party, whether by merger, acquisition (of assets or stock) or otherwise, provided that the Party to whom this Agreement is assigned assumes this Agreement in writing or by operation of law. In addition, either Party shall have the right to assign this Agreement to an Affiliate, in whole or in part, upon written notice to the non-assigning Party; provided that the assigning Party guarantees the performance of this Agreement by such Affiliate; and further provided that no such assignment shall relieve Cephalon of its obligations to make payments to Angioblast in accordance with the terms of this Agreement. Notwithstanding the foregoing, if the non-assigning Party reasonably believes such assignment to an Affiliate could result in material adverse tax consequences to the non-assigning Party, such assignment shall not be made without the non-assigning Party's consent. Subject to the foregoing, this Agreement shall inure to the benefit of each Party, its successors and permitted assigns. Any assignment of this Agreement in contravention of this Section 15.8 shall be null and void. In the event of any assignment-in-part as permitted under this Section 15.8, the Parties shall agree to amend this Agreement or enter into a separate agreement to clarify the rights and obligations of the Parties as a result of such assignment-in-part.

15.9 No Partnership or Joint Venture. Nothing in this Agreement is intended, or shall be deemed, to establish a joint venture or partnership between Angioblast and Cephalon. Neither Party to this Agreement shall have any express or implied right or authority to assume or create any obligations on behalf of, or in the name of, the other Party, or to bind the other Party to any contract, agreement or undertaking with any Third Party.

15.10 No Third Party Beneficiaries. Except for the rights to indemnification provided for certain Third Parties as specified in ARTICLE XII, all rights, benefits and remedies under this Agreement are solely intended for the benefit of Angioblast and its Affiliates and Cephalon and its Affiliates, and except for such rights to indemnification expressly provided pursuant to ARTICLE XII, no Third Party shall have any rights whatsoever to (i) enforce any obligation contained in this Agreement (ii) seek a benefit or remedy for any breach of this Agreement, or (iii) take any other action relating to this Agreement under any legal theory, including but not limited to, actions in contract, tort (including but not limited to, negligence, gross negligence and strict liability), or as a defense, setoff or counterclaim to any action or claim brought or made by either Party.

15.11 Export Laws. Notwithstanding anything to the contrary contained herein, all obligations of Angioblast and Cephalon are subject to prior compliance with the export regulations of the United States or any other relevant country and such other Laws in effect in the United States, or any other relevant country as may be applicable, and to obtaining all necessary approvals required by the applicable agencies of the governments of the United States and any other relevant countries. Angioblast and Cephalon shall cooperate with each other and shall provide assistance to the other as reasonably necessary to obtain any required approvals.

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

[The remainder of this page left blank intentionally; signature page follows immediately behind.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

ANGIOBLAST SYSTEMS INC.

CEPHALON INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT 1.6
[***]

EXHIBIT 1.8
[***]

EXHIBIT 3.1
[***]

EXHIBIT 4.2
[***]

EXHIBIT 6.3

EXHIBIT 7.4
[***]

EXHIBIT 7.8

EXHIBIT 12.2

EXHIBIT 13
EFFECTS OF EXPIRATION OR TERMINATION

1. Accrued Obligations. Expiration or termination of this Agreement for any reason, whether in its entirety or in any part, shall not release either Party from any obligation or liability which, at the time of such expiration or termination, has already accrued to the other Party or which is attributable to a period prior to such expiration or termination.

2. Non-Exclusive Remedy. Notwithstanding anything herein to the contrary, termination of this Agreement, in its entirety or in part, by a Party shall be without prejudice to other remedies such Party may have at law or equity under this Agreement.

3. Termination Press Releases. In the event of termination of this Agreement for any reason, in its entirety or in any part, the Parties shall cooperate in good faith to coordinate public disclosure of such termination and the reasons therefor, and shall not, except to the extent required by applicable Law or the rules of a recognized stock exchange disclose such information without the prior approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. To the extent possible under the situation, the terminating Party shall provide the non-terminating Party with a draft of any such public disclosure it intends to issue five (5) Business Days in advance and with the opportunity to review and comment on such statement, it being understood that if the non-terminating Party does not notify the terminating Party in writing within such five (5) Business Day period (or such shorter period if required by applicable Law or and the rules of a recognized stock exchange in each case as notified to the non-terminating Party in writing) of any reasonable objections, such disclosure shall be deemed approved, and in any event the Parties shall work diligently and reasonably to agree on the text of any such proposed disclosure in an expeditious manner. The principles to be observed in such disclosures shall be accuracy, compliance with applicable Law and regulatory guidance documents, reasonable sensitivity to potential negative reactions to such news and the need to keep investors and others informed regarding the Parties' business and other activities. Accordingly in such situation, neither Party shall withhold, condition or delay its approval of a proposed disclosure that complies with such principles.

4. General Survival. The following provisions of this Agreement, shall survive expiration or termination of this Agreement in its entirety for any reason: [***] of the Agreement. Except as otherwise expressly provided in this Exhibit 13, all rights and obligations of the Parties under this Agreement shall terminate upon expiration or termination of this Agreement in its entirety for any reason.

5. Certain Terminations of this Agreement in its Entirety. This Paragraph 4 shall apply upon any termination of this Agreement in its entirety pursuant to Section 13.2(a) or 13.3(c).

(a) Ongoing Trials. If there are any ongoing clinical trials with respect to Products being conducted by or on behalf of Cephalon (or its Affiliates or Marketing Partners) at the time of notice of termination, Cephalon agrees, as requested by Angioblast, to (i) promptly transition to Angioblast or its designee some or all of such clinical trials and the activities related to or supporting such trials (ii) continue to conduct such clinical trials for a period requested by Angioblast up to a maximum of six (6) months after the effective date of such termination, or (iii) terminate such clinical trials as expeditiously as practicable in consultation with the applicable institutional review board (or equivalent). In such event, Cephalon shall be responsible for the costs of such transition.

(b) Commercialization. To avoid a disruption in the supply of Products to patients, if the Agreement is terminated after the first commercial sale of any Product in the Territory, Cephalon, its Affiliates and its Marketing Partners shall continue to distribute the Products in each country of the Territory for which Marketing Approval therefor has been obtained, in accordance with the terms and conditions of this Agreement, until the date on which Angioblast notifies Cephalon in writing that Angioblast has secured an alternative distributor or licensee for the Products in such country, but in no event more for than twenty-four (24) months after the effective date of any termination of this Agreement, in whole or in part (the "Wind-down Period"); provided that Cephalon, its Affiliates and its Marketing Partners shall cease such activities, or any portion thereof, in a given country upon sixty (60) days' notice by Angioblast requesting that such activities (or portion thereof) be ceased. Notwithstanding any other provision of this Agreement, during the Wind-down Period, Cephalon's and its Affiliates' and Marketing Partners' rights with respect to the Products in the Territory shall be non-exclusive and, without limiting the foregoing, Angioblast shall have the right to engage one or more other distributor(s) and/or licensee(s) of any Products in all or part of the Territory. Any Products sold or disposed by Cephalon in the Territory during the Wind-down Period shall be subject to applicable payment obligations under ARTICLE VI above. Within thirty (30) days of expiration of the Wind-down Period, Cephalon shall, upon the request of Angioblast, transfer to Angioblast or its designee, all Products and BMT MPCs in its inventory at the provisional transfer price therefor (as set forth in Paragraph 2(c) of Exhibit 6.3).

(c) Assignment of Regulatory Materials. At Angioblast's request, Cephalon shall assign or cause to be assigned to Angioblast or its designee (or to the extent not so assignable, Cephalon shall take all reasonable actions to make available to Angioblast or its designee the benefits of) all Regulatory Materials for all Products in the Territory, including any such Regulatory Materials owned by Cephalon's Affiliates and/or Marketing Partners. In addition, Cephalon shall promptly provide to Angioblast a copy of all Data and other Cephalon Know-How pertaining to all Products to the extent not previously provided to Angioblast and Angioblast shall have the right to use and disclose all Data and Cephalon Know How pertaining to such Products following termination of this Agreement.

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(d) Marketing Partners. If requested by Angioblast, any contracts with Marketing Partners of any Products in the Territory engaged by Cephalon other than Cephalon's Affiliates shall be assigned to Angioblast to the extent Cephalon has the right to do so. In the event such assignment is not requested by Angioblast or Cephalon does not have the right to do so, then the rights of such Marketing Partners shall terminate upon termination of Cephalon's rights with respect to the Territory. Cephalon shall ensure that its Affiliates and such Marketing Partners (if not assigned to Angioblast pursuant to this Paragraph 5(d)) shall transition all Products back to Angioblast in the manner set forth in this Paragraph 4 as if such Affiliate or Marketing Partner were named herein.

(e) Return of Materials. Within thirty (30) days after the end of the Wind-down Period and without limiting the last sentence of Paragraph 4(b), Cephalon shall either transfer to Angioblast or destroy all tangible items related to the Products including those comprising, bearing or containing any Existing Mark, Product Mark, the Angioblast Logos, Data, photographs, samples, literature, sales and promotional aids and all Confidential Information of Angioblast, that is in Cephalon's, its Affiliates (or subject to Paragraph 4(d) its Marketing Partners') possession. Effective upon the end of the Wind-down Period, Cephalon shall: (i) cease to use all Existing Marks and Product Marks, and all rights granted to Cephalon hereunder with respect to the Products in the Territory shall terminate; and (ii) assign or cause to be assigned to Angioblast or its designee all right, title and interest in and to the Existing Marks (to the extent such Existing Marks are not maintained in Angioblast's name) and Product Marks in the Territory. In addition, all Data generated by or on behalf of Cephalon hereunder during the Term shall, to the extent it specifically pertains to the Products, be deemed Confidential Information of Angioblast and not Confidential Information of Cephalon (and will not be subject to the exclusion under Section 8.1(a) or 8.1(e)).

(f) Transition. Without limiting the foregoing provisions of this Paragraph 4, Cephalon shall cooperate with Angioblast and/or its designee to effect a smooth and orderly transition in the Development and Commercialization of the Cardiovascular Products and CNS Products and Development, processing and Commercialization of Expanded HPCs in the Territory during the Wind-down Period. Without limiting the foregoing, Cephalon shall use commercially reasonable efforts to conduct in an expeditious manner any activities to be conducted under this Paragraph 4. Upon transition of such Development and Commercialization of the Products, Angioblast shall assume all liabilities and obligations resulting from the Development and Commercialization of the Products, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to Paragraph 5.d, that accrue on or after the date of assignment of the obligations of Cephalon under this Paragraph 5; provided, however, that Cephalon shall remain responsible for all liabilities and obligations resulting from the Development and Commercialization of the Products, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to Paragraph 5.d, that accrue prior to such date of assignment of this Paragraph 5.

6. Certain Terminations of this Agreement with respect to a Sub-Field/Product. This Section 5(f) shall apply upon any termination of this Agreement with respect to a particular Sub-Field pursuant to Sections 13.2(b) and 13.3(b).

(a) Exclusion of Sub-Field/Product. Effective upon such termination of this Agreement with respect to a particular Sub-Field (the “Excluded Sub-Field”), (i) the Excluded Sub-Field shall be excluded from the definition of Field for all purposes of this Agreement and the associated Products (i.e., if the Excluded Sub-Field is the Cardiovascular Field, then the Cardiovascular Products; if the Excluded Sub-Field is the Oncology Field, then the Expanded HPCs; or if the Excluded Sub-Field is the CNS Field, then the CNS Products, in each case the “Excluded Products”) shall be excluded from the definition of Product for all purposes of this Agreement. Each Party’s rights and obligations under this Agreement with respect to the Excluded Sub-Field and Excluded Products, except to the extent otherwise set forth in this Exhibit 13 and Paragraph 6, shall terminate. Accordingly and without limiting the foregoing, Cephalon’s rights under Section 2.1 with respect to the Excluded Products and Excluded Sub-Field shall terminate.

(b) Ongoing Trials. If there are any ongoing clinical trials with respect to Excluded Products being conducted by or on behalf of Cephalon (or its Affiliates or Marketing Partners) at the time of notice of termination, Cephalon agrees, as requested by Angioblast, to (i) promptly transition to Angioblast or its designee some or all of such clinical trials and the activities related to or supporting such trials (ii) continue to conduct such clinical trials for a period requested by Angioblast up to a maximum of six (6) months after the effective date of such termination, or (iii) terminate such clinical trials as expeditiously as practicable in consultation with the applicable institutional review board (or equivalent). In such event, Cephalon shall be responsible for the costs of such transition.

(c) Commercialization. To avoid a disruption in the supply of Excluded Products to patients, if the Agreement is terminated after the first commercial sale of any Excluded Product in the Territory, Cephalon, its Affiliates and its Marketing Partners shall continue to distribute the Excluded Products in each country of the Territory for which Marketing Approval therefor has been obtained, in accordance with the terms and conditions of this Agreement, during the Wind-down Period; provided that Cephalon, its Affiliates and its Marketing Partners shall cease such activities, or any portion thereof, in a given country upon sixty (60) days’ notice by Angioblast requesting that such activities (or portion thereof) be ceased. Notwithstanding any other provision of this Agreement, during the Wind-down Period, Cephalon’s and its Affiliates’ and Marketing Partners’ rights with respect to the Excluded Products in the Territory shall be non-exclusive and, without limiting the foregoing, Angioblast shall have the right to engage one or more other distributor(s) and/or licensee(s) of any Excluded Products in all or part of the Territory. Any Excluded Products sold or disposed by Cephalon in the Territory during the Wind-down Period shall be subject to applicable payment obligations under ARTICLE VI above. Within thirty (30) days of expiration of the Wind-down Period, Cephalon shall, upon the request of Angioblast, transfer to Angioblast or its designee, all Excluded Products or BMT MPCs (if applicable) in its inventory at the provisional transfer price therefor (as set forth in Paragraph 2(c) of Exhibit 6.3).

(d) Assignment of Regulatory Materials. At Angioblast’s request, Cephalon shall assign or cause to be assigned to Angioblast or its designee (or to the extent not so assignable, Cephalon shall take all reasonable actions to make available to Angioblast or its designee the

benefits of) all Regulatory Materials for all Excluded Products in the Territory, including any such Regulatory Materials owned by Cephalon's Affiliates and/or Marketing Partners. In addition, Cephalon shall promptly provide to Angioblast a copy of all Data and other Cephalon Know-How pertaining to all Excluded Products to the extent not previously provided to Angioblast and Angioblast shall have the right to use and disclose all Data and Cephalon Know How pertaining to such Excluded Products following termination of this Agreement with respect to such Excluded Product.

(e) Marketing Partners. If requested by Angioblast, any contracts with Marketing Partners of any Excluded Products in the Territory engaged by Cephalon other than Cephalon's Affiliates shall be assigned to Angioblast to the extent Cephalon has the right to do so. In the event such assignment is not requested by Angioblast or Cephalon does not have the right to do so, then the rights of such Marketing Partners shall terminate upon termination of Cephalon's rights with respect to the Excluded Products. Cephalon shall ensure that its Affiliates and such Marketing Partners (if not assigned to Angioblast pursuant to this Paragraph 6.e shall transition all Excluded Products back to Angioblast in the manner set forth in this Paragraph 6 as if such Affiliate or Marketing Partner were named herein.

(f) Return of Materials. Within thirty (30) days after the end of the Wind-down Period and without limiting the last sentence of Paragraph 6.c, Cephalon shall either transfer to Angioblast or destroy all tangible items related to the Excluded Products including those comprising, bearing or containing any Existing Mark, Product Mark, the Angioblast Logos, Data, photographs, samples, literature, sales and promotional aids and all Confidential Information of Angioblast, that is in Cephalon's, its Affiliates (or subject to Paragraph 6.e its Marketing Partners') possession, in each case solely and specifically with respect to the Excluded Product. Effective upon the end of the Wind-down Period, Cephalon shall: (i) cease to use all Existing Marks and Product Marks specific to the Excluded Products (the "Excluded Marks"), and all rights granted to Cephalon hereunder with respect to the Excluded Products in the Territory shall terminate; and (ii) assign or cause to be assigned to Angioblast or its designee all right, title and interest in and to the Excluded Marks in the Territory. In addition, all Data generated by or on behalf of Cephalon hereunder during the Term shall, to the extent it specifically pertains to the Excluded Products, be deemed Confidential Information of Angioblast and not Confidential Information of Cephalon (and will not be subject to the exclusion under Section 8.1(a) or 8.1(e)).

(g) Transition. Without limiting the foregoing provisions of this Paragraph 6, Cephalon shall cooperate with Angioblast and/or its designee to effect a smooth and orderly transition in the Development and Commercialization of the Excluded Products (and processing if the Excluded Products are the Expanded HPCs) in the Territory during the Wind-down Period. Without limiting the foregoing, Cephalon shall use commercially reasonable efforts to conduct in an expeditious manner any activities to be conducted under this Paragraph 6. Upon transition of such Development and Commercialization of the Excluded Products, Angioblast shall assume all liabilities and obligations resulting from the Development and Commercialization of the Excluded Products, including, but not limited to, all liabilities and obligations under any contracts with

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Marketing Partners assigned to Angioblast pursuant to Paragraph 6.e, that accrue on or after the date of assignment of the obligations of Cephalon under this Paragraph 6; provided, however, that Cephalon shall remain responsible for all liabilities and obligations resulting from the Development and Commercialization of the Excluded Products, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to Paragraph 6.e, that accrue prior to such date of assignment.

7. Certain Terminations of this Agreement with respect to a Region. This Paragraph 7 shall apply upon any termination of this Agreement with respect to a particular Region pursuant to Section 13.2(c).

(a) Exclusion of Region. Effective upon such termination of this Agreement with respect to a particular Region (the "Excluded Region"), the Excluded Region shall be excluded from the definition of Territory for all purposes of this Agreement. Each Party's rights and obligations under this Agreement with respect to the Excluded Region, except to the extent otherwise set forth in this Exhibit 13 and Paragraph 7, shall terminate. Accordingly and without limiting the foregoing, (i) Cephalon's rights under Section 2.1 with respect to the Excluded Region shall terminate and (ii) thereafter, Cephalon shall not Develop, Commercialize or otherwise exploit any Product in the Excluded Region (or authorize any Third Party to do so).

(b) Ongoing Trials. If there are any ongoing clinical trials with respect to Products being conducted by or on behalf of Cephalon (or its Affiliates or Marketing Partners) applicable only to the Excluded Region at the time of notice of termination, Cephalon agrees, as requested by Angioblast, to (i) promptly transition to Angioblast or its designee some or all of such clinical trials and the activities related to or supporting such trials (ii) continue to conduct such clinical trials for a period requested by Angioblast up to a maximum of six (6) months after the effective date of such termination, or (iii) terminate such clinical trials as expeditiously as practicable in consultation with the applicable institutional review board (or equivalent). In such event, Cephalon shall be responsible for the costs of such transition.

(c) Commercialization. To avoid a disruption in the supply of Products to patients, if the Agreement is terminated after the first commercial sale of any Product in the Excluded Region, Cephalon, its Affiliates and its Marketing Partners shall continue to distribute the Products in each country of the Excluded Region for which Marketing Approval therefor has been obtained, in accordance with the terms and conditions of this Agreement, until the date on which Angioblast notifies Cephalon in writing that Angioblast has secured an alternative distributor or licensee for the Products in such country, during the Wind-down Period; provided that Cephalon, its Affiliates and its Marketing Partners shall cease such activities, or any portion thereof, in a given country of the Excluded Region upon sixty (60) days' notice by Angioblast requesting that such activities (or portion thereof) be ceased. Notwithstanding any other provision of this Agreement, during the Wind-down Period, Cephalon's and its Affiliates' and Marketing Partners' rights with respect to the Products in the Excluded Region shall be non-exclusive and, without limiting the foregoing, Angioblast shall have the right to engage one or more other distributor(s) and/or

licensee(s) of any Products in all or part of the Excluded Region. Any Products sold or disposed by Cephalon in the Excluded Region during the Wind-down Period shall be subject to applicable payment obligations under ARTICLE VI above.

(d) Assignment of Regulatory Materials. At Angioblast's request, Cephalon shall assign or cause to be assigned to Angioblast or its designee (or to the extent not so assignable, Cephalon shall take all reasonable actions to make available to Angioblast or its designee the benefits of) all Regulatory Materials specific to the Products in the Excluded Region, including any such Regulatory Materials owned by Cephalon's Affiliates or Marketing Partners. In addition, Cephalon shall promptly provide to Angioblast a copy of all Data and other Cephalon Know-How pertaining to Products in the Excluded Region to the extent not previously provided to Angioblast and Angioblast shall have the right to use and disclose all Data and Cephalon Know How pertaining to such Excluded Region following termination of this Agreement with respect to such Excluded Region.

(e) Marketing Partners. If requested by Angioblast, any contracts with Marketing Partners of any Products in the Excluded Region engaged by Cephalon other than Cephalon's Affiliates shall be assigned to Angioblast to the extent Cephalon has the right to do so. In the event such assignment is not requested by Angioblast or Cephalon does not have the right to do so, then the rights of such Marketing Partners shall terminate upon termination of Cephalon's rights with respect to the Excluded Region. Cephalon shall ensure that its Affiliates and such Marketing Partners (if not assigned to Angioblast pursuant to this Paragraph 7.e) shall transition all Products back to Angioblast with respect to the Excluded Region in the manner set forth in this Paragraph 7 as if such Affiliate or Marketing Partner were named herein.

(f) Return of Materials. Within thirty (30) days after the end of the Wind-down Period, Cephalon shall either transfer to Angioblast or destroy all tangible items related to the Excluded Products including those comprising, bearing or containing any Existing Mark, Product Mark, the Angioblast Logos, Data, photographs, samples, literature, sales and promotional aids specifically with respect to the Excluded Region. Effective upon the end of the Wind-down Period, Cephalon shall: (i) cease to use all Existing Marks and Product Marks in the Excluded Region, and all rights granted to Cephalon with respect to the Products in the Excluded Region shall terminate; and (ii) assign or cause to be assigned to Angioblast or its designee all right, title and interest in and to the Existing Marks and Product Marks in the Excluded Region.

(g) Transition. Without limiting the foregoing provisions of this Paragraph 7, Cephalon shall cooperate with Angioblast and/or its designee to effect a smooth and orderly transition in the Development and Commercialization of the Products (and processing of the Expanded HPCs) in the Excluded Region during the Wind-down Period. Without limiting the foregoing, Cephalon shall use commercially reasonable efforts to conduct in an expeditious manner any activities to be conducted under this Paragraph 7. Upon transition of such Development and Commercialization of the Products in the Excluded Region, Angioblast shall assume all liabilities and obligations resulting from the Development and Commercialization of the Products in the

Excluded Region, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to Paragraph 7.e, that accrue on or after the date of assignment of the obligations of Cephalon under this Paragraph 7; provided, however, that Cephalon shall remain responsible for all liabilities and obligations resulting from the Development and Commercialization of the Products in the Excluded Region, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to Paragraph 7.e, that accrue prior to such date of assignment.

8. Certain Terminations of this Agreement with respect to the Cardiovascular Field in a Region. This Paragraph 8 shall apply upon any termination of this Agreement with respect to the Cardiovascular Field in a particular Region pursuant to Section 13.3(a).

(a) Exclusion of the Cardiovascular Field in a Region. Effective upon such termination of this Agreement with respect to the Cardiovascular Field in a Region (the "Excluded Region"), (i) the Cardiovascular Field shall be excluded from the definition of Field for all purposes of this Agreement and the associated Products (i.e., the Cardiovascular Products) shall be excluded from the definition of Product for all purposes of this Agreement and (ii) the Excluded Region shall be excluded from the definition of Territory for all purposes of this Agreement. Each Party's rights and obligations under this Agreement with respect to the the Cardiovascular Field, Cardiovascular Products, and Excluded Region, except to the extent otherwise set forth in this Exhibit 13 and Paragraph 8, shall terminate. Accordingly and without limiting the foregoing, (i) Cephalon's rights under Section 2.1 with respect to the Cardiovascular Field, Cardiovascular Products, and Excluded Region shall terminate and (ii) thereafter, Cephalon shall not Develop, Commercialize or otherwise exploit any Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region (or authorize any Third Party to do so) using any Angioblast Technology.

(b) Ongoing Trials. If there are any ongoing clinical trials with respect to Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region being conducted by or on behalf of Cephalon (or its Affiliates or Marketing Partners) applicable only to the Excluded Region at the time of notice of termination, Cephalon agrees, as requested by Angioblast, to (i) promptly transition to Angioblast or its designee some or all of such clinical trials and the activities related to or supporting such trials (ii) continue to conduct such clinical trials for a period requested by Angioblast up to a maximum of six (6) months after the effective date of such termination, or (iii) terminate such clinical trials as expeditiously as practicable in consultation with the applicable institutional review board (or equivalent). In such event, Cephalon shall be responsible for the costs of such transition.

(c) Assignment of Regulatory Materials. At Angioblast's request, Cephalon shall assign or cause to be assigned to Angioblast or its designee (or to the extent not so assignable, Cephalon shall take all reasonable actions to make available to Angioblast or its designee the benefits of) all Regulatory Materials specific to the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region, including any such Regulatory Materials owned by Cephalon's Affiliates or Marketing Partners. In addition, Cephalon shall promptly provide to

Angioblast a copy of all Data and other Cephalon Know-How pertaining to the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region to the extent not previously provided to Angioblast and Angioblast shall have the right to use and disclose all Data and Cephalon Know How pertaining to such Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region following termination of this Agreement with respect to such Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region.

(d) Marketing Partners. If requested by Angioblast, any contracts with Marketing Partners of any Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region engaged by Cephalon other than Cephalon's Affiliates shall be assigned to Angioblast to the extent Cephalon has the right to do so. In the event such assignment is not requested by Angioblast or Cephalon does not have the right to do so, then the rights of such Marketing Partners shall terminate upon termination of Cephalon's rights with respect to the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region. Cephalon shall ensure that its Affiliates and such Marketing Partners (if not assigned to Angioblast pursuant to this Paragraph 8.d) shall transition all Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region back to Angioblast with respect to the Excluded Region in the manner set forth in this Paragraph 8 as if such Affiliate or Marketing Partner were named herein.

(e) Return of Materials. Within thirty (30) days after the end of the Wind-down Period, Cephalon shall either transfer to Angioblast or destroy all tangible items related to the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region, including those comprising, bearing or containing any Existing Mark, Product Mark, the Angioblast Logos, Data, photographs, samples, literature, sales and promotional aids specifically with respect to the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region. Effective upon the end of the Wind-down Period, Cephalon shall: (i) cease to use all Existing Marks and Product Marks for the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region, and all rights granted to Cephalon with respect to the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region shall terminate; and (ii) assign or cause to be assigned to Angioblast or its designee all right, title and interest in and to the Existing Marks and Product Marks for the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region.

(f) Transition. Without limiting the foregoing provisions of this Paragraph 8, Cephalon shall cooperate with Angioblast and/or its designee to effect a smooth and orderly transition in the Development and Commercialization of the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region in the Excluded Region during the Wind-down Period. Without limiting the foregoing, Cephalon shall use commercially reasonable efforts to conduct in an expeditious manner any activities to be conducted under this Paragraph 8. Upon transition of such Development and Commercialization of the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region, Angioblast shall assume all liabilities and obligations resulting from the Development and Commercialization of the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to

Paragraph 8.d, that accrue on or after the date of assignment of the obligations of Cephalon under this Paragraph 8; provided, however, that Cephalon shall remain responsible for all liabilities and obligations resulting from the Development and Commercialization of the Cardiovascular Products for use in the Cardiovascular Field in the Excluded Region, including, but not limited to, all liabilities and obligations under any contracts with Marketing Partners assigned to Angioblast pursuant to Paragraph 8.d, that accrue prior to such date of assignment.



— 275 Madison Ave — 4th Floor — New York, NY 10016 — 212.880.2060 — 212.880.2061 —

August 10, 2011

Kevin Buchi, Chief Executive Officer
Cephalon, Inc.
41 Moores Road
Frazer, PA 19355

Re: Certain Development activities pursuant to the Development and Commercialization Agreement between Angioblast Systems Inc. (“Angioblast”) and Cephalon, Inc. (“Cephalon”), dated December 7, 2010 (“Agreement”)

Dear Mr. Buchi:

This letter is to confirm the understanding between Angioblast and Cephalon (each, a “Party” or collectively, the “Parties”) regarding Cephalon’s reimbursement of Angioblast’s costs and expenses for certain Development activities to be conducted by Angioblast for the Cardiovascular Product for acute myocardial infarction (“AMI”), in accordance with the terms set forth herein. All capitalized terms not defined herein will have the meaning assigned to them in the Agreement. Without limiting any rights or obligations of the Parties under the Agreement, Angioblast agrees to conduct a phase 2 clinical trial for the Cardiovascular Product for AMI (the “AMI Phase 2 Trial”) as follows:

1. JSC Subcommittee. Within ten (10) calendar days of the date of this letter, the Parties, through its representatives on the JSC, shall establish a subcommittee to oversee the management of costs and expenses incurred in Angioblast’s conduct of the AMI Phase 2 Trial as further described herein (the “AMI Subcommittee”). Each Party shall have two (2) representatives on the AMI Subcommittee with one such member having decision-making authority on behalf of the Party within the scope of responsibilities of the AMI Subcommittee. Unless otherwise agreed by the Parties, the AMI Subcommittee shall meet telephonically, by video conference or in person as reasonably necessary to conduct its obligations hereunder, but no less frequently than once every two (2) months during the conduct of the AMI Phase 2 Trial. The AMI Subcommittee shall be further managed as a “Committee” defined under the Agreement in accordance with the provisions set forth under paragraphs 3, 4, and 5 of Exhibit 3.1 of the Agreement, provided that, unless the Parties mutually agree otherwise, the AMI Phase 2 Trial may not be terminated except for safety purposes as required by any Regulatory Authority or the responsible Institutional Review Board (“IRB”).

2. AMI Phase 2 Trial. The Parties have agreed to that certain protocol entitled, "A randomized clinical trial of intracoronary infusion of immunoselected, bone marrow-derived Stro3 mesenchymal precursor cells (MPC) in the treatment of patients with ST-elevation myocardial infarction" and included in the applicable IND filed with the FDA for the conduct of the AMI Phase 2 Trial ("Protocol"). For clarity, a representative of Cephalon will be a member of the executive steering committee for the AMI Phase 2 Trial, as outlined in the Protocol. Promptly after receipt of regulatory approval of such INDs, Angioblast shall initiate the AMI Phase 2 Trial and thereafter use commercially reasonable efforts to continue such trial to completion in a timely manner in accordance with the Protocol (as may be revised as set forth in this paragraph 2). Angioblast may revise the Protocol as reasonably necessary during the conduct of the AMI Phase 2 Trial; provided that (a) any revision to the Protocol design of the AMI Phase 2 Trial shall be first submitted to the AMI Subcommittee for review and approval, and the AMI Subcommittee shall approve or disapprove such revised Protocol within fifteen (15) calendar days of its receipt thereof; and (b) any revision to the Protocol required by the applicable Regulatory Authority or IRB shall be first submitted to the AMI Subcommittee for its review and approval, and the AMI Subcommittee shall approve or disapprove, not to be unreasonably withheld, conditioned or delayed, such revised Protocol within five (5) calendar days of its receipt thereof.

3. Plan and Budget. An initial estimated plan and budget of third party costs and expenses to be incurred for the conduct of the AMI Phase 2 Trial, including for clinical trial management, laboratory testing, delivery devices for MPCs and shipping and handling, is attached hereto as Exhibit A and made a part hereof (the "Plan and Budget"). For clarity, Angioblast shall be responsible for the supply of MPCs comprising the Cardiovascular Product at its expense. Angioblast shall manage the costs and expenses of the AMI Phase 2 Trial in accordance with the Plan and Budget. Commencing upon the conclusion of the first full calendar month after enrollment of the [***] in the AMI Phase 2 Trial, Angioblast shall invoice Cephalon by the second (2nd) business day of each month for the Reimbursable Expenses incurred during the previous month in accordance with the Plan and Budget (as may be revised and updated as set forth in this paragraph 3 below), and Cephalon shall reimburse Angioblast within thirty (30) days of invoice for such Reimbursable Expenses. For purposes hereof, "Reimbursable Expenses" means third party costs and expenses reasonably allocable to those patients enrolled as the [***] patient through the last patient enrolled in excess of [***] patients, if any, and consistent with the then-current approved Plan and Budget. For clarity, Cephalon's obligation to reimburse Angioblast for amounts under this letter shall survive any termination of the Agreement-Angioblast may revise the Plan and Budget as reasonably necessary to conduct the AMI Phase 2 Trial and shall provide updates to the Plan and Budget to the AMI Subcommittee on a monthly basis during the conduct of the AMI Phase 2 Trial; provided that Angioblast shall first submit any material increase of the total budget under the Plan and Budget to an amount more than [***] of the total budget set forth in the then-current approved Plan and Budget to the AMI Subcommittee for its review and approval, and the AMI Subcommittee shall approve or disapprove such revised Plan and Budget within fifteen (15) days of its receipt thereof.

4. Audit. Upon completion or early termination of the AMI Phase 2 Trial, Cephalon shall have the right to audit the books and records of Angioblast relating to reimbursable third party costs and expenses incurred in connection with the conduct of the AMI Phase 2 Trial, at the location(s) where such books and records are maintained by Angioblast, for purposes of ascertaining

the accuracy of Cephalon's payments to Angioblast under paragraph 3 above, provided that any (i) such audit shall take place by (and no later than) six (6) months after the completion or early termination of the AMI Phase 2 Trial; (ii) such audit shall be performed on behalf of Cephalon by an independent third party auditor selected by Cephalon and reasonably acceptable to Angioblast and (iii) once such an audit of the books and records of Angioblast has been completed and any discrepancies or potential discrepancies identified in such audit with respect to payments under paragraph 3 above have either been resolved or determined in reasonable detail in connection with such audit, such books and records will not be subject further audit under this paragraph 4. Such audit shall be conducted during the normal business hours of Angioblast upon at least thirty (30) days advance notice to Angioblast, and the auditor selected by Cephalon shall be required to execute a reasonable confidentiality agreement prior to commencing any such audit and shall only disclose to Cephalon (a) whether or not the relevant payments were accurate, and (b) if the payments were not accurate, the amount of any under- or over-payment, as well as detail concerning the nature, scope and circumstances of the discrepancy so that such discrepancy can be equitably resolved.

5. **General.** Each Party shall bear its own costs incurred in connection with its activities under this letter. The Parties further agree that unless otherwise expressly provided for otherwise in this letter, the terms and conditions of the Agreement, including Articles 8 (Confidentiality) and 9 (Intellectual Property), shall apply to the conduct of activities pursuant to this letter, as applicable, but that nothing in this letter shall be deemed to amend or modify the rights and obligations of the Parties under the Agreement. Accordingly, this letter is intended to be binding in nature whereby the Parties by signing below will form a valid and enforceable agreement under applicable law, which shall inure to the benefit of each Party, its successors and assigns. This letter shall be governed by and interpreted in accordance with the substantive laws of the State of New York and the Parties submit to the jurisdiction of the courts of New York, both state and federal. This letter may not be amended except by a writing signed by both Parties. This letter may be executed in any number of counterparts (which may be by facsimile), each of which need not contain the signature of more than one party but all such counterparts taken together shall constitute one and the same agreement.

Sincerely,

/s/ Michael Schuster

Angioblast Systems Inc.

Michael Schuster
EVP, Global Therapeutic Programs

275 Madison Avenue, 4th Floor
New York, New York 10016

Acknowledged and agreed as of

Cephalon, Inc.

By: /s/ J. Kevin Buchi

Name: J. Kevin Buchi

Title: CEO

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [* * *] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

EXHIBIT A

INITIAL PLAN AND BUDGET

AMENDMENT
TO
DEVELOPMENT AND COMMERCIALIZATION AGREEMENT
RELATING TO PHASE 3 CHF CLINICAL TRIAL

This Amendment to Development and Commercialization Agreement relating to Phase 3 CHF Clinical Trial (this "Amendment") is entered into as of the 24th day of September, 2013, by and between Mesoblast, Inc., as successor to Angioblast Systems, Inc. ("Mesoblast"), and Cephalon, Inc. (collectively with its Affiliates, "Cephalon," and, together with Mesoblast, the "Parties" and, each, a "Party").

WHEREAS, the Parties entered into that certain Development and Commercialization Agreement, dated December 7, 2010, as amended and supplemented (the "Development Agreement"); and

WHEREAS, the Parties desire to obtain prompt finalization and implementation of the design, protocol and allocation of funding for the Phase 3 Clinical Trial (hereinafter, the "P3CHF Trial") for the Cardiovascular Product for congestive heart failure (the "Product," or, alternatively, "CEP-41750").

NOW, THEREFORE, the Parties hereby agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings attributed to them in the Development Agreement.

2. The P3CHF Trial is ultimately designed to enroll approximately 1700 total patients. The final protocol (which shall otherwise be established in accordance with the Development Agreement, the "P3CHF Protocol") for the P3CHF Trial will include two interim analyses of efficacy and/or safety of CEP-41750. The charter of the Executive Steering Committee of the P3CHF Protocol (the "ESC") is attached hereto as Exhibit A.

3. The first interim analysis (hereinafter, "Interim Analysis #1") will first assess the effect of CEP-41750 on secondary cardiac functional parameters of ejection fraction and left ventricular volumes as measured by cardiac ultrasound. CEP-41750 treatment effect on these surrogates will be used to decide whether continued evaluation of CEP-41750 for reduction in the primary clinical endpoint of [***] in this population is warranted. Predefined thresholds for the achievement of a positive effect of CEP-41750 on the surrogate endpoints are defined below. The efficacy evaluation for Interim Analysis #1 will be performed by an independent statistician designated by Cephalon by advance written notice to Mesoblast and to which Mesoblast has no reasonable objection (the "Statistician"). The Statistician will be fully unblinded to treatment assignment. This analysis will be conducted after the first [***] patients randomly assigned to treatment (i.e., approximately [***] patients each in the CEP-41750 and control groups) have undergone an [***] and completed a minimum of [***] months follow up. Short-term measurements of [***] will be evaluated as surrogates for longer term [***]. All patients treated in the P3CHF Trial will

be followed up for a minimum of [***] months for safety. The [***] surrogates will focus on [***] as assessed by change from baseline to month [***] in [***] determined [***]. It is anticipated that approximately [***] to [***] of the first [***] patients will qualify for this [***] analysis based on having [***] of satisfactory image quality as determined by the core [***] reading center.

For the surrogate endpoints analysis, the predefined threshold will be achieved if the following two conditions are satisfied:

- a) The difference in mean change from baseline to month [***] between CEP-41750 and the control groups for [***] is greater than or equal to [***]; and
- b) The difference in mean change from baseline to month [***] between CEP-41750 and the control groups for either [***] or [***] is less than or equal to [***].

The Statistician will evaluate the results of the surrogate endpoints analysis and incorporate them into a written notice to be sent to each of Mesoblast, Cephalon and the ESC as described in paragraph 5 herein.

Interim Analysis #1 will secondly involve a time-to-first event analysis of CEP-41750's effect on the primary clinical endpoint for [***] using the log rank test. This analysis will be conducted after the first [***] patients randomly assigned to treatment (i.e., approximately [***] patients each in the CEP-41750 and control groups) have undergone an index cardiac catheterization and completed a minimum of [***] months follow up. All events will be positively adjudicated for the Statistician by an independent Clinical Events Committee (as described in the P3CHF Protocol), which will remain blinded to treatment assignment and will be responsible for the determination of [***] events for each enrolled patient. For the [***] analysis, the Statistician will confirm that the predefined threshold has been achieved if [***].

4. Interim Analysis #1 shall be conducted after the first [***] patients recruited from the initial [***] designated clinical injection sites in North America have completed [***] months of follow-up, including ultrasound measurements of cardiac function. Unless Mesoblast notifies Cephalon otherwise in advance, after the recruitment of the [***] patient in the P3CHF Trial, Cephalon shall continue the enrollment of additional patients in accordance with P3CHF Protocol at Mesoblast's cost and expense. Mesoblast shall have the right to designate up to [***] additional sites in North America (each subject to Cephalon's prior written consent, which shall not be unreasonably withheld) at Mesoblast's expense that will refer patients to the injection sites for inclusion in the P3CHF Trial. For the avoidance of doubt, subject to the oversight of the ESC, all interactions with the sites shall be conducted by Cephalon or designee. [***]. The Parties acknowledge that the foregoing sentence will not be

included in the P3CHF Protocol and associated documentation. The Interim Analysis #1 will not be used to re-evaluate the number of required HF-MACEs, and will not be used to stop the study early for success.

5. As soon as the Statistician has completed its final evaluation of the data required for all aspects of Interim Analysis #1, he or she will promptly and contemporaneously deliver written notice of his/her determinations to each of Mesoblast, Cephalon and the ESC. The written notice will consist of a binary notification (yes/no) of whether the respective thresholds were achieved.

6. The second interim analysis shall be as further described in the P3CHF Protocol.

7. Cephalon will be responsible for funding up to the first [***] million in third party costs for the performance of the P3CHF Trial in accordance with the P3CHF Protocol, but only to the extent such third party costs are incurred with respect to services performed prior to the date of delivery by Cephalon to Mesoblast of the Decision Notice (as defined below). Mesoblast will equally share with Teva all third party costs for performance of the P3PCHF Trial exceeding [***] million up until the Decision Notice (except for any costs relating to an expansion of the patient enrollment beyond [***] or any referral sites designated by Mesoblast, all of which excess costs will be the sole responsibility of Mesoblast). Cephalon will be obligated to provide notice to Mesoblast promptly after becoming aware of any third party costs under its control that are anticipated to exceed [***] million.

8. The "Decision Notice" means the written notice that Cephalon is obligated to deliver to Mesoblast indicating Cephalon's decision to either (i) withdraw from or (ii) continue with the P3CHF Trial, within thirty (30) days of the earlier to occur of:

a) receipt by Cephalon of the Statistician's written determinations for Interim Analysis #1; or

b) that date [***] months after treatment of the first patient in the P3CHF Trial, in the event that at least [***] patients have not been enrolled in the P3CHF Trial by such date.

For the avoidance of doubt, Cephalon shall have a right to withdraw from the P3CHF Trial only if (1) the Statistician determines that the surrogate endpoints set forth in paragraph 3 above have not been achieved; (2) fewer than [***] patients have been enrolled in the P3CHF Trial on the date [***] months after treatment of the first patient enrolled; or (3) any regulatory authority, data safety monitoring board or IRB requires such termination as a result of safety issues.

9. In the event that the Decision Notice indicates Cephalon's decision to continue the P3CHF Trial, then Cephalon will be responsible for funding all further third party costs in connection with the P3CHF Trial and otherwise conducting the P3CHF Trial in accordance with the Development Agreement and will pay back to Mesoblast any amounts paid by Mesoblast to Cephalon pursuant to paragraphs 4 and 7 above. For clarity, if Cephalon decides to continue the P3CHF Trial then Cephalon will retain the right to terminate the Development Agreement in whole or in part in accordance with Sections 13.2(a) and (b) of the Development Agreement.

10. In the event that the Decision Notice indicates Cephalon's decision to withdraw from its involvement with the P3CHF Trial, then Mesoblast, within [***] Business Days of receiving the Decision Notice, may elect to continue the P3CHF Trial on its own by providing written notice to Cephalon within such 10-Business Day period (the "Continuation Notice"), and the Parties shall cooperate to transition all of Cephalon's responsibilities relating to the trial to Mesoblast as quickly as possible in accordance with this Amendment, including the "Transition Procedure" more particularly described in Exhibit B; provided that Mesoblast shall immediately assume responsibility for paying all third party costs and reimbursing Cephalon for all additional reasonable internal costs it incurs for the transition of trial responsibilities. If Mesoblast notifies Cephalon of its desire to have the P3CHF Trial terminated or fails to provide the Continuation Notice timely, then the P3CHF Trial shall be promptly terminated by Cephalon consistent with safety of the subjects involved and applicable Law, and Cephalon and Mesoblast will equally share the third party costs for the conduct and wind-down of the P3CHF Trial following delivery of the Decision Notice, except that any such third party costs relating to an expansion of the patient enrollment beyond [***] or any addition of referral sites designated by Mesoblast will be the sole responsibility of Mesoblast. If Cephalon delivers a Decision Notice in conformance with this paragraph 10, it will be deemed a termination by Cephalon pursuant to Seciton 13.2(b) of the Development Agreement with respect to the Cardiovascular Field provided that, (i) Mesoblast hereby waives the 60 day notice required thereunder; (ii) notwithstanding Section 13.2(b), Cephalon shall not have any obligations under the provisions of Paragraphs 6(b), 6(c) and 6(e) of Exhibit 13 of the Development Agreement; and (iii) the Wind-down Period for such purposes shall be the period determined by the JSC reasonably necessary to carry out the transition as described in the Transition Procedure. Notwithstanding anything to the contrary in the Development Agreement, it is hereby clarified that in case of termination of the Cardiovascular Field, Cephalon shall have no further funding obligations in relation to the AMI Phase 2 Trial.

11. All amounts due hereunder are payable within [***] days of receipt of an invoice therefor.

12. If FDA provides comment(s) on the P3CHF Protocol during its initial review the incorporation of which would materially change the form and design of the P3CHF Protocol as described in this Amendment (including, without limitation, the interim analyses), then Cephalon shall either (a) work promptly with Mesoblast in good faith to address such comments in a time and manner consistent with mitigating the possible risk of a clinical hold being imposed on the P3CHF Trial during FDA's review period or a material delay in commencement of the P3CHF Trial; or (b) promptly notify Mesoblast (such notification to be no later than [***] days from the date Cephalon receives the FDA comment(s) on the P3CHF Protocol) in writing that it does not intend to incorporate such comments, and in the case of (b) the Parties shall promptly schedule a mutually agreed meeting (such meeting to be no later than [***] days from the date Cephalon provides Mesoblast with notification that it does not intend to incorporate the FDA comment(s) on the P3CHF Protocol) to discuss potential changes to this Amendment and the P3CHF Protocol that would allow the Parties to proceed with the P3CHF Trial. If the Parties agree to making changes within thirty (30) days of such meeting, they will enter into a written amendment hereto documenting the terms thereof. If the Parties fail for any reason to agree within thirty (30) days of the meeting to any such changes, then Cephalon shall be deemed to have provided a Withdrawal Notice, as defined in and subject to the Transition Procedure.

13. This Amendment clarifies and amends certain rights and obligations of the Parties under the Development Agreement and, except to the extent expressly provided otherwise herein, the terms and conditions of the Development Agreement shall continue to apply. In the event of a conflict between this Amendment and the Development Agreement, this Amendment shall prevail with respect to the conduct of the P3CHF Trial and matters relating to the conduct thereof. This Amendment shall be governed by and interpreted in accordance with the substantive laws of the State of New York (without regard to any conflicts of law provisions) and the provisions of Article XIV of the Development Agreement shall apply to any Dispute hereunder. If an obligation hereunder is due on a date that is not a Business Day, such obligation will not be due until the immediately following Business Day. This Amendment may not be amended except by agreement in writing signed by both Parties. This Amendment and the Development Agreement (together with the documents referred to therein) constitute the entire agreement of the Parties with respect to the P3CHF Trial and related matters and supersede any prior agreement or understanding with respect thereto.

14. Until such time as Cephalon provides the Decision Notice, it will consult with Mesoblast in advance of submitting material correspondence and filings (including the IND) with the FDA and will include Mesoblast on all calls and / or meetings with the FDA, it being understood by the parties that Cephalon will lead the discussions with the FDA. All material correspondence and filings with any Regulatory Authority with respect to CEP-41750 shall be consistent with the Parties' respective rights and obligations under the Agreement as modified by this Amendment. Each of the Parties undertakes to use commercially reasonable efforts to file the IND for the P3CHF Trial expeditiously.

IN WITNESS WHEREOF, the Parties have set forth their signatures below.

Mesoblast, Inc.

Cephalon, Inc.

/s/ Silviu Itescu

/s/ Michael R. Hayden

Name: Silviu Itescu

Name: Michael R. Hayden

Title: CEO

Title: President of Global R&D & CSC

/s/ Jenni Pilcher

/s/ Mirella Moshe

Name: Jenni Pilcher

Name: Mirella Moshe

Title: Chief Financial Officer & Company
Secretary of Mesoblast Group

Title: Head of Alliance Management
Corporate Business Development

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EXHIBIT A

Executive Steering Committee Charter

[***]

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EXHIBIT B

TRANSITION PROCEDURE

[***]



IND SPONSOR: InCHOIR

CLINICAL TRIAL AGREEMENT

BETWEEN

THE NATIONAL HEART, LUNG, AND BLOOD INSTITUTE (“NHLBI”)

AND

Mesoblast, Inc.

Protocol # CTSNLVAD02

“Safety and Efficacy of Intramyocardial Injection of Mesenchymal Precursor Cells on Myocardial Function in LVAD Recipients”

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July 2014

This Clinical Trial Agreement (the “Agreement”), effective as of July , 2014 (the “Effective Date”) is made by and between the National Heart, Lung, and Blood Institute (“NHLBI”), an institute of the National Institutes of Health (“NIH”), which is part of the United States Government Department of Health and Human Services (HHS), and Mesoblast, Inc. (“Company”), located at 505 Fifth Ave., 3rd Floor, New York, NY 10017 (individually referred to as the “Party” and collectively referred to as the “Parties”) for a Clinical Trial designated as Protocol # CTSNLVAD02 entitled “**Safety and Efficacy of Intramyocardial Injection of Mesenchymal Precursor Cells on Myocardial Function in LVAD Recipients.**”

NHLBI will conduct this clinical trial through NHLBI extramurally-funded clinical research sites: the Cardiothoracic Surgical Trials Network (“CTSN”), including its Core, Ancillary and Satellite clinical sites, and Core Laboratories. This network and sites were established under a number of U.S. Government Cooperative Agreement Grants from the NHLBI with additional funding provided by the National Institute of Neurologic Disorders and Stroke (NINDS), and the Canadian Institutes of Health Research (CIHR), in part to develop, coordinate and conduct multi-center cellular therapy clinical trials for cardiovascular regenerative medicine applications, and will conduct the clinical trial under the terms of its funding agreements. The International Center for Health Outcomes and Innovation Research (InCHOIR), Mount Sinai School of Medicine, operating under U.S. Government Cooperative Agreement Grant 2U01-HL088942-07, is the Sponsor of the Investigational New Drug Application 13967 (IND), and will serve as the Data Coordinating Center (“CTSN DCC”). Dr. Annetine Gelijns (InCHOIR), IND Sponsor’s Authorized Representative, and Dr. Deborah Ascheim, Principal Investigator for the Clinical Trial, has filed the Protocol with the U.S. FDA to the active subject IND, and as either the CTSN DCC or its subcontractors will perform the necessary support activities, including but not limited to data collection, management, analysis, and reporting, and adverse events reporting. Notwithstanding any statement to the contrary in this Agreement, the network and Clinical Research Sites including the CTSN DCC and the Core Laboratories, and their respective investigators are not parties to this Agreement. However, NHLBI shall ensure, through its grantee, Mount Sinai School of Medicine, that all subcontracts between the CTSN DCC and such Clinical Research Sites and Core Laboratories and their respective investigators containing terms similar to and in accordance with those set forth in this Agreement.

This Agreement sets forth the terms and conditions under which this clinical trial will be conducted and managed.

The Company and the NHLBI agree as follows:

1. DEFINITIONS

The terms listed in this Section have the meanings indicated throughout this Agreement. To the extent a definition of a term as provided in this Section is inconsistent with a corresponding definition in the applicable sections of either the United States Code (U.S.C.) or the Code of Federal Regulations (C.F.R.), the definition in the U.S.C. or C.F.R. will control.

“**Adverse Event**” or “**AE**” means any untoward medical occurrence in a Human Subject during the course of the Clinical Trial. An AE does not necessarily have a causal relationship with the Test Article or pharmaceutical product, that is, it can be any unfavorable and unintended diagnosis, symptom, sign (including an abnormal laboratory finding), syndrome or disease which either occurs during the study, having been absent at baseline, or, if present at baseline, appears to worsen. Any AE that occurs between the time a Human Subject is randomized to a treatment arm to the time he or she departs the Clinical Trial at the end of the final follow-up visit will be captured and recorded.

“**Affiliate**” with respect to the Company means

- (i) any legal entity of which the securities or other ownership interests representing fifty per cent (50%) or more of the equity or fifty per cent (50%) or more of the ordinary voting power or fifty per cent (50%) or more of the general partnership interest are, at the time such determination is being made, owned, controlled or held, directly or indirectly, by such legal entity, or
- (ii) any legal entity which, at the time such determination is being made, is controlling or under common control with, such legal entity.

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As used herein, the term “control”, whether used as a noun or verb, refers to the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a legal entity, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this Clinical Trial Agreement “CTA”, all executed amendments and supplements to this Agreement and all schedules, appendices and/or addenda to this Agreement.

“**Electronic Case Report Form**” (“**eCRF**”) means the data collection form(s) to be completed for each Human Subject participating in the Clinical Trial.

“**Clinical Research Sites**” means the participating clinical research sites where the Clinical Trial will be conducted in strict accordance with the Protocol. Other clinical sites or sub-sites may be added as necessary in order to complete the Protocol. In such a case, the Protocol will be amended to include the additional sites. Pursuant to their contract/grant, each Clinical Research Site will be responsible for the data, and scientific reporting of all results/data obtained from the Clinical Trial at the Investigator’s Clinical Research Site.

“**Clinical Trial**” means a biomedical or behavioral research study of Human Subjects that is designed to answer specific questions about biomedical or behavioral interventions (drugs, treatments, devices, or new ways of using known drugs, treatments, or devices). Clinical Trials are used to determine whether new biomedical or behavioral interventions are safe, efficacious, and effective. In this Agreement “Clinical Trial” means the Clinical Trial for the Protocol.

“**Clinical Terms of Award**” means the legal requirements NHLBI imposes on a clinical Cooperative Agreement.

“**Confidential Information**” means confidential scientific, proprietary, business, financial information or Identifiable Private Information provided that Confidential Information does not include:

- (a) Information that is in the public domain or subsequently enters the public domain through no fault of the receiving Party;
- (b) Information that is presently known or becomes known to the receiving Party from its own independent sources, without restriction as to confidentiality or use, from a party having the legal right to disclose data;
- (c) Information that can be established by competent proof was already known and lawfully in the possession of the receiving Party, at the time of the disclosure, without restriction as to confidentiality or use;
- (d) Information that is independently created or compiled by the receiving Party without reference to or use of the Confidential information and such independent development can be documented by receiving Party with written records; or
- (e) Information that is reasonably required by scientific standards for publication of the results of the Clinical Trial (including Clinical Trial methods and/or data); or
- (f) Information that is independently created, compiled or otherwise generated by the Clinical Research Sites, DCC, or Core, Ancillary and Satellite sites including the Core Laboratories and made known to NHLBI as a result of conducting the Clinical Trial that relates to potential hazards or cautionary warnings associated with the production, handling, or use of the Test Article.

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“Confidential Information Use Exception” Confidential Information that is (1) required to be disclosed for compliance with applicable U.S. federal, Foreign government, state or local law or regulation, or (2) required to be disclosed by a court of competent jurisdiction or governmental authority may be disclosed for such limited purpose, provided that when the party required to disclose is required to disclose for compliance with applicable laws that such disclosing party provides the other party with prompt written notice so that the other party may seek a court order to enjoin disclosure. All Confidential Information disclosed under this provision will retain Confidential Information status as defined above for all other purposes.

“Data and Safety Monitoring Board” (DSMB) means an independent group of experts that advises the NHLBI and the Investigators. The primary responsibilities of the NHLBI-sponsored DSMB are to: (i) periodically review and evaluate the accumulated data of the Clinical Trial for participant safety, Clinical Trial conduct and progress, and when appropriate, efficacy; and (ii) make recommendations to NHLBI concerning the continuation, modification, or termination of the Clinical Trial.

“Data Coordination Center” or “DCC” means a non-governmental organization funded by the NHLBI which receives, reviews, and performs data management tasks on the individual Human Subject Case Report Forms completed and statistical analyses of the aggregate data for this Clinical Trial. The CTSN Data Coordination Center for this Clinical Trial is located at the Mount Sinai School of Medicine (InCHOIR).

“Effective Date” means the date of the last signature of the Parties executing this Agreement.

“FDA” means the U.S. Food and Drug Administration. For the purpose of this Agreement, the use of the term FDA also means any “HA” (as defined below), as appropriate.

“Government” means the Federal Government of the United States of America.

“Cooperative Agreement” means the award providing financial assistance from NHLBI for approved activities. An NHLBI Cooperative Agreement is a Grant in the U series that features substantial NHLBI involvement.

“HA” means non-U.S. Health Authority used when the Clinical Trial is being conducted in whole or in part at a non-U.S. Clinical Research Site requiring the use of non-U.S. regulatory agencies.

“Human Subject” means, in accordance with the definition in 45 C.F.R. Part 46.102(f), a living individual about whom an Investigator conducting research obtains:

- (i) Data through intervention or interaction with the individual; or
- (ii) Identifiable Private Information.

“ICH” means the International Conference on Harmonization. Cited is:

- (i) **ICH E6 (R1):** “Good Clinical Practice: Consolidated Guidance”, published in the Federal register (62 Federal Register 25, 691 (1997)), also referred to as “FDA Good Clinical Practice Guidelines”.

“Identifiable Private Information” or “IPI” about a Human Subject means private information from which the identity of the Human Subject is or may readily be ascertained. Regulations defining and governing this information include 45 C.F.R. Part 46 and 21 C.F.R. Part 50.

“IND” means an **“Investigational New Drug Application”**, filed in accordance with 21 C.F.R. Part 312 under which clinical investigation of an experimental drug or biologic (Test Article) is performed in Human Subjects in the United States or intended to support a United States licensing action. For the purpose of this Agreement, the use of the term IND also means any “RA” (as defined below), as appropriate.

“Institutional Review Board” or “IRB” means, in accordance with 45 C.F.R. 46, Protection of Human Subjects (Revised November 13, 2001) and 21 C.F.R. 56, Subpart C: IRB Functions and Operations, (as

amended June 18, 1991, and other applicable regulations, an independent body comprising medical, scientific, and nonscientific members, whose responsibility is to ensure the protection of the rights, safety, and well-being of the Human Subjects involved in a Clinical Trial. It may also be referred to as an Independent Ethics Committee in accordance with ICH E-6, Section 1.27.

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under 35 U.S.C., or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act, 7 U.S.C. §§ 2321 *et seq.*

“Investigator” means, in accordance with 21 C.F.R. Part 312.3, an individual who actually conducts a clinical investigation, that is, who directs the administration or dispensation of Test Article to a Human Subject, and who assumes responsibility for studying Human Subjects, for recording and ensuring the integrity of research data, and for protecting the welfare and safety of Human Subjects. In this Agreement, “Investigator” means the individual(s) identified as responsible for the conduct of the Clinical Trial at the Clinical Research Sites.

“Investigator’s Brochure” or **“IB”** means, in accordance with the definition in 21 C.F.R. Part 312.23(a)(5), a document containing information about the Test Article, including animal screening, preclinical toxicology, and detailed pharmaceutical data, including a description of possible risks and side effects to be anticipated on the basis of prior experience with the Test Article or related drugs, and precautions, such as additional monitoring, to be taken as part of the investigational use of the Test Article.

“OHRP” or “Office of Human Research Protections” means the HHS office that oversees protection of human subjects from research risks under 45 C.F.R. Part 46 (the Common Rule).

“Party” means an entity entering into this Agreement, referred to individually as the “Party” and collectively as the “Parties”.

“Patent” means any issued United States patent, any international counterpart(s), and any corresponding grant(s) by a non-U.S. government in place of a patent.

“Principal Investigator” means Deborah D. Ascheim, MD; Associate Professor, Department of Health Evidence & Policy / Cardiovascular Institute; Clinical Director of Research, InCHOIR; Icahn School of Medicine at Mount Sinai.

“Protocol” means the formal, detailed description of the Clinical Trial to be performed as provided in Protocol # CTSNLVAD02 entitled **“Safety and Efficacy of Intramyocardial Injection of Mesenchymal Precursor Cells on Myocardial Function in LVAD Recipients.”** A Protocol describes the objective(s), design, methodology, statistical considerations, and organization of a Clinical Trial. For the purposes of this Agreement, the term Protocol includes any and all associated documents, including informed consent forms, to be provided to Human Subjects and potential participants in the Clinical Trial. The Agreement will be governed by the most recent version of the Protocol, and should the Agreement be executed prior to complete finalization of the Protocol, the last-dated version thereof will be considered to be incorporated by reference in place of any prior versions. In the event that there is a conflict between the terms of the Protocol and the terms of the Agreement, the terms of the Protocol will govern for medical and scientific purposes and the terms of the Agreement will govern for all other purposes.

“Protocol Development Committee/Executive Steering Committee” means the study team, under the direction of NHLBI, responsible for the overall scientific direction for the Clinical Trial, development and management of the Protocol, evaluation of data, amendments to the Protocol, and all issues related to the Protocol or aspects of Protocol development and modification. The study team will maintain contact with study investigators to ensure high quality data collection, approve and implement major protocol changes in response to advice from the DSMB, collaborate in data analysis, interpretation, and publication,

establish criteria for the authorship on all manuscripts, publications and presentations that arise from the Clinical Trial. The study team will include the Protocol chair (an Investigator), other Investigators, representatives from the NHLBI, and the persons involved with statistical and data analysis for the Clinical Trial. The representatives from the Company may attend meetings of the study team, and the study team will consider in good faith the comments provided by Company.

“**RA**” means an IND equivalent non-U.S. regulatory application.

“**Sponsor**” means, in accordance with the definition in 21 C.F.R. Part 312.3, an organization or individual who assumes legal responsibility for supervising or overseeing Clinical Trial with Test Article.

“**Study Report**” means a report generated by the CTSN DCC for the purpose of providing the unblinded trial results to the NHLBI-appointed Data Safety and Monitoring Board (DSMB) and the CTSN investigators, the latter of whom may publish the trial results once the trial is completed. The Study Report will contain the complete data analysis set, including unblinded safety and efficacy outcomes, and, where not self-explanatory, an explanation of the applicable analyzed data set.

“**Test Article(s)**” means, in accordance with 21 C.F.R. Part 50.3(j), any drug (including a biological product), medical device, food additive, color additive, electronic product, material or any other article subject to regulation under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.*, Pub. L.No.75-717, 52 Stat. 1040 (1938), as amended. In this Agreement, Test Article(s) collectively refers to an allogeneic, immunoselected, *ex vivo* expanded mesenchymal precursor cell product (MPC), produced by Company using its proprietary technology, and cryopreserved and provided in injectable cryoprotective media, and the injectable cryoprotective media alone (Control/sham/comparator), as identified in the Protocol.

2. CLINICAL RESEARCH SITES AND INVESTIGATORS

- 2.1 The Company acknowledges that the NHLBI substantially funds the Clinical Research Sites and the CTSN DCC under Cooperative Agreements and, therefore, the Clinical Research Sites and the CTSN DCC have certain existing contractual or other legal obligations to the NHLBI.
- 2.2 The Company will not provide any funding or material for any aspect of the Clinical Trial to any Clinical Research Site or participating in the Clinical Trial without the prior written approval of the NHLBI. In addition, subject to Section 12.4 of this Agreement, the Company will not enter into any separate agreements, including, but not limited to Material Transfer Agreements, with the Clinical Research Sites or the Investigators at the Clinical Research Sites that interfere with the conduct of this Clinical Trial.
- 2.3 The NHLBI will not utilize:
 - 2.3.1 Any organization performing services in connection with this Clinical Trial that has been:
 - (i) Debarred under the provisions of the Generic Drug Enforcement Act of 1992, 21 U.S.C. § 335a(a) and (b); or
 - (ii) Suspended by the Office for Human Research Protections (OHRP) as a clinical research site under 45 C.F.R. Part 46, and
 - 2.3.2 Any person convicted of a felony under federal law for conduct:
 - (i) Relating to the development or approval, including, but not limited to, the process for development or approval, of any drug, product, medical device, New Drug Application (NDA), Pre-Market Application (PMA), 510(k) or IND or similar application; or
 - (ii) Otherwise relating to the regulation of any drug product or medical device under the FD&C Act.

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- 2.3.3 Any person performing services in connection with this Clinical Trial has been disqualified as a clinical investigator under 21 C.F.R. Part 312.70.
- 2.3.4 Any Investigator who is not qualified by training and experience as an appropriate expert to conduct the Clinical Trial, as required under 21 C.F.R. Part 312.53.
- 2.4 If either Party becomes aware that any organization or person involved in the Clinical Trial is debarred, threatened with debarment, disqualified, threatened with disqualification, or suspended, that Party will notify the other Party as soon as practicable.
- 2.5 The Cooperative Agreements require and the NHLBI agrees that the NHLBI, Principal Investigator and Investigators at Clinical Research Sites shall conduct the Clinical Trial in accordance with applicable provisions of ICH E6 (R1): FDA Good Clinical Practice and shall comply with all applicable U.S., foreign government, state and local laws, regulations and guidelines.
- 2.6 The Company agrees that this Protocol will be conducted only at Clinical Research Sites defined in the Protocol. However, the Company can conduct, at its own expense and under its own IND, additional Clinical Trials with Test Article; provided, however, that the Company agrees not to directly compete with this Clinical Trial for the enrollment of Human Subjects by initiating an independent clinical trial, with a protocol, that would compete for the same local Human Subject study population as that served by any of the designated Clinical Research Sites. NHLBI acknowledges that the Test Article constitutes proprietary technology of the Company, and as such, Company may develop protocols that have similar elements in part to the Protocol.

3. INVESTIGATIONAL NEW DRUG APPLICATION SPONSORSHIP

- 3.1 **IND.** The Company acknowledges that the IND Sponsor has submitted the Protocol with the U.S. FDA to the already active IND #13967. The IND will satisfy all of the requirements of the FDA. The NHLBI acknowledges that the Company has provided the IND Sponsor with a letter of cross-reference to all pertinent regulatory filings (including IND 13335) sponsored by the Company for the limited purpose of IND Application 13967. The Company acknowledges that it has received from the IND Sponsor a letter granting the FDA permission to cross-reference the IND filed by the Sponsor for this Clinical Trial for other regulatory submissions provided by Company. Accordingly, NHLBI and the IND Sponsor hereby grant Company a right to cross-reference relevant data within IND Application 13967 for purposes of developing and commercializing Company's products, including without limitation the Test Article.
- 3.2 **Clinical Monitoring.** The CTSN DCC will be responsible for Clinical Research Site monitoring and quality assurance of all data in accordance with the clinical monitoring plan. Monitoring will be done in compliance with current Good Clinical Practice Guidelines. The CTSN DCC will communicate any clinically significant findings from clinical monitors to the NHLBI and Company in a timely manner.
- 3.3 **Adverse Event Reporting.**
 - 3.3.1 The CTSN DCC will collect adverse event reports according to the procedure outlined in the Protocol. The CTSN DCC will assume responsibility for the reporting of Adverse Events to the FDA and will provide copies of all of the reports, redacted to maintain blinding to control data, to the Company.
 - 3.3.2 The CTSN DCC will report all unexpected serious Adverse Events associated with the Test Article observed in this Clinical Trial (IND Safety Reports) to the FDA, the Company, and the Protocol Team on a timely basis consistent with 21 C.F.R. Part 312.32 and the Protocol. The CTSN DCC will report all other serious and non-serious adverse experiences to the

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FDA and will provide to the Company reports, redacted of Identifiable Private Information and maintaining blinding to control data, on a timely basis consistent with 21 C.F.R. Part 312.33.

- 3.3.3 As the manufacturer, the Company will, in a timely manner consistent with FDA requirements and during the term of this Clinical Trial, provide the NHLBI and CTSN DCC with any material information it now has or may obtain in the future regarding the safety and/or the toxicity of Test Article. The CTSN DCC will promptly review the information and determine if the information warrants informing all participating Investigators in the Clinical Trial. If said determination warrants, the CTSN DCC will transmit that information to all Investigators participating in the Clinical Trial. The NHLBI acknowledges that the Company and the CTSN DCC have entered into a Safety Data Exchange Agreement to govern the exchange of safety data and information regarding the Test Article.

3.4 Safety Monitoring.

In accordance with NIH guidelines, the Company and the NHLBI agree that the following type(s) of safety monitoring is (are) necessary and appropriate for this Clinical Trial: DSMB.

If a DSMB is constituted or is in place for the Clinical Trial, the NHLBI or CTSN DCC will notify the Company in advance of any DSMB review. The Company may participate in and will receive the open session reports of the DSMB. The recommendations derived from the closed sessions, redacted to maintain blinding of the Company to control data, will also be communicated to the Company.

4. FDA MEETINGS/COMMUNICATIONS

- 4.1 With respect to any discussions with the FDA involving data obtained from this Clinical Trial under IND# 13967, the CTSN DCC and NHLBI, in consultation with the Company, will take the initiative in arranging meetings or conference calls with the FDA. Formal meetings with the FDA concerning the Clinical Trial design and/or data will be discussed and agreed upon in advance by the Company and the CTSN DCC and NHLBI. The Company will have the right to participate in all formal meetings with the FDA. The Company agrees not to contact the FDA independent of the CTSN DCC and NHLBI concerning this Clinical Trial. However, the Company may contact the FDA on separate product-related issues.
- 4.2 The Company will in a timely manner notify NHLBI and CTSN DCC of any FDA correspondence related to the Protocol that is received by the Company, or its Affiliates, any FDA enforcement actions directed toward the Company or its Affiliates, including but not limited to the following but only if these would impact the safety of Human Subjects in the Clinical Trial: warning letters, seizures, recalls, injunctions/consent decrees, rejection of regulatory submissions or withdrawal of approval for Test Article; criminal investigations, and proceedings to debar the Company or its Affiliates or individuals employed under a contract to the Company and/or its Affiliates.
- 4.3 The Company will also promptly notify NHLBI and CTSN DCC of any action taken by the FDA regarding manufacturing of the Test Article that would impact the safety of Human Subjects in the Clinical Trial.

5. SUPPLY, DISTRIBUTION, AND USE OF TEST ARTICLE

5.1 Supply.

- 5.1.1 The NHLBI will provide the Company with an estimate of the quantity of Test Article that will be required to complete the Protocol. The Company will supply sufficient quantities of appropriately formulated Test Article to the Clinical Research Sites without cost or expense, on a schedule mutually agreed upon by the Parties per Attachment 1, which is hereby

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incorporated in its entirety into this Agreement, to ensure timely performance and completion of the Protocol. After the CTSN DCC has: (i) received a copy of the approval of the Protocol from the IRB of the Clinical Research Site, including the approved subject Informed Consent Form, (ii) received a financial disclosure form which complies with FDA regulations 21 CFR 54 and 312, (iii) and other essential study documents as needed, and (iv) Clinical Research Site has been qualified to conduct the Clinical Trial; the Test Article will be shipped to the Clinical Research Site and will be managed according to the Protocol.

5.1.2 The Company will be responsible for labeling the Test Article used in the Clinical Trial.

5.2 Distribution.

5.2.1 The Company will ship the Test Article directly to the Clinical Research Sites as mutually agreed by the Parties per Attachment 1 of this Agreement. The Company will provide specific storage and/or shipping instructions for the Test Article to the CTSN DCC and the Clinical Research Sites, who will be responsible for adhering to them, as mutually agreed by the Parties. The Company warrants that any packaging for hazardous material, provided by the Company, meets Department of Transportation regulatory requirements for use at all Clinical Research Sites.

5.2.2 The Test Article should be received by the Clinical Research Sites in usable condition, specific storage and shipping instructions, stability and/or expiration dating information and the Certificate of Analysis (CoA) for each lot of Test Article sent.

5.2.3 If there is evidence that the Test Article that arrived at the Distributor or Clinical Research Site has not been maintained according to the defined shipping instructions or is potentially adulterated, NHLBI or CTSN DCC will contact the Company to inform them of the condition of the received Test Article and to determine if the Test Article is usable or if it must be replaced. If the Test Article must be replaced, the Company will replace it at no cost to NHLBI, or the Clinical Research Sites.

5.3 Use.

5.3.1 The NHLBI will not chemically modify, replicate, make derivatives of, or reverse engineer the Test Article unless mutually agreed in writing by the Parties.

5.3.2 The NHLBI pursuant to the Clinical Terms of Award will require that the Investigators:

- (i) use the Test Article only in accordance with the Protocol and for no other purpose;
- (ii) not transfer the Test Article to any parties except the Company; and
- (iii) not chemically modify, replicate, make derivatives of, or reverse engineer the Test Article unless mutually agreed to, in writing, by the Parties.

5.4 **Investigator's Brochure.** The Company will provide a current IB for all applicable components of the Test Article, and any later revisions and addenda to the IB for the Test Article to the NHLBI and CTSN DCC, as mutually agreed by the Parties, who will agree to keep them in confidence in accordance with Section 11 (Confidentiality Information) of this Agreement.

5.5 **Destruction/Return.** The Clinical Research Sites will be instructed to follow all applicable laws, regulations and policies regarding the disposition or destruction of the Test Article. The Company will pay for the cost of transporting any requested, unused Test Article from the Clinical Research Site to the Company.

5.6 **Warranty.** The Company represents and warrants that to the best of its knowledge the Test Article supplied has been produced in accordance with the FDA's cGMP set out in 21 C.F.R. §§ 210-211, and ICH QA7, and meets the specifications cited in the Certificates of Analysis for the Test Article and IB provided.

5.7 **Source.** In the event the Company elects to terminate its development of Test Article or unilaterally terminate this Agreement for reasons other than safety or IRB approval withdrawal, without the transfer of its development efforts and obligations under this Agreement to another party acceptable to the NHLBI, such acceptance not to be unreasonably withheld, within a reasonable time from termination of development of Test Article, such time not to exceed four (4) months, then the Company, if it has not already done so, will continue to provide the Clinical Research Sites with Test Article at no cost for Test Article and in sufficient quantities to complete the Clinical Trial in the manner described in the Protocol, but only to the maximum number of Human Subjects as identified in the Protocol at the time of Company's notice of termination of its development of the Test Article. The Company hereby grants to the NHLBI a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Invention which the Company may have or obtain on Test Article, its manufacture, or on the process for use of Test Article, throughout the world, for medical research purposes related to the Protocol for the sole purpose of completing the Clinical Trial. This license will only become effective in the event the Company terminates its development of Test Article or this Agreement for reasons other than safety or IRB approval withdrawal, without the transfer of its development efforts to another party within the time period recited in this Section 5.7, and the NHLBI elects to complete the Clinical Trial.

6. PROTOCOL DEVELOPMENT AND REGISTRATION

- 6.1 The Parties agree that enrollment in the Clinical Trial will not start until the version of the Protocol to be used has been reviewed in advance by the Company, accepted by the study team (which will consider in good faith the comments provided by Company), and approved by the relevant IRB(s) and the NHLBI in writing, and submitted to the FDA and any clinical hold issues have been responded to satisfactorily. The Protocol and any related documents are products of the NHLBI and will be deemed NHLBI Confidential Information, as defined in Section 11 (Confidential Information) of this Agreement. The Parties agree that Company may provide on a need to know basis and under an obligation of confidence the Protocol and any related documents to its identified partner, Teva Pharmaceutical Industries Ltd.; provided that the partner is also informed that the Confidential Information is proprietary to NHLBI.
- 6.2 The Parties agree that any alteration in or amendment to the Protocol must be accepted by the study team, and approved in writing by the relevant IRB(s) and the NHLBI and submitted to the FDA prior to such alteration or amendment becoming effective. Company will review any amendments or alterations to the Protocol and NHLBI will consider such comments in good faith in finalizing such amendments or alterations.
- 6.3 If trial is randomized, the NHLBI, through its contractors/grantees, will be responsible for performing the randomization. The NHLBI will determine who will have access to the randomization code.
- 6.4 Each Clinical Research Site, prior to participating in any NHLBI sponsored study, must submit their informed consent and other pertinent documents to the NHLBI or its designee.

7. CASE REPORT FORM DEVELOPMENT

The NHLBI or its designee will be responsible for the development and subsequent revisions, if any, of the Case Report Forms with appropriate review and comment by the study team.

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8. HUMAN SUBJECTS PROTECTION

- 8.1 The NHLBI and the Company recognize the principles of respect for persons, beneficence (including minimization of harms and maximization of benefits), and justice as stated in the Belmont Report and will apply these principles in all research covered under this Agreement. The informed consent of each Human Subject participating in the Clinical Trial at a Clinical Research Site will be obtained prospectively using an IRB approved informed consent process, provided that the informed consent form will enable the Parties disclosure of the data generated under this Clinical Trial, subject to the applicable Privacy Laws. The informed consent document will be reviewed in advance by the Company, accepted by the study team (which will consider in good faith the comments provided by Company), and will be approved by the NHLBI, the FDA, and all appropriate IRBs.
- 8.2 The NHLBI or its designee and the Company acknowledge and accept their responsibilities for protecting the rights and welfare of Human Subjects set forth in 45 C.F.R. Part 46, Protection of Human Subjects (Revised November 13, 2001).

Therefore:

- 8.2.1 The NHLBI or its designee and the Company will maintain the confidentiality of Identifiable Private Information collected under the Clinical Trial and protect the privacy of the individual Human Subjects unless disclosure is required by law.
- 8.2.2 The NHLBI or its designee and the Company may inspect, but not copy, Human Subjects' medical records that might also include information not directly connected to this Clinical Trial. However, the NHLBI or its designee and the Company agree that this information will remain confidential and will not be used for any purpose other than confirmation of Clinical Trial data.
- 8.2.3 The NHLBI and the Company agree that neither Party will, nor will they allow their contractors/grantees to, include names or personal identifiers that could lead to identification of individual Human Subjects in any release of data, reports or publications related to the Clinical Trial. The NHLBI will require that the Investigators not include names or personal identifiers that could lead to identification of individual Human Subjects in any release of data, reports or publications related to the Clinical Trial.
- 8.2.4 The NHLBI and the Company agree that neither Party will, nor will they allow their contractors/grantees to, use Identifiable Private Information about Human Subjects for any purpose not stated in the Protocol without the consent of the other Party and local site IRB approval. The NHLBI will require that the Investigators not use personally Identifiable Private Information for any purpose not stated in the Protocol and informed consent document without the written consent of both Parties and appropriate IRB approval.
- 8.2.5 The NHLBI and the Company agree to comply with the determinations of all IRBs overseeing this research.
- 8.2.6 Specimens, if any, and data provided to the Company during and after the Clinical Trial will be coded. Unequivocally, neither individual personal identifiers nor the key linking coded data to individuals will be released to the Company.

9. DATA ANALYSIS AND MANAGEMENT, CLINICAL SPECIMENS AND ISOLATES

- 9.1 Pursuant to their Clinical Terms of Award, each Clinical Research Site will be responsible for the data, and scientific reporting of all results/data obtained from the Clinical Trial at the Investigator's Clinical Research Site.

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- 9.2 The NHLBI and/or CTSN DCC will have responsibility for the data management: collection, entry, and quality control edits (with implied verifications and documentation) and analysis of data obtained from the Clinical Trial in accordance with the Protocol.
- 9.3 In accordance with NIH Grant Policy, data obtained from the Clinical Trial is the property of the Investigator or the Clinical Research Site, as applicable that produces the data. However, NHLBI agrees that the Company, its affiliates, its contractors and its designees may review or use the data obtained from the Clinical Trial for purposes of seeking regulatory approval of the Test Article; provided, however, that NHLBI has received such request in writing and written authorization by the Company. The Company will receive interim safety data reports on study intervention patients only. These reports include, but are not limited to, adverse events, immune sensitization, and anti-murine and anti-bovine antibody reports.
- 9.4 Upon completion of the data analyses, the NHLBI through the CTSN DCC shall in a timely manner transfer to the Company a copy of the Study Report in a machine-readable format to be determined jointly by the Parties. If the Company requires that the data be provided to it in any customized format(s), the Company will pay for all costs associated with the customized data format(s). Within a reasonable time after the completion of the Clinical Trial, NHLBI through the CTSN DCC shall provide, in addition to Study Report, complete data sets excluding identifiable private information (patient line listings) for, to the extent permitted by law, use in and for any regulatory filing by or on behalf of the Company.
- 9.5 Subject to the right of the NHLBI and the Investigators to publish the data from this Clinical Trial as set forth in Section 10 (Publications and Press Releases) of this Agreement, the Company has the right to utilize the data reports in its possession from this Clinical Trial for all legitimate business or regulatory purposes. The NHLBI and the Company may provide any information regarding the Clinical Trial to governmental organizations including, but not limited to, the FDA, and the Securities and Exchange Commission (SEC) for all legitimate public health, regulatory or business purposes. Except for information related to regulatory or safety issues or under emergency circumstances where it is not practicable to do so and to the extent permitted by law, the NHLBI will not release information regarding the Clinical Trial to governmental organizations without prior notification to the Company.

10. PUBLICATIONS and PRESS RELEASES

- 10.1 Any publications based on the results of the Clinical Trial and originating from NHLBI or the Investigators will conform to the latest version of the CTSN *Grants Policy on Publication and Presentation*. Unless requested otherwise by the Company, the NHLBI will acknowledge the Company as the source of the Test Article in any NHLBI publication resulting from the Clinical Trial and will request that the Investigators do the same in their publications resulting from the Clinical Trial, however, NHLBI's request will not constitute a term or condition for making or renewing a grant award to an Investigator.
- 10.2 Recognizing that employees of either Party may play an important role in the design, analysis, and interpretation of the findings of the Clinical Trial, each Party will include appropriate individuals from the other Party in the authorship of publications resulting from the Clinical Trial, in accordance with the generally accepted customs pertaining to authorship (as detailed in the NHLBI-approved CTSN Manual of Procedures), and NHLBI will require the Investigators to include appropriate individuals from both Parties in their publications resulting from the Clinical Trial.
- 10.3 Each Party will, and NHLBI will request that the Investigators provide the other Party with a copy of any abstract, manuscript or other disclosure containing data not previously reviewed by the other Party ("Publication") prior to submission for publication with sufficient time for review and

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comment (5 business days for abstracts, 30 calendar days for any other publication). Each Party agrees that, following the receiving Party's review of the abstract and/or manuscript for the maximum periods of time specified above, and subject to other restrictions contained in this Agreement, the submitting Party and/or the Investigators will be free to publish, present or use any Clinical Trial data, unless Company determines during the thirty (30) day review period that the Publication contains patentable subject matter, then and at Company's discretion, the disclosure will be postponed for an additional forty-five (45) days in order to allow for the preparation of patent applications covering said patentable subject matter. Further, each Party shall receive any comments or edits from any editorial committees post-submission in order to consider and comment prior to any final publication.

- 10.4 Each Party will provide, and NHLBI will request that the Investigators provide, a copy of any proposed press release to the other party for review at least five (5) business days in advance of proposed publication. Each Party agrees that, following the receiving Party's review of the proposed press release for the maximum periods of time specified above, the submitting Party and/or the Investigators will be free to publish the press release.

11. CONFIDENTIAL INFORMATION

- 11.1 Either Party may disclose and/or receive Confidential Information under the terms and conditions of this Agreement. Each receiving Party will limit its disclosure and use of the disclosing Party's Confidential Information to the amount necessary to conduct the Clinical Trial. Each Party receiving Confidential Information agrees that any information a reasonable person under similar circumstances would consider to be confidential will be used by it only for the purposes of the Clinical Trial and not further used or disclosed.
- 11.2 Unless expressly provided otherwise, neither Party will disclose, copy, reproduce or otherwise make the disclosing Party's Confidential Information available to any other person or entity without the consent of the disclosing Party unless required by a court or administrative body of competent jurisdiction, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, 45 C.F.R. Part 5, or other applicable laws and/or regulations to disclose the Confidential Information, except that the NHLBI may disclose the Company's Confidential Information to the Investigators solely and as necessary for the conduct of the Clinical Trial for purposes of the Clinical Trial. The NHLBI will require the Investigators to maintain the confidentiality of Confidential Information in accordance with the terms of this Agreement.
- 11.3 Each Party will use the same level of care it uses with its own Confidential Information, but no less than a reasonable level of care, in maintaining the confidentiality of the other Party's Confidential Information. While the NHLBI will endeavor to control the distribution of the Protocol document itself, the Company acknowledges that some Government documents are available (with abstracts) to the public under the FOIA. In addition, current NHLBI policy requires that a brief synopsis and the recruitment status of selected Clinical Trials be posted in the NHLBI Clinical Trial Database, a part of the ClinicalTrials.gov registry of clinical studies, available through the NIH Website.
- 11.4 Each Party agrees that the receiving Party is not liable for the disclosure of Confidential Information which, after notice to and consultation with the disclosing Party, the receiving Party determines may not be lawfully withheld, provided the disclosing Party has been given an opportunity to seek a court order to enjoin from disclosure.
- 11.5 Each Party's obligation to maintain the confidentiality of Confidential Information will expire at the earlier of the date when the information is no longer Confidential Information as defined above or five (5) years from the Effective Date of this Agreement or completion of the Study Report and

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transfer of data sets (excluding identifiable private information) to Company, whichever occurs earlier. Either Party may request an extension to this term when necessary to protect Confidential Information relating to products not yet commercialized.

12. INTELLECTUAL PROPERTY

12.1 Ownership of any invention made solely or jointly by the NHLBI, the Clinical Research Sites and Investigators, or other NHLBI contractors or grantees as a consequence of conducting the Clinical Trial and involving the Test Article, will be determined under U.S. laws pertaining to intellectual property created in the course of federally-funded research. Neither Party claims by virtue of this Agreement any right, title, nor interest in or to any issued Patents or pending Patent applications owned or controlled by the other Party as of the date of this Agreement. Nothing in this Agreement will be construed as granting any license or obligation to license any intellectual property owned by the Company to the NHLBI with respect to the Test Article other than the limited right to use the Test Article for the performance of the Protocol in accordance with the terms of this Agreement.

12.2 NHLBI Intellectual Property

12.2.1 The Government will retain title to any Patent, pending patent applications or other intellectual property rights in Inventions made solely by NHLBI employees in the course of the Clinical Trial.

12.3 **Company Intellectual Property.** The Company will retain title to any Patent or other intellectual property rights in Inventions made by its employees during the course of the Clinical Trial.

12.4 **Clinical Research Site/Investigator Intellectual Property.** This Agreement does not grant or preclude intellectual property rights, including but not limited to inventions made by Clinical Research Sites, the Investigators or other NHLBI contractors or grantees during the course of the Clinical Trial.

12.5 **Joint NHLBI-Company Intellectual Property.** The NHLBI and the Company will have joint intellectual property rights in Inventions made jointly by their employees during the course of the Clinical Trial.

13. FORCE MAJEURE

Neither Party will be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party, which causes such Party to be unable to perform its obligations under this Agreement, and which it has been unable to overcome by the exercise of due diligence. In the event of the occurrence of such a *force majeure* event, the Party unable to perform will promptly notify the other Party. It will further use its best efforts to resume performance as quickly as possible and will suspend performance only for such period of time as is necessary as a result of the force majeure event.

14. LIABILITY, INDEMNIFICATION, INSURANCE & RESEARCH RELATED INJURY

14.1 **Liability.** In view of the Anti-Deficiency Act, 31 U.S.C § 1341, NHLBI cannot agree to indemnify the Company for its losses. Each Party will be liable for the losses, claims, damages, or liabilities that it incurs as a result of its activities under this Agreement except that the NHLBI, as an agency of the Government, assumes liability only to the extent provided under the Federal Tort Claims Act, 28 U.S.C. Ch. 171. The Company's right and obligation to defend NHLBI and the Company's control over the defense and settlement of any claim against NHLBI will be subject to the consent of NHLBI and the Department of Justice.

14.2 **Indemnification.** The Company will defend, indemnify and hold harmless NHLBI, its grantees and contractors and their respective agents and employees ("Indemnitee(s)") from any and all third party liabilities, damages, losses, claims, action, suits and expenses, including attorneys' fees and

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court costs (collectively “Claims”) to the extent caused by the administration or use of the Test Articles during the course of the Clinical Trial, provided, however, that Company’s obligation to so indemnify Indemnitee(s) will only apply if each of the following conditions is met:

- 14.2.1 The Claim was not proximately caused by the Indemnitee(s)’ failure to conduct the Clinical Trial in accordance with the Protocol and this Agreement;
 - 14.2.2 The Claim was not caused by the gross negligence, recklessness or willful misconduct of any Indemnitee, provided that any action properly taken by the Indemnitee in compliance with the Protocol or written instructions from the Company will be deemed, for purposes of this condition, not to be negligent, and provided further that if a Claim is jointly caused by the negligence of any Indemnitee and the administration or use of the Test Articles, then the Company will provide defense and indemnification to the extent the Claim was caused by the administration or use of the Test Articles;
 - 14.2.3 The Company is promptly notified of the Claim, provided that the failure to give such notice will not abrogate or diminish the Company’s defense and indemnity obligation if the Company has or receives knowledge of the existence of the Claim by any other means or if such failure does not prejudice the Company’s ability to defend the Claim;
 - 14.2.4 The Company will have the ability to participate jointly with the Department of Justice in the defense and settlement of the claim, subject to the requirements of 28 U.S.C. 516,518 and 519;
 - 14.2.5 The Company will have the right to select its own defense counsel to undertake the joint defense and settlement of the Claim.
- 14.3 The Company will provide a diligent defense against and/or settlement of any Claims for which defense and indemnification are provided under this Agreement whether such Claims are rightfully or wrongfully made. The Company will have the right to settle such Claims, at the Company’s sole expense and in the Company’s sole discretion. Indemnitee(s) will fully cooperate, at the Company’s expense, with the Company and its legal representatives in the investigation and defense of any Claim for which defense and indemnification are provided under this Agreement.
- 14.4 The Indemnitee(s) will at all times have the right to fully participate in the defense of any Claim at their own expense and for their own account. If the Company will, within a reasonable time after notice, fail to defend any Claim for which defense and indemnification are provided under this Agreement, the Indemnitee(s) will have the right, but not the obligation, to undertake the defense of and to compromise or settle the Claim on behalf, for the account, and at the risk of the Company. The Company may not consent to the entry of any judgment or enter into any compromise or settlement with respect to any third party claim without the prior written consent of the Indemnitee(s) (not to be unreasonably withheld, conditioned or delayed) unless the Company is exercising a right to control the conduct of the defense of a third party claim and the terms, conditions and existence of such judgment, compromise or settlement are confidential and such judgment, compromise or settlement (A) provides for the payment by the Company of money as sole relief for the claimant; (B) results in a dismissal with prejudice of such third-party claim, including a full and general release of the Indemnitee(s) and its Affiliates from all liabilities arising or relating to, or in connection with, the third party; and (C) includes an affirmative statement that there is no finding or admission of any violation of any law or the rights of any person or entity, and has no adverse effect on any other claims that may be made against the Indemnitee(s). The Indemnitee(s) will have no liability with respect to any compromise or settlement of, or the entry of any judgment arising from, any third-party claim effected without the Company’s consent.

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- 14.5 **Insurance.** The Company represents and warrants that it will secure and maintain in full force and effect, both during the performance of the Clinical Trial and following the termination or completion of the Clinical Trial, sufficient insurance coverage to: 1) fulfill its indemnification obligations expressed in the agreement, and 2) cover the costs of medical care required to treat or stabilize adverse reactions suffered by Human Subjects who received Test Article in accordance with the approved Protocol as set forth as follows in Section 14.6. Upon request, the Company will provide evidence of its insurance or self-insurance to NHLBI.
- 14.6 **Human Subject Injury or Illness Attributable to the Test Article.** The Company agrees to assume responsibility for the reasonable costs of medical care, to the extent such costs are not covered by the Human Subject's medical or hospital insurance or by third party or governmental programs providing such coverage, of reasonable and medically necessary treatment of any adverse reaction, illness or injury reasonably attributable to the use of the Test Article, experienced by a Human Subject enrolled in the Clinical Trial to the extent such expenses are not the result of the Human Subject's pre-existing abnormal medical condition or underlying disease, or gross negligence by the investigator or NHLBI except for such costs that arise from: (i) a failure to adhere to the material terms of the Protocol by Clinical Research Sites, or (ii) negligence or willful misconduct on the part of Clinical Research Sites. For purposes of this determination and the Company's obligation under this Agreement, "attributable" means that the receipt of the Test Article and the Clinical Trial Human Subject's illness or injury are reasonably related in time, and the illness or injury is more likely explained by the receipt of the Test Article than any other cause. The payment or offer of payment of any amount by the Company on behalf of a Human Subject or his or her healthcare insurer or other third party payer under this Section is not an admission of fault or liability by any one or more of (a) the United States Government or any agency thereof; (b) the Clinical Research Site, or its affiliate organizations, or (c) the Company, its employees or agents, and any such payment or offer of payment will not be considered a waiver of any defense or other legal right by any of the foregoing in any legal, administrative or similar proceeding.
- 14.7 **LIMITATION ON LIABILITY.** IN NO EVENT SHALL COMPANY BE LIABLE TO NHLBI, INVESTIGATOR OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE SUBJECT MATTER HEREOF, HOWEVER CAUSED AND WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.8 **DISCLAIMER.** EXCEPT AS SPECIFICALLY STATED IN SECTION 5.6 OR IN REPRESENTATIONS OR WARRANTIES MADE ELSEWHERE IN THIS AGREEMENT, COMPANY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

15. DISPUTES

Any dispute arising under this Agreement that is not disposed of by Agreement of the Parties will be submitted jointly to the signatories of this Agreement. If the signatories are unable to jointly resolve the dispute within thirty (30) days after notification thereof, the dispute will be referred to the Director of NHLBI (or his/her designee) and an appropriate authorized representative of the Company for resolution. If the Director of NHLBI, (or his/her designee) and the authorized representative of the Company are unable to jointly resolve the dispute within 30 calendar days, either Party may pursue any and all administrative or judicial remedies that may be available.

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16. INDEPENDENT CONTRACTORS

In the performance of all work under this Agreement, neither Party is authorized or empowered to act as agent for the other for any purpose and will not, on behalf of the other Party, enter into any contract, warranty, or representation as to any matter. Neither Party will be bound by the acts of the other Party.

17. NON-ENDORSEMENT

By entering into this Agreement, the NHLBI does not directly or indirectly endorse any product or service provided, or to be provided, by the Company. The Company will not in any way state or imply that this Agreement is an endorsement of those product(s) or service(s) by the Government or any of its organizational units or employees. However, the Company may reference or use publications and reports based on the Clinical Trial for legitimate business and regulatory purposes.

18. AMENDMENTS

Modifications to this Agreement will not be effective unless made in writing, as mutually agreed, and signed by a duly authorized representative of each Party.

19. SURVIVABILITY

The provisions Sections 2 (Clinical Research Sites & Investigator), 3 (Investigational New Drug Application Sponsorship), 5 (Supply, Distribution, and Use of Test Article), 8 (Human Subjects Protection), 9 (Data Analysis and Management, Clinical Specimens and Isolates), 10 (Publications and Press Releases), 11 (Confidentiality Information), 12 (Intellectual Property), 14 (Liability, Indemnification, Insurance and Research Related Injury), 15 (Disputes), 16 (Independent Contractors), 17 (Non-Endorsement), 18 (Amendments), and this Section 19 (Survivability); will survive the expiration or earlier termination of this Agreement.

20. ENTIRE AGREEMENT AND SEVERABILITY

This Agreement constitutes the entire Agreement and understanding of the Parties with respect to the subject matter hereof and supersedes any prior understanding or written or oral Agreement. The provisions of this Agreement are severable and, in the event that any provision of this Agreement will be determined to be invalid or unenforceable under any controlling body of law, such determination will not in any way affect the validity and enforceability of the remaining provisions of this Agreement.

21. ASSIGNMENT

Neither this Agreement nor any rights or obligations of any Party hereunder will be assigned or otherwise transferred by either Party without the prior written notification of the other Party.

22. APPLICABLE LAW

This Agreement will be construed in accordance with Federal law as applied by the Federal courts in the District of Columbia.

23. TERM AND TERMINATION

23.1 Unless terminated sooner in accordance with this Section 23, this Agreement will expire upon completion of the Clinical Trial.

23.2 The Parties may terminate this Agreement at any time by mutual written consent.

23.3 Either Party may unilaterally terminate this Agreement at any time by giving written notice at least thirty (30) calendar days prior to the desired termination date in event of IRB approval withdrawal or if necessary to protect the safety of Human Subjects.

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- 23.4 Company may terminate this Agreement if the Principal Investigator becomes unavailable for or withdraws from the Clinical Trial, and NHLBI is unable to appoint a successor within thirty (30) days after NHLBI is notified of such unavailability or withdrawal.
- 23.5 Company may also terminate this Agreement if Company elects to abandon development of the Test Article for the indication being studied under this Clinical Trial.
- 23.6 The Parties agree that should the Company terminate this Agreement prior to completion of the Clinical Trial, the Clinical Trial will be completed if medically and ethically appropriate. In that event, the Company will use its best commercial efforts to supply enough Test Article to complete the Clinical Trial for the maximum number of Human Subjects identified in the approved Protocol at the time of Company's notice of termination.
- 23.7 In the event the Company elects to terminate its obligations under the terms of this Agreement, due to an unexpected dissolution of the Company, the Company must notify NHLBI within at least 30 days of the dissolution.
- 23.8 Either party may terminate this Agreement at any time by giving written notice at least thirty (30) calendar days prior to the desired termination date.

24. NOTICES

Any notice or report required under the terms of this Agreement will be sent to the other Party at the following addresses. Any notice will be deemed to be effective when delivered to the other Party by courier, registered mail (with return receipt) or via facsimile followed by confirmational hard copies sent via international courier when it is necessary to receive or deliver documents within a very short period of time (less than one day).

For the Company:

Mesoblast, Inc.

505 Fifth Avenue, 3rd Floor

New York, New York 10017

Attn: Chief Medical Officer

With mandatory copy to: Mesoblast Legal Department

For technical matters:

Mesoblast, Inc.

505 Fifth Avenue, 3rd Floor

New York, New York 10017

Attn: Chief Medical Officer

With mandatory copy to: Mesoblast Legal Department

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For the NHLBI:

For technical and clinical matters:

*Dr. Marissa Miller, NHLBI Program Officer for CTSN
Chief, Advanced Technologies & Surgery Branch
Division of Cardiovascular Sciences
National Heart, Lung, and Blood Institute
National Institutes of Health
6701 Rockledge Drive, Room 8218
Bethesda MD 20892-7992
Phone: 301.594.1542
Fax: 301.480.1336*

For regulatory and safety matters:

*Dr. Wendy Taddei-Peters, CTSN Regulatory & Clinical Trial Specialist
Office of Special Projects
Division of Cardiovascular Sciences
National Heart, Lung, and Blood Institute
National Institutes of Health
6701 Rockledge Drive, Room 8144
Bethesda MD 20892-7992
Phone: 301.435.7818
Fax: 301.480.7971*

SIGNATURES BEGIN ON THE NEXT PAGE

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If the Company agrees with the terms of this Agreement for the Clinical Trial in accordance with the Protocol designated as Protocol # CTSNLVAD02 titled “**Safety and Efficacy of Intramyocardial Injection of Mesenchymal Precursor Cells on Myocardial Function in LVAD Recipients**”, please have an authorized representative sign below.

FOR NHLBI:

Gary H. Gibbons, MD
Director, NHLBI

Date

Dr. Michael Lauer, Director, DCVS, NHLBI

Date

FOR COMPANY:

(Signature)

Donna Skerrett, MD, MS
Chief Medical Officer
Mesoblast, Inc.
275 Madison Avenue
New York, NY 10016

Date

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ATTACHMENT 1

Test Article (MPCs and Control) Supply Schedule

The Company agrees to provide an initial inventory of 2 (two) ampoules of allogeneic MPCs, each ampoule containing 150 million MPCs) and 2 (two) ampoules Control (50% Alpha-MEM/42.5% ProFreeze NAO Freezing Medium/7.5% DMSO) – to each CTSN Clinical Research Site, as identified by the NHLBI, within 48-72 hours of notification by the NHLBI or its designee that the site has been approved to begin enrollment.

When notified by an approved Clinical Research Site, the Company shall initiate requested shipment of replenishment inventory of one (1) ampoule containing 150 million MPCs or Control (50% Alpha-MEM/42.5% ProFreeze NAO Freezing Medium/7.5% DMSO) within twenty-four (24) hours of notification. Initiation will require coordination with the Clinical Site coordinator or designee, the DCC and the Company and is estimated to take 48-72 hours for delivery at the identified site.

A maximum of one hundred twenty (120) ampoules of MPCs is allocated to this Study and the Company has no obligation to supply in excess of those one hundred twenty (120) ampoules of MPCs.

Subject to Section 14 (*FORCE MAJEURE*) of this Agreement, the Company hereby agrees that the Company's failure to maintain site inventory and to transfer Test Article (MPC and Control) to Clinical Research Sites as contemplated by and in accordance with this Agreement and this Attachment 1 shall constitute a material breach of the Agreement.

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Subscription Deed

Mesoblast Limited
ABN 68 109 431 870

and

Cephalon International Holdings, Inc.

Middletons Lawyers

Melbourne office
Ref: MLUM.NZM:10024006

Subscription Deed

Date 2010

Parties

1. **Mesoblast Limited** ABN 68 109 431 870 of Level 39, 55 Collins Street, Melbourne, Victoria 3000, Australia (**Mesoblast**)
2. **Cephalon International Holdings, Inc.** of 41 Moores Road, Frazer, PA 19355, United States of America (**Cephalon**)

Background

A. Mesoblast and Angioblast Systems, Inc. (**Angioblast**) have entered into a merger agreement dated as of September 28, 2010 and amended on October 13, 2010 for the acquisition by Mesoblast of all of the issued capital of Angioblast (**Merger Agreement**).

B. Cephalon, simultaneously with the execution of this Subscription Deed, will:

(a) enter into a development and commercialisation agreement with Angioblast under which Cephalon is to acquire the license of certain intellectual property rights of Angioblast in specified applications and territories; and

(b) acquire certain stock in Angioblast which in accordance with the terms of the Merger Agreement will on completion under that agreement be extinguished with Mesoblast issuing new Shares to those persons holding Angioblast stock on the date of completion.

C. Mesoblast wishes to issue and Cephalon wishes to subscribe for additional Shares which on issue, in aggregate with the Shares to be issued to Cephalon on completion under the Merger Agreement, will result in Cephalon holding 19.99% of the issued Shares.

D. Mesoblast has agreed to issue and Cephalon has agreed to subscribe for the additional Shares as outlined in accordance with Recital C on the terms and condition of this Deed.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions. In this Deed:

AEDST means Australian Eastern daylight saving time;

Angioblast means Angioblast Systems, Inc. a company incorporated under the laws of State of Delaware, in the United States;

ASX means the Australian Securities Exchange or ASX Limited, as the context requires; **ASX Listing Rules** means the Official Listing Rules of ASX;

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in Victoria Australia;

Cephalon Associates means any officer of Cephalon or any person or entity who would constitute an “associate” of Cephalon (where Cephalon was an Australian company) within the meaning given to the terms “associate” under sections 11, 12 and 15 of the Corporations Act;

Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Deed or otherwise;

Completion Date means (subject to clause 2.2(b) that date being not more than 2 Business Days after the date that each of the Conditions Precedent is satisfied;

Conditions Precedent means the conditions precedent to the issue of the Subscription Shares as detailed in clause 3.1;

Control Proposal means any proposed or possible transaction or arrangement which, if entered into or completed, would result in any person:

(a) acquiring (whether directly or indirectly):

(i) an interest in all or a substantial part of the business of the Mesoblast Group, or a right to acquire any such interest; or

(ii) a relevant interest in 20% or more of Shares, or a right to acquire any such relevant interest;

(b) acquiring control (as determined in accordance with section 50AA of the Corporations Act) of Mesoblast;

(c) otherwise acquiring or merging with Mesoblast;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Deed means this Deed including the recitals, any schedules and any annexures;

Government Agency includes any government, or any government, semi-government or judicial agency or authority;

Mesoblast Board means the Board of Directors of Mesoblast; **Mesoblast Group** means Mesoblast and its related bodies corporate; **related body corporate** has the meaning given to that term in the Corporations Act; **relevant interest** has the meaning given to that term in the Corporations Act;

Shares means fully paid ordinary shares in the capital of Mesoblast;

Subscription Amount means the aggregate Subscription Price per Share for the issue of all of the Subscription Shares being equal to the number of Subscription Shares multiplied by the Issue Price;

Subscription Price means a price per Subscription Share being the lesser of (a) A\$ Au\$110,601,295 divided by the total Subscription Shares and (b) \$4.35; and

Subscription Shares means a number of Shares equal to 19.99% of the issued Shares (after the issue of the Subscription Shares) less that number of Shares already issued to Cephalon under the Merger Agreement.

1.2 Interpretation. In this Deed, unless the context requires otherwise:

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

(b) the headings are used for convenience only and do not affect the interpretation of this Deed;

(c) other grammatical forms of defined words or expressions have corresponding meanings;

(d) the word “person” includes a natural person and anybody or entity whether incorporated or not;

(e) the words “in writing” include any communication sent by letter or facsimile transmission;

(f) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

(g) wherever “include” or any form of that word is used, it must be construed as if it were followed by “(without being limited to)”; and

(h) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

2. Issue of Subscription Shares

2.1 Application for Subscription Shares. Cephalon by executing this Deed agrees to subscribe for and Mesoblast agrees to issue the Subscription Shares on the terms and conditions of this Deed. Cephalon’s agreement to subscribe for the Subscription Shares is irrevocable and, except as otherwise provided by this Deed, unconditional.

2.2 Subscriber's obligations. Cephalon must by 3:00pm AEDST on the Completion Date pay (in cleared funds) the Subscription Amount to Mesoblast by bank cheque or electronic funds transfer to an account nominated by Mesoblast.

2.3 Mesoblast's obligations. Subject to compliance by Cephalon with clause 2.2, Mesoblast must, on the Completion Date:

(a) allot and issue the Subscription Shares to Cephalon, including by causing Mesoblast's share registry to register Cephalon as the holder of the Subscription Shares;

(b) apply for and do everything the ASX reasonably requires to obtain quotation of the Subscription Shares; and

(c) deliver or cause to be delivered to Cephalon a holding statement for the Subscription Shares.

2.4 Constitution. Cephalon agrees to be bound by and to hold the Subscription Shares subject to the terms of Mesoblast's Constitution (as amended from time to time).

2.5 Cleansing notice. If on the Completion Date:

(a) the requirements of section 708A(5)(a), (b), (c) and (d) of the Corporations Act are satisfied in relation to Mesoblast and the existing issued Shares (as applicable);

(b) Mesoblast has complied with:

(i) the provisions of Chapter 2M of the Corporations Act as they apply to Mesoblast; and

(ii) section 674 of the Corporations Act; and

(iii) there is no determination in force under section 708A(2) of the Corporations Act, Mesoblast must, on the Completion Date, issue a notice in accordance with section 708A(5)(e) of the Corporations Act (cleansing statement) in relation to the Subscription Shares issued on the Completion Date.

2.6 Disclosure document. If any of the requirements referred to in clause 2.5 will not be satisfied on the Completion Date:

(a) Mesoblast must so notify Cephalon before the Completion Date promptly upon becoming aware that such requirements will not be satisfied; and

(b) Mesoblast must as soon as reasonably practicable issue a disclosure document which complies with Part 6D.2 of the Corporations Act (disclosure document) on or prior

to the Completion Date (which shall be postponed to such date notified by Mesoblast to Cephalon with the notification given under paragraph (a) as will give Mesoblast sufficient time to prepare and issue the disclosure document) so that Cephalon will not be subject to any on-sale restrictions in respect of such Shares under section 707(3) of the Corporations Act.

Mesoblast's obligation to issue a disclosure document in accordance with this clause 2.6 is subject to Cephalon and its directors (if applicable) giving the consent required under section 720 of the Corporations Act. Mesoblast must do everything reasonably required by Cephalon (in accordance with customary procedures and practice) to facilitate Cephalon and its directors (if applicable) giving such consent.

3. Precondition to the issue of the Subscription Shares

3.1 Conditions precedent. The issue of the Subscription Shares by Mesoblast to Cephalon is conditional on:

(a) Mesoblast obtaining the approval of its Shareholders for the purposes of ASX Listing Rule 7.1;

(b) no objection being received and the period of 30 days expiring (or earlier terminated) from the date of the filing by Mesoblast and Cephalon of a merger / acquisition notification (**HSR filing**) as required under the US Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; and

(c) the Treasurer of the Commonwealth of Australia either:

(i) issues a notice stating that the Commonwealth Government does not object to the proposed acquisition of the Subscription Shares by Cephalon, either without conditions or with conditions that Cephalon considers acceptable (acting reasonably); or

(ii) becomes, or is, precluded under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) from making an order in respect of the proposed acquisition of the Subscription Shares by Cephalon, in each case on or before 28 February 2011 or any other date agreed by Mesoblast and Cephalon in writing.

3.2 Duties in relation to Conditions Precedent.

(a) Each party must use its reasonable endeavours to ensure that the Conditions Precedent are fulfilled on or before the date specified in that clause.

(b) Without limiting the generality of paragraph (a), Mesoblast must use reasonable endeavours to convene a meeting of Shareholders to consider the Shareholders' approval required by the Condition Precedent in clause 3.1(a), including by dispatching the Notice of Meeting by no later than 15 January 2011.

(c) Each party must:

(i) supply the other with all information and documents necessary or desirable for the purpose of enabling either the other party or for fulfilment of each Condition Precedent; and

(d) Without limiting the generality of paragraph (c), Cephalon must promptly provide Mesoblast with such information in relation to Cephalon and the Cephalon Group (**Cephalon Information**) as is reasonably required for the purposes of any disclosure that must be included in the Notice of Meeting or the HSR filing.

(e) Mesoblast must consult with Cephalon as to the content and presentation of the Notice of Meeting and must:

(i) provide to Cephalon successive drafts of the Notice of Meeting and of any other document which it is proposed will accompany the Notice of Meeting to enable Cephalon to review and comment on those drafts;

(ii) take all comments made by Cephalon into account in good faith when producing revised drafts of the Notice of Meeting and any accompanying documents;

(iii) before issuing the final Notice of Meeting and any accompanying documents, obtain Cephalon's written approval for the form and content in which the Cephalon Information appears in those documents;

(iv) keep Cephalon informed of any issues raised by the ASX or any other person about the Notice of Meeting or generally the transactions to be given effect by this Deed and take into account in good faith in resolving such issues any matters raised by Cephalon.

(f) If the parties are unable to agree on the final form of the Notice of Meeting and any accompanying documents, the final form and content shall be determined by Mesoblast acting reasonably but if Cephalon disagrees with such form and content:

(i) Mesoblast must include a statement to that effect in the Notice of Meeting; and

(ii) if the failure to agree relates to the Cephalon Information or any other information concerning the Cephalon Group, Mesoblast must include a statement that Cephalon takes no responsibility for the relevant form and content to the extent that Cephalon disagrees with it.

3.3 Failure of Conditions Precedent. Either party may, if not otherwise in breach of this Deed, terminate the obligation on the parties to proceed with the issue of the Subscription Shares in accordance with clause 2 of this Deed by giving written notice to all other party at any time before Completion if the Conditions Precedent are not satisfied before 5.00 pm AEST on the date specified in clause 3.1.

3.4 No Share issues pending satisfaction of Conditions Precedent. Mesoblast represents and warrants to Cephalon that Mesoblast does not foresee the need for any additional capital or other funding during the period from the execution of this agreement and the date by which each Condition Precedent must be satisfied or the obligation on the parties to proceed with the issue of the Subscription Shares in accordance with clause 2 is terminated under clause 3.3 (the **Condition Satisfaction Period**) beyond the funding to be received by Arigioblast from Cephalon pursuant to the licence agreement referred to in recital B. Accordingly, during the Condition Satisfaction Period, Mesoblast must not issue any Shares other than under any employee or Director Share or option plan or remuneration arrangements for employees or Directors (including upon the exercise of options granted under such arrangements).

4. Standstill obligation

4.1 Not to acquire any interest in further Shares. Subject to clause 4.3, Cephalon agrees that for a period of 12 months from the date of this Deed it will not and it will procure that its Cephalon Associates do not:

(a) acquire or obtain any right, title or interest of any nature whatever in any further Shares or securities capable of conversion into Shares or which give substantially the economic benefit of Shares; or

(b) enter into any arrangement, understanding or agreement with any party concerning Shares or securities capable of conversion into Shares which give substantially the economic benefit of Shares, which in aggregate would give Cephalon a relevant interest in Shares of more than 19.99%. For the purpose of clarity in the event of any dilutive issue (including without limitation those matters referred to in clause 7.3 below) which as a consequence results in Cephalon's relevant interest being less than 19.99%, Cephalon can buy (on market or off market) from any Mesoblast shareholder which in aggregate would give Cephalon a relevant interest in Shares of more than 19.99%.

4.2 Not to announce or make any Takeover Offer or like action. Subject to clause 4.3, Cephalon agrees that for a period of 12 months from the date of this Deed it will not and it will ensure that its Cephalon Associates do not announce or make any takeover offer or like corporate action to offer to acquire any right, title or interest in further Shares other than in respect of the Shares to be issued to Cephalon under the Merger Agreement or, where the Condition Precedent is satisfied under clause 2 of this Deed, the Shares to be issued under this Deed.

4.3 Third Party Control Proposals. Clauses 4.1 and 4.2 cease to apply if:

(a) any person (other than Cephalon or a Cephalon Associate) announces or makes any Control Proposal; or

(b) Mesoblast announces that it is in any discussions with any person (other than Cephalon or a Cephalon Associate) concerning a Control Proposal.

4.4 No action to cause classification as Controlled Foreign Corporation. Cephalon agrees that it will take no action which is reasonably likely to result in Mesoblast being classified or treated as a controlled foreign corporation for the purpose of the taxation laws of the United States.

5. Parties' Acknowledgments and Representations

5.1 Cephalon's acknowledgments. Cephalon acknowledges that:

(a) the issue of the Subscription Shares to Cephalon does not (except pursuant to clause 2.5 or clause 2.6) require a disclosure document, prospectus or like registerable document to be prepared by Mesoblast pursuant to any applicable legislation and therefore Cephalon has not received that information which would otherwise be available to a potential investor in such a document;

(b) Cephalon has investigated all material matters that a prudent intending subscriber for the Subscription Shares would investigate and has satisfied itself about anything arising from its investigation (but having regard to Mesoblast's representations and warranties in clauses 5.2 and 5.3);

(c) it has received independent professional advice in relation to the subscription for the Subscription Shares (including legal, accounting, tax and financial advice), has satisfied itself about anything arising from that advice and is able to evaluate the risks and merits of subscribing for the Subscription Shares;

(d) an investment in the Subscription Shares is speculative and there is no guarantee that there will be any return on holding the Subscription Shares, any class of shares in Mesoblast or Mesoblast itself (whether by way of dividends or return of capital or any other manner whatever);

(e) apart from Mesoblast's representations and warranties in clauses 5.2 and 5.3, neither Mesoblast, nor its officers, agents or advisers, have made any representation or warranty of any kind whatever in connection with this Deed, Mesoblast, its financial position or trading in shares of any class in Mesoblast; and

(f) apart from Mesoblast's representations and warranties in clauses 5.2 and 5.3, to the fullest extent permitted by law, all terms, conditions, undertakings, inducements, warranties or representations (whether express or implied, statutory or otherwise), which relate to or are connected with terms of this Deed are excluded.

5.2 Mutual Representations and Warranties. Each party represents and warrants to the other, as an inducement to the other to enter into this Deed and to subscribe for or issue the Subscription Shares that:

(a) it has full and lawful authority to execute and deliver this Deed and to perform, or cause to be performed, its obligations under this Deed;

(b) apart from the Condition Precedent, it has taken all action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Deed;

(c) the execution, delivery and performance of this Deed will not contravene:

(i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;

(ii) any provision of its constitution or equivalent documents; or

(iii) any agreement, undertaking or instrument which is binding on the party or any of its property.

5.3 Mesoblast's Representations and warranties. Mesoblast represents and warrants to Cephalon, as an inducement to Cephalon to enter into this Deed and to subscribe for the Subscription Shares that:

(a) Mesoblast has complied with its obligations under ASX Listing Rule 3.1 and, other than as fairly disclosed to Cephalon, is not relying on ASX Listing Rule 3.1A to withhold information from disclosure; and

(b) Mesoblast has complied with its obligations under Chapter 2M of the Corporations Act.

6. Director Appointment

6.1 Appointment of Cephalon Nominee. Having regard to the matters described in recital B, Mesoblast agrees to procure that the Mesoblast Board upon the execution of this Deed appoints Mr. Kevin Buchi, being a person nominated by Cephalon, as a Director of Mesoblast (the **Cephalon Nominee**).

6.2 Other Directors. Clause 6.1 does not limit Cephalon's rights as a Shareholder to nominate for election or vote for or against the election or re-election of any Director or proposed Director of Mesoblast (in addition to the Cephalon Nominee) at any general meeting of Mesoblast Shareholders.

6.3 Disclosure of Information by Cephalon Nominee to Cephalon. Having regard to the benefits to Mesoblast of having Cephalon's contribution through the Cephalon Nominee to the deliberations of the Mesoblast Board, Mesoblast agrees that the Cephalon Nominee may provide information obtained by the Cephalon Nominee as a Director of Mesoblast to Cephalon, officers of Cephalon or Cephalon, Inc. and the advisers to Cephalon or Cephalon, Inc., subject to:

(a) Cephalon ensuring that any such information which is confidential is not further disclosed unless required by law (including pursuant to an order, rule, regulation or policy of any Government Agency or securities exchange or stock market) and then only to the extent so required and after consulting with Mesoblast to the extent practicable;

(b) such information not being used for any purpose other than to obtain Cephalon's contribution through the Cephalon Nominee to the deliberations of the Mesoblast Board, except where there is an actual conflict of interest between Cephalon and Mesoblast in respect of a particular matter and the information relates to that matter (in which case the relevant information must remain confidential and the Cephalon Nominee may, at the discretion of the other members of the Mesoblast Board, be excluded from deliberations in relation to that matter if required by section 195 of the Corporations Act).

6.4 Disclosure of Financial Information to Cephalon. Mesoblast (in this clause 6.4 referred to as the **Company**) must:

(a) deliver to Cephalon as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company, a consolidated income statement for such fiscal year, a consolidated balance sheet as of the end of such year and a consolidated cash flow statement for such fiscal year, such year-end financial reports to be in reasonable detail, prepared in accordance with applicable generally accepted accounting principles consistently applied, and audited and certified by independent public accountants of nationally recognized standing selected by the Company, and additionally, the Company shall deliver a draft of such year-end financial reports to Cephalon as soon as practicable, but in any event within seventy-five (75) days after the end of each fiscal year of the Company;

(b) deliver to Cephalon as soon as practicable, but in any event within fifteen (15) days after the end of each of the quarter of each fiscal year of the Company, an unaudited consolidated profit or loss statement for such fiscal quarter, an unaudited consolidated balance sheet as of the end of such fiscal quarter and an unaudited consolidated cash flow statement for such fiscal quarter;

(c) in the event Cephalon is required to incorporate its share of Mesoblast result in its profit and loss, MSB will provide an unaudited profit and loss, unaudited balance sheet, and unaudited cashflow within seven (7) business days after the end of every month;

(d) deliver to Cephalon as soon as practicable, but in any event prior to the end of each fiscal year, a budget and business plan for the Company's 2011 fiscal year and each fiscal year thereafter, prepared on a monthly basis, including balance sheets and sources and applications of funds statements for such months and, within five (5) business days after presentation to the Company's Board of Directors, any other budgets or revised budgets prepared by the Company;

(e) deliver to Cephalon as soon as reasonably practicable, additional supporting financial information as mutually agreed upon by Cephalon and the Company;

(f) deliver to Cephalon, with respect to the audited financial statements called for in subsection (i) and the unaudited financial statements called for in subsection (ii) of this

Section 6.4(b) and 6.4(c), an instrument executed by the chief financial officer or chief executive officer of the Company, certifying that such financials were prepared in accordance with International Financial Reporting Standards and generally accepted accounting principles consistently applied with prior practice for earlier periods and fairly present, in all material respects, the consolidated financial condition of the Company and its results of operation for the period specified, subject to year-end audit adjustments and, in the case of the financial statements called for in subsection (ii) of this Section 5.1(b), footnotes;

(g) provide Cephalon, and/or Cephalon's auditors', financial records and financial information that are required for Cephalon to prepare its audited financial statements or for Cephalon's auditors to review, audit or perform other procedures on Cephalon's financial statements. Cephalon and Cephalon's auditors shall only be required to provide reasonable advance notice of such requirements, and such requirements shall only be made to the extent reasonably necessary to enable Cephalon to prepare all of its statutory financial reporting statements in accordance with the rules of any exchange on which its securities are traded or generally in accordance with its reporting obligations under International Financial Reporting Standards.

(h) Cephalon will hold and will procure that Cephalon's officers, employees and authorized representatives of Cephalon (including independent public accountants and attorneys) will hold, any information obtained pursuant to this Section 5.1 in strict confidence (it being understood that Cephalon shall be permitted to disclose such information to the extent required by applicable requirements of law or the rules of any applicable securities exchange).

7. Top-up Right

7.1 Future Placements. Subject to clauses 7.2, 7.3 and 7.4, if Mesoblast proposes in the future to make a placement of Shares or to issue Shares on the conversion of securities convertible into Shares (each, **Placement Shares**) then Mesoblast must offer to Cephalon the right (**top-up right**) to subscribe for additional Shares on the same terms and, to the extent reasonably practicable, at precisely the same time as Mesoblast proposes to issue such other Shares in such number as would, upon the issue of the Placement Shares and the Shares issued to Cephalon, result in Cephalon's percentage Shareholding being maintained at the same percentage as Cephalon had immediately prior to such issue.

7.2 Sell down by Cephalon. Clauses 6 and 7.1 does not apply if Cephalon ceases to have a relevant interest (as defined in the Corporations Act) in less than 10% of the issued Shares.

7.3 Excluded Issues. Clause 7.1 does not apply in relation to any Shares issued by Mesoblast:

(a) under any employee or Director Share or option plan or remuneration arrangements for employees or Directors (including upon the exercise of options granted under such arrangements); or

(b) under a dividend reinvestment plan; or

(c) pursuant to an acquisition agreement or like arrangement to acquire another entity or assets (whether by acquisition, license or other like arrangement).

7.4 ASX Waiver. The top-up right referred to in clause 7.1 is conditional on the ASX granting a waiver of ASX Listing Rule 6.18. Mesoblast must use reasonable endeavours to obtain such a waiver as soon as possible and must:

(a) provide to Cephalon drafts of the waiver application to enable Cephalon to review and comment on those drafts;

(b) take all comments made by Cephalon into account in good faith when producing revised drafts of waiver application;

(c) keep Cephalon informed of any issues raised by the ASX or any other person about the waiver and take into account in good faith in resolving such issues any matters raised by Cephalon.

In the event that the ASX requires an adjustment to the terms of the top-up right as a condition of the waiver, and such adjustment is acceptable to Cephalon, the parties must adjust the terms of the top-up right as so required.

7.5 No ASX waiver. If the ASX does not grant the waiver referred to in clause 7.1, Mesoblast agrees that it will not issue additional Shares for a period of 12 months from the Completion Date other than:

(a) under any employee or Director Share or option plan or remuneration arrangements for employees or Directors (including upon the exercise of options granted under such arrangements); or

(b) under a dividend reinvestment plan; or

(c) pursuant to an acquisition agreement or like arrangement to acquire another entity or assets (whether by acquisition, license or other like arrangement).

8. Public Announcement. Immediately after the execution of this Deed, Mesoblast must make the announcement to the ASX which is set out in Annexure A.

9. GST

9.1 GST Gross-Up. If a party (**supplier**) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this Deed, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST (**GST gross-up**).

9.2 GST Invoice. If a GST gross-up is payable, then the supplier must give the recipient a tax invoice for the supply.

9.3 Payment. Provided a tax invoice has been given, the GST gross-up must be paid by the recipient:

- (a) if any monetary consideration is payable for the supply, at the same time and in the same manner as such monetary consideration;
- (b) if no monetary consideration is payable for the supply within 10 Business Days after the day on which the tax invoice is given.

9.4 Reimbursement. If any payment to be made to a party under or in connection with this Deed is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 8.1.

9.5 Adjustments. If an adjustment event has occurred in respect of a supply made under or in connection with this Deed, any party that becomes aware of the occurrence of that adjustment event must notify the other party as soon as practicable, and the parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST (or part thereof), is paid no later than 20 Business Days after the supplier first becomes aware that the adjustment event has occurred.

9.6 Definitions.

(a) Terms used in this clause 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

(b) In this clause 8, a reference to a payment includes any payment of money and any form of consideration other than payment of money.

(c) In this Deed, all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity), are, but for the operation of this clause, exclusive of GST.

10. General

10.1 Time of the Essence. In this Deed, time is of the essence unless otherwise stipulated.

10.2 Entire Understanding. This Deed and all documents referred to in this Deed contain the entire understanding between the parties concerning the subject matter of the Deed and supersede all prior communications between the parties. Each party acknowledges that, except as expressly stated in this Deed, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Deed.

10.3 No Adverse Construction. No Deed is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

10.4 Further Assurances. A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Deed.

10.5 No Waiver. A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Deed does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Deed. A waiver of a breach does not operate as a waiver of any other breach.

10.6 Severability. If any provision of this Deed offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

(a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and

(b) in any other case the offending provision must be severed from this Deed, in which event the remaining provisions of the Deed operate as if the severed provision had not been included.

10.7 Successors and Assigns. This Deed binds and benefits the parties and their respective successors and permitted assigns under clause 10.8.

10.8 No Assignment. A party cannot assign or otherwise transfer the benefit of this Deed without the prior written consent of each other party.

10.9 Consents and Approvals. Where anything depends on the consent or approval of a party then, unless this Deed provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

10.10 No Variation. This Deed cannot be amended or varied except in writing signed by the parties.

10.11 Costs. Each party must pay its own legal costs of and incidental to the preparation and completion of this Deed.

10.12 Governing Law and Jurisdiction. This Deed is governed by and must be construed in accordance with the laws in force in the State of Victoria, Australia. The parties submit to the exclusive jurisdiction of the courts of that State and Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

10.13 Counterparts. If this Deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

10.14 Conflicting Provisions. If there is any conflict between the main body of this Deed and any schedules or annexures comprising it, then the provisions of the main body of this Deed prevail.

10.15 Non Merger. No provision of this Deed merges on completion of the subscription by Cephalon for the Subscription Shares. A term or condition of, or act done in connection with, this Deed does not operate as a merger of any of the rights or remedies of the parties under this Deed and those rights and remedies continue unchanged.

10.16 No Right of Set-off. Unless this Deed expressly provides otherwise, a party has no right of set-off against a payment due to another party.

10.17 Relationship of Parties. Unless this Deed expressly provides otherwise, nothing in this Deed may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

10.18 Notices. Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

(a) must be in writing;

(b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Mesoblast

Mesoblast Limited
Level 39, 55 Collins Street,
Melbourne, Victoria 3000, Australia
Fax:
For the attention of: Company Secretary

CEPHALON

Cephalon International Holdings, Inc.,
c/o Johnson Winter & Slattery
Level 30, 264 George Street,
Sydney, New South Wales, 2000
Fax: +61 2 8274 9500
For the attention of: Mr. Damian Reichel

(c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorized agent of, that party;

(d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 10.18(b); and

(e) is taken to be received by the addressee:

(i)(in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(ii)(in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;

(iii)(in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

(iv)(in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

Executed as a Deed

Executed by **Mesoblast Limited** ACN 109

431 870 in accordance with section 127 of the *Corporations Act 2001*
(Cth)

/s/ Brian Jamieson

Signature of Director

Brian Jamieson

Name of Director (please print)

Executed by Cephalon International Holdings, Inc. by its duly
authorised representative/s:

Signature of Director

Name of Director (please print)

/s/ Kevin Hollingsworth

Signature of Secretary

Kevin Hollingsworth

Name of Secretary (please print)

Signature of Director/Secretary

Name of Director/Secretary (please print)



MANUFACTURING SERVICES AGREEMENT

This Manufacturing Services Agreement (the “**Agreement**”) is made as of September 20, 2011 (the “**Effective Date**”) between **LONZA WALKERSVILLE, INC.**, a Delaware corporation having its principal place of business at 8830 Biggs Ford Road, Walkersville, Maryland 21793 and Lonza Bioscience Singapore Pte. Ltd., a company having its principal place of business at 11 Tuas Bay Link, Singapore 637393 (collectively, “**LONZA**”), and **MESOBLAST SWITZERLAND SA**, a Swiss societe anonyme, having an address at Route de Pre-Bois 20, c/o Accounting & Management Services SA, 1217 Meyrin, Switzerland (“**CLIENT**”) (each of LONZA and CLIENT, a “**Party**” and, collectively, the “**Parties**”).

RECITALS

A. CLIENT has developed a proprietary technology platform based on MPCs (as defined below) that produces certain novel cell therapy products for the treatment of various indications (as further defined below, “**MPC Products**”) and is pursuing the development and commercialization of MPC Products. CLIENT owns or controls certain patents, know-how and other intellectual property relating to the manufacture, development and commercialization of such MPC Products;

B. LONZA possesses substantial resources and expertise in process development and manufacture of cell-based therapy products such as MPC Products; and

C. CLIENT desires to have LONZA develop manufacturing processes for certain MPC Products, and manufacture such MPC Products for CLIENT, and LONZA desires to provide such process development and manufacturing services, in accordance with the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, LONZA and CLIENT, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. DEFINITIONS

When used in this Agreement, capitalized terms will have the meanings as defined below and throughout the Agreement. Unless the context indicates otherwise, the singular will include the plural and the plural will include the singular.

- 1.1. “**Affiliate**” means, with respect to either Party, any other corporation or business entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Party. For purposes of this definition, the term “control” and, with correlative meanings, the terms “controlled by” and “under common control with” means direct or indirect ownership of more

than fifty percent (50%) (or such lesser percentage that is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the securities or other ownership interests representing the equity voting stock or general partnership or membership interest of such entity or the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise. For purposes of this Agreement, Lonza Bioscience Singapore Pte. Ltd., a Singapore corporation having its principal place of business at 35 Tuas South Ave 6, Singapore, Tuas 637377 (“LBS”) is one of LONZA’s Affiliates.

- 1.2. “**Applicable Laws**” shall mean all relevant federal, state and local laws, statutes, rules, regulations, and ordinances in the United States, countries in Europe, Singapore, Japan, Australia and/or any other Relevant Jurisdiction, including without limitation, the United States Federal Food, Drug and Cosmetic Act and cGMP, as well as any industry or governmental standards and guidelines applicable to the manufacture, supply, development and/or commercialization of pharmaceutical products in each case, together with any and all amendments thereto.
- 1.3. “**Background Intellectual Property**” means any Intellectual Property either (i) owned or controlled by a Party or its Affiliates prior to the Effective Date or (ii) developed, conceived, invented, first reduced to practice, made or otherwise acquired by a Party or its Affiliates independently from performance under this Agreement during the Term of the Agreement.
- 1.4. “**Batch**” means a quantity of Product that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.
- 1.5. “**Batch Record**” means the production record pertaining to a Batch.
- 1.6. “**Best Efforts**” means active, sustained and diligent efforts to conduct the applicable activity, or achieve the applicable requirement or goal, in a prompt and timely manner, using all measures reasonably practicable under the circumstances, and in no event less than the level of resources, efforts and urgency that the applicable Party would apply to achieve its own high priority goals. For the avoidance of doubt, the Parties acknowledge and agree that Best Efforts is intended to embody a higher level of obligation than that which is associated with the phrase “commercially reasonable efforts.”
- 1.7. “**Biosimilar**” means any Cell Therapy Product for the same indication as a pharmaceutical or medicinal product that has received Regulatory Approval, which Cell Therapy Product has received, or is in development and is intended to receive, Regulatory Approval in one or more jurisdictions through an abbreviated regulatory process based in part upon a determination or finding by the applicable Regulatory Authority that such Cell Therapy Product is “biosimilar,” “interchangeable” or “substitutable” (as such terms are used with respect to biosimilar determinations by the FDA or EMA, or a similar determination of like import under the applicable

regulatory framework of a given jurisdiction outside the United States or Europe) to or with a reference Cell Therapy Product manufactured or sold by another party which has already received Regulatory Approval in such jurisdiction.

- 1.8. **“Cell Therapy Product”** means a product containing human cells for administration to the patient or subject as a therapeutic agent in treatment or therapy.
- 1.9. **“cGMP”** means the regulatory requirements for current good manufacturing practices and standards as provided for (and as amended from time to time) in the Current Good Manufacturing Practice Regulations of the United States Code of Federal Regulations 21 CFR Parts 210 and 211 and the European Community Directive 91/356/EEC (Principles and Guidelines of Good Manufacturing Practice for Medicinal Products), as well as the applicable documents developed by the International Conference on Harmonization (ICH), and similar requirements of other Regulatory Authorities in Relevant Jurisdictions as may apply from time to time during the Term, and subject to any arrangements, additions or clarifications, and the respective roles and responsibilities, that may be agreed from time to time between the Parties.
- 1.10. **“Change Order”** has the meaning set forth in Section 2.2.
- 1.11. **“CLIENT Materials”** has the meaning set forth in Section 2.3.2.
- 1.12. **“CLIENT Personnel”** has the meaning set forth in Section 4.15.1.
- 1.13. **“Commencement Date”** means with respect to a Product, the estimated date set forth in the Statement of Work, based on a Draft Plan, or in the applicable Binding Purchase Order, for the commencement of the production of a Batch of such Product.
- 1.14. **“Confidential Information”** has the meaning set forth in Section 12.1.
- 1.15. **“Disapproval Notice”** shall have the meaning set forth in Section 6.2.2.
- 1.16. **“Draft Plan”** shall have the meaning set forth in Section 4.1.
- 1.17. **“EMA”** means the European Medicines Agency, and any successor agency thereof.
- 1.18. **“Europe”** means those countries which are subject to the jurisdiction of the EMA.
- 1.19. **“Facility”** means any manufacturing facility owned or operated by LONZA or an Affiliate of LONZA with space and other resources reasonably necessary to make such facility capable of manufacturing Product, including the Walkersville Facility, the Singapore Facility and LONZA’s (or its Affiliate’s) facilities in Vervier. For the avoidance of doubt, any facility actually used in LONZA’s or its Affiliate’s manufacture of Product under this Agreement shall be deemed a “Facility.”
- 1.20. **“FDA”** means the U.S. Food and Drug Administration, and any successor agency thereof.

- 1.21. **“First Commercial Launch”** means the first commercial launch in the United States or Europe of a Product for an indication where the MPCs contained therein are the intended therapeutic agent, after Regulatory Approval thereof in the applicable jurisdiction.
- 1.22. **“Intellectual Property”** means all worldwide patents, copyrights, trade secrets and all other intellectual property rights, including all applications and registrations with respect to any of the foregoing, but excluding all trademarks, trade names, service marks, logos and other corporate identifiers, including any such rights in or to any technology, know-how, materials, designs, ideas, inventions, improvements, devices, developments, discoveries, compositions, processes, methods and/or techniques, whether or not patentable or copyrightable.
- 1.23. **“Joint Steering Committee”** or **“JSC”** shall have the meaning set forth in Section 5.1.
- 1.24. **“LONZA Operating Documents”** means, with respect to a Product, the SOPs, standard manufacturing procedures, raw material specifications, protocols, validation documentation, and supporting documentation used by LONZA, such as environmental monitoring, for operation and maintenance of any Facility where a Product is manufactured and LONZA equipment used in the process of manufacturing such Product, excluding any of the foregoing that are unique to or specifically developed for the manufacture of such Product.
- 1.25. **“LONZA Parties”** has the meaning set forth in Section 17.2.
- 1.26. **“Master Production Record”** means, with respect to a Product, the documentation developed by LONZA that contains a detailed description of a Process and any other instructions to be followed by LONZA in the production of such Product.
- 1.27. **“Materials”** means, with respect to a Product, all raw materials and supplies to be used in the production of such Product.
- 1.28. **“Most Favored Rate”** shall have the meaning set forth in Section 3.3.1.
- 1.29. **“MPC”** means any mesenchymal precursor cell selected for, or a population of cells that has been enriched for, STRO-1 and/or STRO-3.
- 1.30. **“MPC Product”** means a pharmaceutical or medicinal product containing a population of allogeneic MPCs as the intended therapeutic agent, including without limitation such a product in a final packaged form and labeled for use in clinical trials or for commercial sale to end users.
- 1.31. **“MPC Technology”** means know-how, software, systems, equipment and materials reasonably necessary or useful for the manufacture of MPCs and MPC Products.
- 1.32. **“Phase 2b Clinical Trial”** means, with respect to a Product, any human clinical trial of such Product conducted in the United States on a sufficient number of patients the

primary purpose of which is to make a preliminary or qualitative determination of efficacy of such Product in the patients being studied for the dosage regimes indicated in the related Phase 2a Clinical Trial as required under 21 C.F.R. §312.21(b), or, with respect to a jurisdiction other than the United States, a similar clinical trial.

- 1.33. “**Process**” shall have the meaning set forth in Section 3.1.
- 1.34. “**Product**” means a particular MPC Product set forth in a Statement of Work.
- 1.35. “**Product Warranties**” means those warranties as specifically stated in Section 6.1.
- 1.36. “**Production Term**” shall have the meaning set forth in Section 4.2.1.
- 1.37. “**Quality Agreement**” shall have the meaning set forth in Section 4.10.
- 1.38. “**Regulatory Approval**” means, with respect to any allogeneic pharmaceutical or medicinal product, all approvals, licenses, registrations or authorizations necessary for the commercialization of such product in a particular jurisdiction (and including applicable approvals of labeling, price and reimbursement for such product in such jurisdiction).
- 1.39. “**Regulatory Authority**” means any federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity with authority over the development, manufacture or commercialization (including approval of Regulatory Approvals) of any allogeneic pharmaceutical or medicinal product in any jurisdiction, including the FDA and EMA.
- 1.40. “**Relevant Jurisdictions**” means the United States, countries in Europe, Singapore, Japan, Australia, any other country in which Lonza performs activities hereunder, and such other countries as may apply pursuant to Section 4.9.
- 1.41. “**SOP**” means a standard operating procedure.
- 1.42. “**Specifications**” means, with respect to a Product, the specifications for such Product set forth in the applicable Statement of Work or as modified by the Parties in connection with the production of a particular Batch of Product pursuant to Section 4.12 hereunder.
- 1.43. “**Singapore Facility**” means the applicable portion of LONZA’s facility located at 35 Tuas South Ave 6, Singapore, Tuas 637377, including expansions or extensions of such facility, which is intended for the manufacture of Cell Therapy Products.
- 1.44. “**Statement of Work**” means a plan (including timelines, applicable payment information and applicable milestones and/or deliverables) to develop a Process and/or manufacture a Product. The first Statement of Work, will be numbered Appendix A-1, and be incorporated and made a part of this Agreement. It is contemplated that activities regarding different formulations of Products which are intended for different indications will be treated as separate projects, and that each

separate project shall have its own Statement of Work. As each subsequent Statement of Work is agreed to by the Parties, each shall state that it is to be incorporated and made a part of this Agreement and shall be consecutively numbered as A-2, A-3, etc.

- 1.45. “**Third Party**” means any party other than LONZA, CLIENT or their respective Affiliates.
- 1.46. “**Walkersville Facility**” means the applicable portion of LONZA’s facility located at 8830 Biggs Ford Road, Walkersville, Maryland 21793, and includes expansions or extensions of such facility.
- 1.47. “**Validated and Ready**” means, with respect to the Singapore Facility, that construction of such Facility has been completed, all applicable testing and validation of such Facility has been successfully completed, and all required material permits and licenses have been obtained, and such Facility is otherwise ready and available for use in production of Products for clinical supply, including successful completion of all items listed on Exhibit 1.47 to the reasonable satisfaction of CLIENT.

2. STATEMENTS OF WORK

2.1 Statement of Work. Prior to performing the activities set forth under this Agreement, the Parties will collaborate to develop one or more initial Statements of Work, describing the particular activities to be performed by LONZA, or to be subcontracted by LONZA to Third Parties, in accordance with the terms and conditions of this Agreement. Once agreed to in writing by the Parties, such Statement of Work shall be executed and signed by an authorized representative of each Party, and each such Statement of Work is hereby incorporated herein by reference and made a part of this Agreement. Each Statement of Work shall provide for a proposed work plan and budget for such activities (“**Project Plan and Budget**”) prepared by the Project Team pursuant to Section 5.3 and approved by the JSC pursuant to Section 5.1, including scope of work, estimated timelines, appropriate technical or functional milestones (including cost-reduction and/or yield improvement goals) and deliverables (including any CLIENT Documentation), and shall set forth the applicable compensation agreed upon by the Parties with respect to such activities, including compensation due on a time and materials basis or upon the completion or acceptance of applicable milestones or deliverables, and CLIENT Materials, if any, necessary to be delivered by CLIENT to LONZA in connection with the applicable Statement of Work. In the event that time constraints require faster implementation of a Statement of Work than the foregoing procedure permits, the applicable Project Team may, upon agreement of the Project Team including written agreement from all CLIENT members on the applicable Project Team, implement a modified or amended version of the Statement of Work for which such Project Team is responsible. Notwithstanding the foregoing, LONZA shall not be liable for any delays or costs arising from or relating to any unreasonable delay by CLIENT in signing such Statement of Work, and CLIENT will be responsible for delays and costs to the extent attributable to any such unreasonable delay by CLIENT or to documented requests by CLIENT to change the activities to be performed under such Statement of Work; provided, however, that LONZA shall use reasonable efforts to mitigate such delays or costs. The compensation set forth in a Statement of Work will be deemed to be full compensation for the services set forth therein, including without limitation all time, equipment, materials,

personnel, facilities and overhead charges. In the event of a conflict between the terms and conditions set forth in the body of this Agreement and any Statement of Work, the terms and conditions set forth in the body of this Agreement shall control unless such Statement of Work expressly states an intent to supersede this Agreement on a specific matter. The Parties may enter into one or more Statements of Work pursuant to which CLIENT (and its Affiliates and designees) may issue Binding Purchase Order for the supply of Products or the Parties may agree that CLIENT may issue Binding Purchase Orders without a corresponding Statement of Work, and the Parties agree that the compensation for supply of Product under Binding Purchase Orders whether or not issued under a Statement of Work shall be payment of the applicable purchase price therefore (and payment of shipping costs and the like, if applicable) as set forth elsewhere in this Agreement.

2.2 Modification of Statement of Work. Should CLIENT want to change a Statement of Work or to include additional services to be provided by LONZA, CLIENT may propose to LONZA an amendment to the Statement of Work with the desired changes or additional services (“**Change Order**”). LONZA will use its Best Efforts to comply with such proposed change or proposal to include additional services, and shall promptly (and in any event within fifteen (15) days) notify CLIENT if LONZA is not able to provide the resources and capabilities to accommodate such Change Order. Unless LONZA informs CLIENT that LONZA does not have the resources and capabilities to accommodate such Change Order, the Project Team will prepare a modified version of the applicable Statement of Work reflecting such Change Order (including, without limitation, any changes to the scope of work, estimated timelines, milestones, deliverables or compensation, as applicable) and will submit such modified version of the Statement of Work to the JSC for review and approval (provided, however, that if time constraints require faster implementation than would be permitted if JSC approval were obtained, the applicable Project Team may, as set forth in Section 2.1, implement a modified or amended version of the Statement of Work for which such Project Team is responsible). The modified Statement of Work shall be binding on the Parties only if it refers to this Agreement, states that it is to be made a part thereof, and is signed by an authorized representative of each Party, and such modified version of the Statement of Work will thereafter be deemed to have replaced the prior version of the Statement of Work. For the avoidance of doubt, unless and until a modified version of the applicable Statement of Work has been signed by an authorized representative of each Party, the existing Statement of Work shall remain in full force and effect.

2.3 CLIENT Deliverables.

2.3.1 Technology Transfer to LONZA. It is anticipated that CLIENT and LONZA personnel will interact closely together to facilitate and expedite any transfer of CLIENT Materials with respect to the MPC Technology and MPC Products (including formulations thereof), to the extent such transfer has not already occurred hereunder or under the Prior MSA. In connection with any such transfer, the Parties shall discuss the possibility of having CLIENT Personnel stationed at the LONZA Facility where the performance of the applicable Statement of Work is being conducted.

2.3.2 Development and Production Materials. Subject to Section 2.3.1, within the time period specified in a Statement of Work, CLIENT will provide LONZA with (a)

the Materials listed in the Statement of Work for which CLIENT is responsible for delivering to LONZA, and any handling instructions, protocols, SOPs and other documentation necessary to maintain the properties of such Materials for the performance of the Statement of Work, and (b) any protocols, SOPs and other information and documentation in possession or control of CLIENT and necessary for the performance of the Statement of Work, for the preparation of the Master Production Record in conformance with cGMP, and for performance of the Draft Plan, as applicable, including, without limitation, process information, development data and reports, quality control assays, raw material specifications (including vendor, grade and sampling/testing requirements), product and sample packing and shipping instructions, and product specific cleaning and decontamination information (collectively, the “**CLIENT Materials**”). If CLIENT does not provide the CLIENT Materials specified in a Statement of Work within the time period specified, then CLIENT shall be responsible for reasonable costs incurred by LONZA arising from such failure.

2.3.3 No Sale or License. All CLIENT Materials shall remain the property of CLIENT, and the transfer of physical possession of any such CLIENT Materials to, and the physical possession of such CLIENT Materials by, LONZA or its Affiliates or Third Party contractors shall not be (nor be construed as) a sale, lease, offer to sell or lease, or other transfer of title of such materials to LONZA, its Affiliates or Third Party contractors. Except as expressly granted under Section 13.2.1, no licenses or rights shall be deemed granted by CLIENT to LONZA, its Affiliates or its Third Party contractors, by implication, estoppel or otherwise, under any Intellectual Property.

2.3.4 Limited Use. LONZA, its Affiliates and Third Party contractors shall not use the CLIENT Materials for any purpose other than as necessary under this Agreement and for the performance of the applicable Statement of Work and/or manufacture of Products pursuant to a Binding Purchase Order. LONZA will not provide the CLIENT Materials to: (i) any employee, Affiliate, or Third Party contractor of LONZA except those employees, Affiliates, and Third Party contractors who require access to the CLIENT Materials for the performance of the applicable Statement of Work and/or manufacture of Products pursuant to a Binding Purchase Order; or (ii) except as specified in a particular Statement of Work, any person who is not an employee, Affiliate, or Third Party contractor of LONZA. All CLIENT Materials shall be used and maintained at the Facility or other site at which the applicable activities under a Statement of Work and/or manufacture of Products pursuant to a Binding Purchase Order are performed. LONZA, its Affiliates and Third Party contractors shall only use the CLIENT Materials in compliance with all applicable national, state, and local laws and regulations, and shall keep a record of CLIENT Materials received and used, discarded or otherwise consumed under and during the course of this Agreement (the “**CLIENT Materials Record**”). The CLIENT Materials Record shall be deemed Confidential Information of CLIENT.

2.3.5 No Modification or Derivation. LONZA, its Affiliates and Third Party contractors shall not attempt to alter or modify the CLIENT Materials in any way, or to make any derivatives, progeny or analogues thereof, without the express prior written consent of CLIENT, and shall not under any circumstances attempt, directly or indirectly, to analyze, characterize, reverse engineer or otherwise derive the structures, sequences, or constructs of the CLIENT Materials, except in each case as necessary to perform activities under such Statement of Work.

2.3.6 Care in Use. LONZA acknowledges that the CLIENT Materials are experimental in nature and may have unknown characteristics and therefore agrees to use, and shall cause its Affiliates and Third Party contractors to use, prudence and all reasonable care in the use, handling, storage, containment, transportation and disposition of the CLIENT Materials. LONZA shall not use, nor authorize the use of, any CLIENT Materials on or in humans for any purpose under any circumstances.

2.4 Performance by LONZA. Subject to the provision by CLIENT of the CLIENT Materials pursuant to Section 2.3, as applicable, LONZA shall perform the work described in each Statement of Work in a professional and workmanlike manner in accordance with the terms of this Agreement. Subject to Section 4.6, LONZA will use commercially reasonable efforts to promptly notify CLIENT of any material delays that arise during the performance of activities under any Statement of Work. Unless otherwise expressly provided otherwise in a Statement of Work, LONZA may have work described in a Statement of Work performed through its Affiliates and Third Party contractors; *provided*, however, that LONZA may not have any such work performed through a Third Party contractor unless (i) such Third Party contractor is an existing contractor of LONZA that is used by LONZA for similar activities on projects and programs outside of this Agreement or (ii) LONZA obtains the prior written consent of CLIENT, which shall not be unreasonably withheld or delayed. In any event, LONZA shall cause its Affiliates and Third Party contractors to comply with the provisions of this Agreement and the applicable Statement of Work in connection with such performance (including compliance with applicable terms regarding Intellectual Property and confidentiality, and restrictions on use and transfer of CLIENT Materials), and LONZA shall remain responsible to CLIENT hereunder for all activities of its Affiliates and Third Party contractors to the same extent as if such activities had been undertaken by LONZA itself.

2.5 Documentation and Reports. Without limiting any other obligations of LONZA to provide specific documentation hereunder, LONZA shall use all reasonable efforts to provide any documentation to be provided to CLIENT pursuant to a Statement of Work in accordance with the schedule set forth in such Statement of Work and in sufficient detail (and, as appropriate, in good scientific manner) to reflect the work performed and results achieved, including all data in the form required by Applicable Law and/or Regulatory Authorities in Relevant Jurisdictions ("**CLIENT Documentation**"). In addition, LONZA agrees to provide CLIENT with a report, upon completion or termination of the performance of the applicable Statement of Work, describing the procedures and results obtained in connection with producing, analyzing, developing, testing or otherwise manufacturing the applicable Product(s), including without limitation the applicable Process(es), and all Intellectual Property developed, conceived, invented, first reduced to practice or otherwise made in connection with the performance of the applicable Statement of Work. Each such report will contain sufficient detail so that CLIENT can understand and fully implement and exploit on its own the information described therein, including such information as is required for the CMC section (or equivalent section) of a filing with any Regulatory Authority in a Relevant Jurisdictions (e.g., an IND or NDA, or any corresponding filing in a Relevant Jurisdiction) for such Product and the master batch record. To the extent such information has been previously disclosed in such detail to CLIENT in the CLIENT Documentation, LONZA may reference such CLIENT Documentation to comply with its reporting obligations under this Section 2.5. Upon request by CLIENT from time to time and at CLIENT's expense, LONZA will provide reasonable assistance to CLIENT to understand and implement the information contained in any such report.

2.6 Autologous Cell Therapies. CLIENT may, as needed from time to time during the Term of this Agreement, request LONZA to perform process development and manufacturing services for its autologous Cell Therapy Products at LONZA's Singapore Facility and in such other Facilities as the Parties may agree. LONZA shall keep CLIENT reasonably informed from time to time, and reasonably respond to inquiries from CLIENT, regarding facilities of LONZA and its Affiliates that may be available for such activities. To the extent capacity is available and is not designated or being used for other purposes, including for another customer, LONZA agrees to use its commercially reasonable efforts to make appropriate Facilities available and to perform such services on terms and conditions similar to those set forth under this Agreement, to the extent applicable, as CLIENT may from time to time request. Amounts paid by CLIENT in connection with such activities shall count toward CLIENT's global spending commitments pursuant to Section 8.1 and, to the extent such activities are conducted in Singapore or in connection with activities conducted in Singapore, to CLIENT's commitments with respect to amounts spent with respect to activities for Singapore.

2.7 Cord Blood Product and Non-Therapeutic MPCs. With respect to process development work or other activities related to the production of CLIENT's cord blood product, the Parties agree that the expanded cord blood product and the MPCs which are not the intended therapeutic agent in the cord blood product but which are used in the production of the cord blood product shall be "Products" for purposes of this Agreement other than Sections 4.4.1, 4.4.2 and 4.4.3. Other populations of MPCs that are not themselves intended as therapeutic agents in a product are not included under this Agreement as of the Effective Date, but will be added to and included in this Agreement on a case-by-case basis if CLIENT requests LONZA to conduct process development work or other activities related to such populations of non-therapeutic MPCs, and any such other populations of non-therapeutic MPCs that are included under this Agreement shall be Products for all purposes of this Agreement (including Sections 4.4.1, 4.4.2 and 4.4.3) unless otherwise mutually agreed in writing by the Parties on a case-by-case basis, and LONZA shall negotiate in good faith on a case-by-case basis where CLIENT requests in good faith for Sections 4.4.1, 4.4.2, and 4.4.3 not to apply to certain populations of non-therapeutic MPCs that may be included under this Agreement as Products. Amounts paid by CLIENT in connection with the cord blood product, MPCs for the cord blood product, and other populations of non-therapeutic MPCs that are included under this Agreement (if any), shall count toward CLIENT's global spending commitments pursuant to Section 8.1 and, to the extent such activities are conducted in Singapore or in connection with activities conducted in Singapore, to CLIENT's commitments with respect to amounts spent with respect to activities for Singapore.

3. PROCESS DEVELOPMENT

3.1 Process Development. LONZA shall perform activities in accordance with the terms and conditions of this Agreement, including applicable Statements of Work, to develop a process for the manufacture of each Product in conformance with the Specifications therefor, and in accordance with cGMP and other Applicable Laws as are standard in the biopharmaceutical manufacturing industry (each, a "**Process**"), including formulation development, establishment and maintenance of master cell banks, records preparation and process validation for such

Product (including master production records and preparation and update of CMC or equivalent materials for applicable filings with Regulatory Authorities in Relevant Jurisdictions related to such Product), analytical method development and validation, manufacturing process (including applicable fill and finish) development and validation, production of applicable scale-up and engineering batches, and development of improved manufacturing processes to increase yield or otherwise lower costs and improve efficiency. LONZA shall provide quarterly updates to the JSC describing in reasonable detail its activities, progress and results in the process development program, including proposals or suggestions that LONZA may have to improve the manufacturing process efficiencies or otherwise reduce the cost of MPC Products.

3.2 Master Production Record.

3.2.1 Based on the information provided by CLIENT and including any process changes developed by LONZA pursuant to any applicable Statement of Work with respect to a Product, LONZA will prepare a Master Production Record for the Process of such Product in accordance with the schedule set forth in the applicable Statement of Work. CLIENT will inform LONZA of any specific requirements CLIENT may have relating to the Master Production Record, including, without limitation, any information or procedures CLIENT wishes to have incorporated therein. LONZA shall not include in the Process or Master Production Record the use of any assay, medium, or other technology that is not commercially available or is covered in whole or in part by Intellectual Property of a Third Party without the express written consent of CLIENT pursuant to Section 13.2.2(c)(ii) below.

3.2.2 CLIENT will cooperate to provide to LONZA information that may be available to CLIENT (and that CLIENT has the right and authority to provide) to assist LONZA to develop the Master Production Record and Process with respect to a Product, including, without limitation, by providing LONZA with any such additional information and procedures as may be reasonably required to create such Master Production Record and Process, including any of the following: (i) manufacturing process information, SOPs, development reports, (ii) quality control assays, (iii) raw material specifications (including vendor, grade and sampling/testing requirements), (iv) Product and sample packing and shipping instructions, and (v) Product specific cleaning and decontamination information. This Section 3.2.2 shall not be construed to require CLIENT to provide information not already in the possession and control of CLIENT, or to provide any information to LONZA in breach of any obligation of CLIENT to any Third Party.

3.2.3 LONZA will deliver a draft version of the Master Production Record for a Product to CLIENT for its review and approval in accordance with the schedule set forth in the Statement of Work. CLIENT will notify LONZA in writing of any objections it has to such draft Master Production Record, and upon such notification, representatives of LONZA and CLIENT will meet promptly to resolve such objections. If CLIENT approves the draft Master Production Record, CLIENT shall notify LONZA in writing of CLIENT's acceptance, and such draft shall be deemed approved upon such notice from CLIENT. LONZA shall not be liable for any delays or costs arising from or relating to any delay of more than thirty (30) days in CLIENT's response with regard to approval or disapproval of the Master Production Record, and CLIENT will be responsible for delays and costs to the extent attributable to such a delay in excess of thirty (30) days or attributable to documented requests by CLIENT to change the Process reflected in the Master Production Record; provided, however, that LONZA shall use reasonable efforts to mitigate such delays or costs.

3.2.4 The Process, Master Production Record, Specifications, and any improvements or modifications thereto developed during the Term of this Agreement, but excluding any LONZA Operating Documents, LONZA New IP or LONZA Confidential Information included in any of the foregoing, will be deemed CLIENT New IP and CLIENT Confidential Information, as applicable, and subject to the provisions set forth in Articles 12 and 13.

3.2.5 The costs of any subsequent transfer of documentation, specifications, and production process by LONZA from LONZA's facility in Walkersville, Maryland to another Facility for the manufacturing of the Product specifically for the CLIENT shall be borne by CLIENT. Such costs shall be determined using Most Favored Rates.

3.3 Payment. Payment for LONZA's performance of the activities pursuant to this Article 3 shall be set forth under the applicable Statement of Work, subject to the following provisions of this Section 3.3.

3.3.1 Time and Materials. Except for the manufacture and supply of Late-Stage Clinical and Commercial Supply, which will be paid by the applicable purchase price for Products determined as set forth in Sections 4.13.2 and 4.13.4, CLIENT will pay LONZA on a time and materials basis for the performance of the activities pursuant this Agreement, including activities pursuant to this Article 3, as follows: (A) an hourly labor rate to be set forth in the applicable Statement of Work, which shall be no more than LONZA's Most Favored Rate at the time the applicable Statement of Work is first agreed; and (B) direct out-of-pocket costs, plus a handling fee set forth in the applicable Statement of Work (not to exceed the lower of Most Favored Rates or [***]), for purchasing, warehousing, receiving and testing raw materials and Product. If mutually agreed by the Parties, a Statement of Work for activities pursuant to this Article 3 may set forth payments due upon achievement of specified milestone events and/or upon delivery of specified deliverables, and acceptance thereof by CLIENT (each a "**Payment Milestone or Deliverable**"), in which event the payments for time and materials set forth in the previous sentence shall be adjusted accordingly. For the purposes of the Agreement, the "**Most Favored Rate**" shall mean the rate that is not less favorable than those rates then-currently extended to any other customer (with the exception of government organizations) for the same or materially similar activities, processes, and materials (and, in the case of supply of Products, for equal or less quantities of product), over a term of the same or less duration. As of the Effective Date, Most Favored Rates include (i) a [***] discount on standard labor rates, (ii) a [***] discount on standard suite fees, and (iii) a markup on raw materials of [***] percent. The obligations with respect to a Most Favored Rate under this Section 3.3.1 shall apply during the entire Term of the Agreement.

3.3.2 Delivery and Acceptance. Payment Milestones or Deliverables to be completed or provided under the applicable Statement of Work, but not payments described in Section 3.3.1 for time and materials, will be subject to confirmation and acceptance of the applicable Payment Milestone or Deliverable by CLIENT. Upon completion or delivery of any Payment Milestone or Deliverable in accordance with the schedule set forth in the applicable

Statement of Work, LONZA shall notify CLIENT in writing; and within seven (7) days of such notice, CLIENT shall notify LONZA whether CLIENT accepts or rejects such Payment Milestone or Deliverable, based upon whether such Payment Milestone or Deliverable conforms with any of the Specifications or other requirements therefor as set forth in the applicable Statement of Work and the requirements of this Agreement; provided, however, in the event that CLIENT does not submit a notice of rejection within such seven (7) day period, such Payment Milestone or Deliverable shall be deemed accepted. Upon receipt of a notice of rejection, LONZA will correct and redeliver, as soon as practicable (and in any event, unless not practicable under the circumstances using LONZA's Best Efforts, within [***] after such rejection notice, provided that such correction does not involve additional testing or manufacturing, in which case LONZA will promptly correct and redeliver), such Payment Milestone or Deliverable so that it conforms with such Specifications and other requirements therefor. The cost of such correction and redelivery shall be borne in accordance with Section 6.6. If CLIENT notifies LONZA that CLIENT accepts such Payment Milestone or Deliverable, then CLIENT shall make the applicable payment to LONZA within thirty (30) calendar days of the date of the invoice. For the avoidance of doubt, this Section 3.3.2 shall not apply to payments under Section 3.3.1 on a time and materials basis in connection with the performance of the applicable activities under the Statement of Work, and CLIENT's payment of amounts due on a time and materials basis shall not be construed as acceptance by CLIENT of any Payment Milestone or Deliverable associated with such activities. For the avoidance of doubt, delivery and acceptance of Products ordered under a Binding Purchase Order shall be governed by the applicable provision set forth in Article 6, below, rather than this Section 3.3.2.

4. MANUFACTURE OF PRODUCT; ORDER PROCESS; DELIVERIES

4.1 Draft Plan. Upon CLIENT's acceptance of the Master Production Record for a Product, LONZA will prepare and deliver to CLIENT for review and comment as soon as practicable (and in any event within thirty (30) days thereafter) a proposed draft plan describing the activities to be performed by LONZA, or to be subcontracted by LONZA to Third Parties (subject to Section 2.4 above), in the production of the applicable Product (the "**Draft Plan**"). Upon the receipt of such Draft Plan, the Parties will meet to decide whether to issue a new Statement of Work pursuant to Section 2.1 or modify an existing Statement of Work pursuant to Section 2.2 above based on such Draft Plan (including the reasonable comments and suggestions of CLIENT with respect to the Draft Plan).

4.2 Manufacture by LONZA.

4.2.1 Subject to Section 4.7.3(a), up to and including First Commercial Launch, and thereafter during the Term of this Agreement except with respect to amounts for which Sections 4.2.3 and 4.2.4 apply, LONZA shall use its Best Efforts to manufacture and supply to CLIENT each Product to support CLIENT's clinical development and commercialization of such Product in accordance with the terms and conditions of this Agreement as further set forth in one or more Statements of Work and/or Binding Purchase Orders accepted by LONZA. Each such Statement of Work shall set forth, among other information, the Specifications and requirements for the formulation, packaging, shipment and quality control with respect to such Product, the time period during which such Product will be manufactured (the "**Production Term**"), and the Commencement Date(s) for the production of each Batch of such Product based on the applicable Draft Plan for such Product.

4.2.2 Subject to Section 4.7.3(a), up to and including First Commercial Launch, and thereafter during the Term of this Agreement except with respect to amounts for which Sections 4.2.3 and 4.2.4 apply, LONZA shall use its Best Efforts to manufacture and supply all quantities of each Product ordered by CLIENT (and its Affiliates and designees) pursuant to Binding Purchase Orders up to one hundred ten percent (110%) of the amounts set forth for the applicable month in the binding portion of the most recent Forecast, as well as all excess quantities accepted by LONZA as set forth in Section 4.5.

4.2.3 CLIENT may, in its discretion, elect upon written notice to LONZA to have this Section 4.2.3 and Section 4.2.4 apply after First Commercial Launch, provided that CLIENT is ordering on a dose basis (a “**Binding Supply Notice**”), in which case the binding forecast period shall be eighteen (18) months as provided in Section 4.3.1. Subject to Sections 4.2.5 and 4.7.3(a), if CLIENT has provided a Binding Supply Notice to LONZA, then for so long as such binding forecast period remains eighteen (18) months and CLIENT is ordering on a dose basis, LONZA shall manufacture and supply to CLIENT each Product to support CLIENT’s commercialization of such Product in accordance with the terms and conditions of this Agreement as further set forth in one or more Statements of Work and/or Binding Purchase Orders accepted by LONZA (“**LONZA’s Obligation**”); provided, however LONZA’s Obligation shall immediately apply upon receipt of a Binding Supply Notice only if on the date of the Binding Supply Notice CLIENT was already providing binding forecasts of eighteen (18) months; provided, further, if on the date of the Binding Supply Notice CLIENT is providing binding forecasts of less than eighteen (18) months, LONZA’s Obligation shall only begin to apply after the same number of months as the difference between eighteen (18) months and the then-current length of the binding forecasts (for example, if on the date of the Binding Supply Notice CLIENT is providing binding forecasts of twelve (12) months, then in connection with the Binding Supply Notice the binding forecasts shall become eighteen (18) months and LONZA’s Obligation shall begin to apply six (6) months after the date of the Binding Supply Notice). If CLIENT is not ordering on a dose basis or does not provide written notice to LONZA of election to invoke this Section 4.2.3, then Sections 4.2.1 and 4.2.2 shall remain in effect.

4.2.4 Subject to Sections 4.2.5 and 4.7.3(a), after First Commercial Launch, if (i) the binding forecast period is eighteen (18) months, (ii) CLIENT is ordering on a dose basis, and (iii) CLIENT has provided a Binding Supply Notice to LONZA, then for so long as such binding forecast period remains eighteen (18) months and CLIENT is ordering on a dose basis: (A) the amount set forth for a given month in the binding portion of CLIENT’s Forecast shall not be less than eighty percent (80%) of the amount projected for such month in the earlier Forecast in which such month was the thirtieth (30th) month, and (B) LONZA shall manufacture and supply all quantities of each Product ordered by CLIENT (and its Affiliates and designees) pursuant to Binding Purchase Orders for a given month up to one hundred twenty-five percent (125%) of the amount projected for such month in the earlier Forecast in which such month was the thirtieth (30th) month. For the avoidance of doubt, in the event that Section 4.2.3 and this Section 4.2.4 apply and CLIENT provides forecasts, or CLIENT (and its Affiliates and designees) submit Binding Purchase Orders for, amounts for a given month that exceed one

hundred twenty-five percent (125%) of the amount projected for such month in the earlier Forecast in which such month was the thirtieth (30th) month, Section 4.2.3 and this Section 4.2.4 shall apply with respect to all amounts up to such one hundred twenty-five percent (125%), and Sections 4.2.1 and 4.2.2 shall apply with respect to any excess amounts. For example, if in July 2015 (when January 2018 is the thirtieth (30th) month in the Forecast), CLIENT forecasts 10,000 doses for January 2018, then in July 2016 (when January 2018 is the eighteenth (18th) month and first becomes part of the binding portion of CLIENT's Forecast) and when CLIENT places a Binding Purchase Order for January 2018, the amount shall be for at least 8,000 doses and for any amounts up to and including 12,500 doses Section 4.2.3 and this Section 4.2.4 shall apply and for any amounts in excess of 12,500 doses Sections 4.2.1 and 4.2.2 shall apply. If CLIENT is not ordering on a dose basis or does not provide written notice to LONZA of election to invoke this Section 4.2.4, then Sections 4.2.1 and 4.2.2 shall remain in effect.

4.2.5 In the event that LONZA is unable to commit to the supply obligations set forth in Sections 4.2.3 and 4.2.4 as a result of Force Majeure, changes in regulatory requirements or other Applicable Laws, changes in the Process or Product, or as a direct result of instructions from CLIENT Personnel, LONZA shall notify CLIENT, and LONZA's obligations to manufacture set forth in Sections 4.2.3 and 4.2.4 shall convert to Best Efforts to manufacture, and Sections 4.2.1 and 4.2.2 shall apply, until such time as LONZA is able again to commit to the supply obligations set forth in Sections 4.2.3 and 4.2.4, but in any event for no more than twelve (12) months, in each instance, from the end of the Force Majeure event or implementation of the changes or instructions, during which period the Parties shall discuss and attempt to resolve any issues associated therewith in an expeditious manner.

4.2.6 LONZA shall manufacture, package, ship, handle quality assurance and quality control for the Product, and deliver to CLIENT the quantities of Product ordered by CLIENT consistent with Section 4.5, all in accordance with this Agreement (including the applicable Statement of Work and Quality Agreement) and all Applicable Laws.

4.3 Forecasting.

4.3.1 Forecasts from CLIENT. CLIENT agrees to provide LONZA, each quarter, a rolling three-year written monthly forecast of its (and its Affiliates' and designees) orders for Products for both clinical and commercial purposes, periodically consistent with CLIENT's internal forecasting, but in no event less than three (3) years in advance and updated quarterly (each, a "**Forecast**"). The format of such Forecasts will be reasonably agreed by the Parties. The amounts set forth in the Binding Portion of each such Forecast will be binding, and accordingly CLIENT and its Affiliates and designees shall collectively issue Binding Purchase Orders for the quantities of Product set forth in the Binding Portion of each Forecast, subject to CLIENT's right to cancel or delay Product as described in Section 4.6 below. As used herein, the "**Binding Portion**" means the first twelve (12) months of each Forecast, unless and until the Binding portion is extended as set forth in Section 4.3.2; provided, however, that if CLIENT provides a Binding Supply Notice as described in Section 4.2.3, then the Binding Portion shall be the first eighteen (18) months of each forecast. The portion of each Forecast beyond the Binding Portion (i.e., the portions covering the thirteenth through thirty-sixth months, if the Binding Portion is the initial twelve (12) months) shall be provided in good faith based on CLIENT's then-available information, but shall be non-binding and are provided solely for planning

purposes (without limitation of applicable commitments under this Agreement with respect to a Purpose-Built Facility as set forth in [Exhibit 9.4.2](#)). If upon receiving a Forecast LONZA believes that it and its Affiliates may not have sufficient capacity in then-existing Facilities used to manufacture Products to meet the amounts projected in each month of such Forecast after the Binding Portion, LONZA agrees to notify CLIENT within thirty (30) days so that the Parties can confer and discuss projections for available capacity, potential need for new additional Facilities, potential for adjustments in the timing of CLIENT's projected orders and the like to facilitate fulfillment of CLIENT's orders as they arise.

4.3.2 Efforts to Extend Binding Forecast Period. CLIENT agrees to use reasonable efforts to amend its existing agreement with CLIENT's licensee for Products so that such licensee will provide CLIENT with binding forecasts of up to eighteen (18) months. In the event that CLIENT succeeds in obtaining such amendment, the Parties agree to amend the forecasting provisions of this Agreement to provide for a longer Binding Portion of CLIENT's Forecasts under this Agreement (up to 18 months) to reflect such increased forecasts to be received by CLIENT from its licensee, taking into account a reasonable time period for CLIENT to receive, process and collate forecasts from its licensee and include them in CLIENT's Forecasts to LONZA.

4.3.3 Reimbursement for Serum under Certain Circumstances. During any period in which the Binding Portion of CLIENT's Forecasts is less than eighteen (18) months, LONZA agrees to use commercially reasonable efforts to obtain sufficient serum for the manufacture of Products to meet the quantities set forth in the first eighteen (18) months of CLIENT's Forecasts. In the event that any amounts of such serum procured by LONZA expire unused because CLIENT (and its Affiliates and designees) failed to actually order quantities of Product in the amounts set forth in the first eighteen (18) months of CLIENT's Forecasts, CLIENT shall reimburse LONZA for such expired serum, including standard handling fees; provided, however, that LONZA agrees to use reasonable efforts to reduce or otherwise mitigate the costs of such expired serum.

4.3.4 Capacity Forecasts from LONZA. To assist CLIENT in its planning, the Parties agree to have the JSC discuss, as a regular topic in its meetings, forecasts of capacity that is available, and capacity that is projected to become available, in LONZA Facilities for the manufacture of Products during the following three-year period.

4.4 Purchase Requirements.

4.4.1 Prior to First Commercial Launch. Subject to the terms and conditions of this Agreement, including Section 4.4.3, prior to First Commercial Launch of the first Product, CLIENT shall order [***] of its requirements for Products from LONZA in accordance with the terms and conditions of this Agreement.

4.4.2 After First Commercial Launch. Subject to the terms and conditions of this Agreement, following First Commercial Launch of the first Product, CLIENT shall order [***] of CLIENT's aggregate production needs for Products (subject to applicable adjustment, if any, pursuant to Section 8.3(e)(iv)) from LONZA in accordance with the terms and conditions of this Agreement ("**Continuing Purchase Requirement**"), determined

as set forth in the following sentence. For purposes of determining compliance with this Section 4.4.2, the measurement shall be based on the average (arithmetic mean) of (1) the percentage of MPCs (cells) in finished Products ordered from LONZA compared to the MPCs (cells) in finished Products from all sources and (2) the percentage of Product units (vials, bags, syringes, etc.) ordered from LONZA compared to Product units (vials, bags, syringes, etc.) from all sources, which average (i.e., the arithmetic mean of the percentages described in clauses (1) and (2)) must equal or exceed the applicable required percentage. For example, if the percentage of cells in finished Products sourced from LONZA is [***] of the total number of cells in finished Products from all sources, and the number of Product units sourced from LONZA is [***] of the total number of Product units from all sources, then the average of [***] and [***] is [***], which would satisfy a requirement of [***] under this Section 4.4.2. Similarly, if the percentage of cells in finished Products sourced from LONZA is [***] of the total number of cells in finished Products from all sources, and the number of Product units sourced from LONZA is [***] of the total number of Product units from all sources, then the average is [***], which would satisfy a requirement of [***] under this Section 4.4.2. On the other hand, if the percentage of cells in finished Products sourced from LONZA is [***] of the total number of cells in finished Products from all sources, and the number of Product units sourced from LONZA is [***] of the total number of Product units from all sources, then the average would only be [***], which would not satisfy a requirement of [***] under this Section 4.4.2.

4.4.3 Requirement for Local Manufacture. In the event that CLIENT or its Affiliate or designee wishes to conduct clinical trials of Products, or to sell Products, in a country which requires that Product to be used or sold in such country is manufactured in whole or part in such country, (i) CLIENT shall notify LONZA, through the JSC, of such requirement promptly after CLIENT becomes aware of such requirement, (ii) the Parties, through the JSC or a joint team designated by the JSC, shall discuss the regulatory requirements related to such manufacture, and (iii) if LONZA is not then currently manufacturing Product for CLIENT in such country, LONZA shall promptly (and no later than the next JSC meeting that occurs more than thirty (30) days following notice by CLIENT to LONZA of such requirement) notify CLIENT whether LONZA agrees to supply Products meeting the requirements for such country. In the event that LONZA has a Facility in such country or agrees to manufacture Product hereunder in compliance with such requirement for local manufacture, the requirements set forth in Sections 4.4.1 and 4.4.2 above shall apply with respect to Product for such country. In the event that LONZA does not then currently manufacture Product for CLIENT in such country and does not agree to supply Products meeting the requirements for such country, then CLIENT may, notwithstanding Sections 4.4.1 and 4.4.2, obtain Product for such country from a Third Party Manufacturer in such country; provided, however, that (a) CLIENT shall not export Product so manufactured in the applicable country from such country until one (1) year following Regulatory Approval of such Product in such country; and (b) Product so manufactured for use or sale in such country shall be excluded for purposes of determining CLIENT's worldwide requirements for Products under Sections 4.4.1 and 4.4.2 (and Product exported from such country for use or sale outside such country shall be included for purposes of determining CLIENT's worldwide requirements for Products under Sections 4.4.1 and 4.4.2 and shall in no way reduce CLIENT's Continuing Purchase Requirement).

4.4.4 Additional Capacity (other than Purpose-Built Facility). Notwithstanding the foregoing, if CLIENT's Forecasts would require LONZA to expand its capacity beyond the then-current capacity at the Facilities used for the manufacture of Products, then LONZA shall notify CLIENT in writing of the required expansion in accordance with Section 4.3.1, and the Parties will discuss the amount of additional capacity that is needed, as well as the various options that may be available to provide such capacity as associated costs and tax benefits of the various options. Unless CLIENT informs LONZA following such discussions that CLIENT will amend its Forecasts to avoid the need for such additional capacity, LONZA will provide such expansion to provide the additional capacity (and shall use a tax-advantaged jurisdiction, as directed by CLIENT, therefor to the extent LONZA or its Affiliates have capacity at, or expect to have capacity at, Facilities in such jurisdictions); provided, however, if such additional capacity would require LONZA to build an additional facility or CLIENT requests LONZA build an additional facility, then the Parties shall negotiate in good faith terms regarding the building of an additional facility and such terms shall be no less favorable than those agreed regarding the Purpose Built Facility. For the avoidance of doubt, building out suites in an existing Facility shall not be deemed "building an additional facility"; provided, however, building a new shell, including suites within such new shell, even if such shell is connected to an existing Facility, shall be deemed "building an additional facility". The Parties agree that this Section 4.4.4 is not intended to apply with respect to a Purpose-Built Facility, the provisions for which are set forth in Section 9.4, below.

4.5 Binding Purchase Orders; Acceptance. Together with each Forecast for a Product provided under Section 4.3 above, CLIENT shall place firm purchase orders with LONZA for the manufacture and supply of Products upon at least ninety (90) days prior written notice. The total quantity of such Product ordered by CLIENT for delivery in each calendar month shall equal at least the quantity of such Product forecasted for such month in the then-current Forecast at the time the applicable Binding Purchase Orders for such month are submitted. Each such firm written purchase order, signed by CLIENT's duly authorized representative and accepted in writing by LONZA shall authorize LONZA to manufacture such quantities of the Product in accordance with the term and conditions of this Agreement as are set forth therein. LONZA shall not be obligated to commence manufacture of any Product unless and until such written purchase order is accepted in writing by LONZA in accordance with this Section 4.5 (each a "**Binding Purchase Order**"). LONZA shall accept all purchase orders for a Product from CLIENT (or its Affiliate or designee) that are placed in accordance with this Section 4.5 with respect to amounts that are subject to Sections 4.2.3 and 4.2.4, and shall use Best Efforts to accept all purchase orders for a Product from CLIENT (or its Affiliate or designee) that are placed in accordance with this Section 4.5 with respect to amounts that are subject to Sections 4.2.1 and 4.2.2. Subject to CLIENT's obligations set forth in Section 4.3.1 with respect to the first twelve months of each Forecast, CLIENT is not obligated to buy any specific amount of a Product except for quantities which CLIENT actually orders through Binding Purchase Orders. The delivery date(s) set forth in a Binding Purchase Order accepted (in whole or part) by LONZA shall be binding upon LONZA, subject to permitted delays by LONZA or CLIENT pursuant to Section 4.6.

4.6 Delay or Cancellation. CLIENT and LONZA shall each have the right upon no less than thirty (30) days advance written notice to delay delivery of any particular order of Product hereunder for a period of up to three (3) months; provided, however, that (i) up to one

such delay by CLIENT in any given twelve month period shall be without cost (and, in LONZA’s discretion, taking reasonably into account the request of CLIENT, subject to LONZA’s available storage capacity, for any additional such delays in a given twelve month period, CLIENT shall either (X) pay applicable storage fees or (Y) accept delivery of Product and store such Product at CLIENT’s facility or with a Third Party), and such a delay by CLIENT shall not change CLIENT’s overall obligation for Binding Purchase Orders during the first twelve months of the then-current Forecast, and (ii) there shall only be one such delay by LONZA during any given twelve month period, and such a delay by LONZA shall not change LONZA’s overall obligation as set forth in this Agreement with respect to supply of Products under Binding Purchase Orders during the first twelve months of the then-current Forecast. In addition, CLIENT may cancel any order upon written notice to LONZA subject to payment (within thirty (30) days after invoice from LONZA therefor) of an applicable “**Cancellation Payment**” determined as set forth in the table below:

<u>No. of months prior to scheduled delivery</u>	<u>Cancellation Payment (% of amounts otherwise due for cancelled order)*</u>
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

* At CLIENT’s request, the Parties will use commercially reasonable efforts to mitigate the costs and loss of revenue associated with any cancellation and to the extent that LONZA is able to so mitigate the costs and loss of revenue associated therewith the Cancellation Payment will be reduced accordingly.

Notwithstanding the foregoing, with respect to the delay or cancellation of Product to be supplied from any Dedicated Facility, CLIENT will only be responsible for (and in lieu of any Cancellation Payment) LONZA’s actual costs (with markup at the lesser of [***] or Most Favored Rates for such markup) to replace expired materials arising therefrom, including materials about to expire that LONZA is not able to timely transition to other projects after reasonable efforts to mitigate. For purposes of this Section 4.6, a “**Dedicated Facility**” means (a) any Facility in Singapore for so long as CLIENT is paying for exclusivity as described in Section 8.1 below or (b) any Facility where CLIENT has committed to purchase during the applicable Binding Portion in the then-current Forecast, or is at the time actually purchasing, [***] or more of that Facility’s then-current capacity for the Products. For the avoidance of doubt, the term “Dedicated Facility” is intended to apply only with respect to matters addressed in this Section 4.6, and is not intended to affect or modify exclusivity issues that are addressed elsewhere in this Agreement.

4.7 Supply Shortage; Back-Up Manufacturing Right; Alternative Sources.

4.7.1 Supply Protection. CLIENT and LONZA shall cooperate to establish reasonable plans and procedures for LONZA to procure and maintain safety stock inventories of Materials and Product on mutually agreed terms.

4.7.2 Shortage. If LONZA anticipates that it will not be able to supply quantities of any Product ordered by CLIENT in accordance with any Binding Purchase Order (in the quantities and by the delivery dates specified in the applicable Binding Purchase Order) (a “**Shortage of Supply**”), LONZA shall promptly (and in any event within fourteen (14) days) notify CLIENT in writing of the same, and shall include in such notice its best estimate of the duration of the delay. LONZA shall, at its own cost, use its Best Efforts to remedy any Shortage of Supply and resume supplying such Product in accordance with the terms and conditions of this Agreement to CLIENT as soon as possible and, upon CLIENT’s request, LONZA shall reasonably cooperate with CLIENT to secure adequate supplies of such Product from alternative sources, including prompt facilitation of Technology Transfer as described in Section 4.7.3(c) to CLIENT or any Third Parties designated by CLIENT for such purposes. In any event, both Parties agree to respond with the level of speed and diligence commensurate with the severity of the problem. In the event of a Shortage of Supply, in addition to any other remedies the CLIENT may have at law or in equity, CLIENT shall be relieved from its obligations to purchase any quantities of such Product identified in any such Binding Purchase Order and may cancel such quantities effective upon notice to LONZA, without charge of any Cancellation Payment.

4.7.3 Back-Up Manufacturing Right; Alternative Sourcing and Technology Transfer.

(a) Back-Up Manufacturing Right. (i) Prior to First Commercial Launch, if, despite the foregoing measures undertaken by the Parties pursuant to Sections 4.7.1 and 4.7.2 above, LONZA is unable to supply at least [***] of the quantities of any Product ordered by CLIENT that LONZA is obligated to supply in accordance with the terms and conditions of this Agreement within [***] of the applicable delivery date [***] times in any [***] period, in each case other than as a result of Force Majeure, changes in regulatory requirements or other Applicable Laws, changes in the Process or Product, or as a direct result of instructions from CLIENT Personnel, then, without limiting CLIENT’s rights under Section 4.7.3(b), CLIENT shall have the right to qualify any Third Party to manufacture Products (the “**Third Party Manufacturer**”), or to arrange for its own or its Affiliate’s manufacture of Products, so that CLIENT and its Affiliates and designees will have a back-up source for the manufacture of such Product for the remaining Term of the Agreement; provided, however, CLIENT shall not be relieved of the Continuing Purchase Requirements set forth in Section 4.4.2 above. In the event of any such supply failure, LONZA shall use its Best Efforts to make up any shortfall in quantities of Product ordered by CLIENT that LONZA is obligated to supply in accordance with the terms and conditions of this Agreement within the twelve (12) month period following the applicable delivery date for such quantities of Product.

(ii) For First Commercial Launch and thereafter for so long as LONZA is manufacturing under Sections 4.2.1 and 4.2.2, if, despite the foregoing measures undertaken by the Parties pursuant to Sections 4.7.1 and 4.7.2 above, LONZA is unable to supply at least [***]

of the quantities of any Product ordered by CLIENT that LONZA is obligated to supply in accordance with the terms and conditions of this Agreement within [***] of the applicable delivery date [***] in any [***] period, in each case other than as a result of Force Majeure, changes in regulatory requirements or other Applicable Laws, changes in the Process or Product, or as a direct result of instructions from CLIENT Personnel, then, without limiting CLIENT's rights under Section 4.7.3(b), CLIENT shall have the right to qualify any Third Party Manufacturer, or to arrange for its own or its Affiliate's manufacture of Products, so that CLIENT and its Affiliates and designees will have a back-up source for the manufacture of such Product for the remaining Term of the Agreement and CLIENT shall be relieved of the Continuing Purchase Requirements and other purchase requirements set forth in Section 4.4 above. In the event of any such supply failure, LONZA shall use its Best Efforts to make up any shortfall in quantities of Product ordered by CLIENT that LONZA is obligated to supply in accordance with the terms and conditions of this Agreement within the twelve (12) month period following the applicable delivery date for such quantities of Product.

(iii) For First Commercial Launch and thereafter for so long as LONZA is manufacturing under Sections 4.2.3 and 4.2.4, if, despite the foregoing measures undertaken by the Parties pursuant to Sections 4.7.1 and 4.7.2 above, LONZA is unable to supply at least [***] of the quantities of any Product ordered by CLIENT that LONZA is obligated to supply in accordance with the terms and conditions of this Agreement within [***] of the applicable delivery date [***] in any [***] period, in each case other than as a result of Force Majeure, changes in regulatory requirements or other Applicable Laws, changes in the Process or Product, or as a direct result of instructions from CLIENT Personnel, then, without limiting CLIENT's rights under Section 4.7.3(b), CLIENT shall have the right to qualify any Third Party Manufacturer, or to arrange for its own or its Affiliate's manufacture of Products, so that CLIENT and its Affiliates and designees will have a back-up source for the manufacture of such Product for the remaining Term of the Agreement and CLIENT shall be relieved of the Continuing Purchase Requirements and other purchase requirements set forth in Section 4.4 above. In the event of any such supply failure, LONZA shall use its Best Efforts to make up any shortfall in quantities of Product ordered by CLIENT that LONZA is obligated to supply in accordance with the terms and conditions of this Agreement within the eighteen (18) month period following the applicable delivery date for such quantities of Product.

(b) Alternative Source. CLIENT has the right to use one or more alternative sources for manufacture and supply of Products and MPC Products, subject to the applicable purchase requirements set forth in Section 4.4.2 above (and applicable purchase minimums, if any, in connection with the Purpose-Built Facility as set forth in Exhibit 9.4.2). LONZA acknowledges that the purchase requirements set forth in Section 4.4.2 permit CLIENT to obtain some portion of its requirements of Products from one or more Third Party Manufacturers (or from its own or its Affiliate's manufacture) at any time after First Commercial Launch, and that preparation, ramp-up, qualification and validation of such a Third Party Manufacturer (or of CLIENT's or its Affiliate's facility), equivalency testing of such Products and inventory build-up, may occur prior to First Commercial Launch so that such Third Party Manufacturer (or CLIENT or its Affiliate) may be prepared to supply Products and MPC Products at the time of First Commercial Launch, provided, however, that CLIENT may not, prior to First Commercial Launch, sell, or use in humans, any Product which is subject to the requirements of Section 4.4.1 that is manufactured by such Third Party Manufacturer (or

CLIENT or its Affiliates), except in the event that CLIENT has been relieved of the Continuing Purchase Requirements and other purchase requirements set forth in Section 4.4, pursuant to Section 4.7.3(a) above, or as permitted pursuant to Section 4.4.3. Accordingly, LONZA agrees to transfer technology used in the manufacture and supply of Products and MPC Products to CLIENT and/or CLIENT's designee upon written request of CLIENT, subject to Section 4.7.3(c) below; provided, however, that if such transfer occurs prior to First Commercial Launch, CLIENT agrees not to obtain supplies of Products that are subject to Section 4.4.1 from any Third Party Manufacturer for use in any clinical trial prior to First Commercial Launch; provided, however, that such limitation shall not apply if CLIENT has the right to obtain a back-up source for the manufacture of Products as described in Section 4.7.3(a) above.

(c) Technology Transfer. If CLIENT so elects to exercise its rights under this Section 4.7.3, then, subject to the applicable CMO License Royalty set forth below, if any, LONZA shall transfer all CLIENT Materials, CLIENT Documentation and other relevant documentation (including without limitation, LONZA Operating Documents) directly related to the Process or manufacture of Product, and any other information regarding the Process and manufacture of Products as conducted by LONZA or its Affiliates that is reasonably necessary to facilitate performance of the Process and manufacture of Products by such alternative sources (provided that, except in connection with a purchase of the Purpose-Built Facility by CLIENT, in no event shall LONZA be obligated to provide general operating documents regarding any Facility, including documents regarding design, maintenance and upkeep, which general operating documents a contract manufacturer of Cell Therapy Products should reasonably be expected to have available with respect to its own manufacturing activities) to CLIENT, its Affiliate or the applicable Third Party Manufacturer for use in the manufacture and supply of Products to CLIENT or CLIENT's designees ("**Technology Transfer**"). It is further understood and agreed that LONZA shall not be obligated to transfer its tissue acquisition protocols; provided, however, LONZA agrees to supply tissue obtained in accordance with its tissue acquisition protocols, at its standard rates, under terms of a supply agreement to be mutually agreed by the Parties, and further provided that LONZA still is in the business of conducting such tissue acquisition activities. There shall only be one Technology Transfer at a time and no more than two Technology Transfers in any twelve-month period. For the avoidance of doubt, LONZA's obligation under this Section 4.7.3(c) is to cooperate and facilitate the transfer of the Process and activities to CLIENT or its designee as set forth herein, and LONZA does not guarantee that such transfer will be successful.

(i) Transfer to CLIENT or Affiliate. No consent of LONZA is required for Technology Transfer to CLIENT or its Affiliate, and CLIENT and its Affiliates will have a fully-paid license, pursuant to the licenses to CLIENT set forth in Section 13.2.2 below, under LONZA's and its Affiliates' interest in all Intellectual Property transferred as part of the Technology Transfer; provided, however, that CLIENT and its Affiliates shall only use such transferred Intellectual Property that is owned or controlled by LONZA to manufacture MPC Products developed or commercialized by or under authority of CLIENT or its Affiliate and to develop, use, sell, offer for sale and otherwise exploit such MPC Products. For the avoidance of doubt, the applicable payment and consent provisions set forth in Section 4.7.3(c)(ii) below shall apply with respect to any further Technology Transfer from CLIENT or its Affiliate to a Third Party Manufacturer.

(ii) **Technology Transfer to Third Party Manufacturer.** For Technology Transfer to a Third Party Manufacturer (including transfer from CLIENT or its Affiliate to a Third Party Manufacturer), the terms set forth below in this Section 4.7.3(c)(ii) shall apply.

(A) **CMO License Payments.** With respect to LONZA New IP (as defined in Section 13.1.2) and Incorporated Technologies (as defined in Section 13.2.2(b)) transferred to a Third Party Manufacturer, CLIENT shall pay to LONZA the applicable CMO License Royalty on MPC Products sold by such Third Party Manufacturer for a period of [***] after Technology Transfer with respect to Third Party Manufacturers to whom such technology is transferred after First Commercial Launch, or [***] after Technology Transfer with respect to Third Party Manufacturers to whom such technology is transferred prior to First Commercial Launch (the applicable period referred to as the “**CMO Royalty Term**”). As used herein, “**CMO License Royalty**” means (1) with respect to LONZA New IP or Incorporated Technologies that are incorporated for the purpose of or result in cost savings, the Tail Payment associated with such LONZA New IP or Incorporated Technologies (where “**Tail Payment**” means [***] of the incremental cost savings attributable to the applicable LONZA New IP or Incorporated Technologies, with such cost savings calculated in the same manner as reductions in the price schedule are calculated under Section 4.13.4), or (2) with respect to other LONZA New IP and Incorporated Technologies (other than modifications or improvements to the Process or Product that were developed by CLIENT or its Affiliate, or by a Third Party, and were implemented by LONZA without need for material modification or development by LONZA, which modifications or improvements shall not give rise to a CMO License Royalty), the applicable CMO License Royalty therefor agreed by the Parties as described in Section 13.2.2(c)(i) below at the time the applicable Incorporated Technology is incorporated into the Product or Process, but in all events no more than the most favorable rate offered by LONZA or its Affiliates to any Third Party for the transfer of the same technology to a third party contract manufacturer. In each case, the CMO License Royalty for each portion of the LONZA New IP or Incorporated Technologies that are incorporated in the applicable MPC Product or corresponding Process that are transferred to the Third Party Manufacturer would apply for [***] after such transfer, but thereafter would only apply (for the remainder of the applicable CMO Royalty Term) to the extent the Third Party Manufacturer uses the applicable LONZA New IP or Incorporated Technology in manufacturing the applicable MPC Product; provided in each case, however, that no CMO License Royalty shall be due (to LONZA, its Affiliates or any Third Party) with respect to Intellectual Property that is listed on Exhibit 4.7.3(c)(ii)(A) or any other Intellectual Property that is incorporated into Products or corresponding Processes as a result of modifications that have been initiated prior to July 25, 2011 and completed prior to December 31, 2011 (collectively, “Prior MSA Intellectual Property”). Notwithstanding the preceding sentence, material improvements or material modifications to the Prior MSA Intellectual Property that are made after July 25, 2011 (including, for the avoidance of doubt, material improvements or material modifications to the technologies listed on Exhibit 4.7.3(c)(ii)(A) made after such date, but not material improvements or material modifications to the technologies listed on Exhibit 4.7.3(c)(ii)(A) made before such date) may be subject to an applicable CMO License Royalty pursuant to the terms of this Section 4.7.3(c)(ii)(A).

(B) Consent by LONZA.

(1) **No Consent Required.** No consent by LONZA is required for Technology Transfer (by LONZA and its Affiliates or by CLIENT and its Affiliates) provided that (a) the applicable Third Party Manufacturer is headquartered in an Agreed Country, as defined below, and (b) either (I) the Third Party Manufacturer has annual revenues, together with its affiliates, of at least [***] on average during the three full calendar years preceding such Technology Transfer in cases where the transferred Process is to be used in a facility that is outside of the Agreed Countries, or (II) the Third Party Manufacturer has annual revenues, together with its affiliates, of at least [***] on average during the three full calendar years preceding such Technology Transfer in cases where the transferred Process is to be used in a facility in an Agreed Country. Unless otherwise agreed in advance by LONZA, in cases of such Technology Transfer where LONZA's consent is not required, (X) CLIENT or its Affiliate shall enter into a written agreement with the Third Party Manufacturer authorizing the Third Party Manufacturer to use the LONZA New IP and Incorporated Technologies solely to manufacture MPC Products for CLIENT and its designees, (Y) LONZA, CLIENT and the Third Party Manufacturer shall enter into a 3-way confidentiality agreement, in substantially the form attached as Exhibit 4.7.3(c)(ii)(B) unless otherwise agreed by both LONZA and CLIENT and any changes to such form shall be negotiated in good faith by the parties, to protect the confidentiality of the Intellectual Property of LONZA and its Affiliates, including LONZA New IP and Incorporated Technologies, transferred to the Third Party Manufacturer as part of the Technology Transfer, and (Z) CLIENT shall remain responsible for the Third Party Manufacturer's compliance with such confidentiality obligations and restrictions limiting such Third Party Manufacturer's use of the LONZA New IP and Incorporated Technologies solely for use in connection with the manufacture and supply MPC Products for CLIENT and its designees. For the purposes of this Section 4.7.3(c)(ii)(B), "**Agreed Countries**" shall mean Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Israel, Italy, Japan, South Korea, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom, and United States.

(2) **Consent Required.** For transfers to Third Party Manufacturers not covered under (1) above, LONZA's prior written consent shall be required for Technology Transfer, such consent not to be unreasonably withheld, conditioned or delayed.

(C) **Notice before Incorporation.** LONZA agrees to notify CLIENT before incorporating any Intellectual Property or modification into any Product or corresponding Process that would be subject to limitations on transfer and/or CMO License Royalties, and such Intellectual Property or modification will only be incorporated into such MPC Products and corresponding Processes upon prior written agreement of CLIENT.

(d) **Supply of LONZA Materials.** LONZA shall use Best Efforts to supply to CLIENT any specific materials used in the Process, or otherwise in the manufacture of Products, as performed by LONZA or its Affiliate for CLIENT, that are not generally available for purchase from Third Parties in an immediately substitutable equivalent form ("**LONZA Materials**"), or otherwise provide for the availability of such LONZA Materials to CLIENT as

set forth in this Section 4.7.3(d), during the Term of this Agreement and for up to [***] thereafter. Thereafter, upon request of CLIENT, LONZA and CLIENT shall negotiate a separate supply agreement for supply of LONZA Materials at LONZA's then-standard rates and upon mutually agreed terms that are customary in agreements of this type. All supply by LONZA or its Affiliate to CLIENT of LONZA Materials during the Term of this Agreement or within the [***] thereafter, shall be offered to CLIENT at LONZA's and its Affiliates' then-current standard rates, including standard handling fees and then-current volume discounts, or as otherwise negotiated by the Parties in good faith. In the event that LONZA or any of its Affiliates is unable for any reason to supply LONZA Materials to CLIENT as set forth in this Section 4.7.3(d), LONZA shall provide as much advance notice to CLIENT as reasonably possible, and, at CLIENT's option, LONZA shall (i) secure an alternative means of supply of such materials to CLIENT's reasonable satisfaction and to meet CLIENT's (and its Affiliates' and Third Party Manufacturers') requirements in connection with the production of Product (including without limitation, commercial requirements), or (ii) [***]. For the avoidance of doubt, LONZA has no obligation under this Section (d) to secure the supply of LONZA Materials at any certain price.

4.8 Packaging and Shipping. LONZA will package and label Products for shipment in suitable containers in accordance with the Specifications therefor set forth in the applicable Statement of Work, the Master Production Record, LONZA's standard practices, and Applicable Laws. Each such container will be individually labeled with description of its contents, including any product name, Batch number, order number, quantity, and date of manufacture, and any other information as may be required in order to trace the history of each Batch. LONZA shall arrange for the delivery of Products at the scheduled delivery time to the location stated on the Binding Purchase Order (if one is so stated in the Binding Purchase Order) or such other location as CLIENT may designate in writing prior to the scheduled delivery time (including without limitation any Third Party location designated by CLIENT) and in a manner consistent with good commercial practices, validated shipping procedures that comply with Applicable Laws (including, without limitation, shipment in approved containers), labeled storage conditions (including during shipment) and any shipping Specifications set forth in the applicable Statement of Work. LONZA will arrange shipment of Products to CLIENT's (or CLIENT's designee's) facility EX-Works (Incoterms 2010) from the applicable Facility via a common carrier designated by CLIENT to LONZA in writing not less than ten (10) days prior to the applicable delivery date unless otherwise agreed to in a Statement of Work (or, if CLIENT does not designate a carrier, by carrier selected by LONZA). Notwithstanding that Products are shipped Ex Works (Incoterms 2010), LONZA agrees, at CLIENT's expense, to obtain export

licenses and other official authorizations, and to carry out customs formalities, necessary for the export of Products, and to reasonably cooperate as CLIENT or its designee may request, at CLIENT or its designee's expense, to obtain import licenses and other official authorizations, and to carry out customs formalities, necessary for the import of Products and for their transport through any country to the applicable destination. Unless otherwise instructed by CLIENT, LONZA shall arrange for appropriate insurance coverage for all shipments of Products, as applicable. CLIENT will provide to LONZA CLIENT's account number with the selected carrier, and will pay for all shipping costs in connection with each shipment of Product. Each shipment will be accompanied by the documentation listed in the Statement of Work, including without limitation, a certificate of analysis describing all current requirements of the Specifications and results of tests performed certifying that the Batch of Product supplied have been manufactured, controlled and released according to the Specifications therefor and Applicable Laws. Except for permitted delays by LONZA under Section 4.6 and subject to Section 4.7.3(a), LONZA shall deliver each shipment of Products to CLIENT on the requested delivery date for such shipment. LONZA will promptly notify CLIENT if LONZA reasonably believes that it will be unable to meet a delivery date. CLIENT shall be required to take delivery of a Batch of Product within thirty (30) days after acceptance of such Batch in accordance with Section 6.3 or such other delivery time as may be specified in the applicable Purchase Order or as may be otherwise agreed by the Parties in writing, subject to applicable storage fees at then-current rates (the "**Delivery Period**"). With respect to clinical trial supplies, LONZA agrees to use reasonable efforts to hold such deliveries and coordinate for delivery to CLIENT's distributor, or to clinical sites, as CLIENT may from time to time reasonably request. For the avoidance of doubt, except as otherwise set forth in Sections 3.3.1 and 6.6, CLIENT shall not be obligated to pay for quantities of Product that only are not actually released.

4.9 Relevant Jurisdictions. In the event that CLIENT (or its Affiliate or designee) intends to use Products supplied by LONZA in clinical trials in a country other than the United States, countries in Europe, Singapore, Australia and/or Japan, or intends to sell or commercialize Products supplied by LONZA in such a country, CLIENT shall inform LONZA by written notice (a "**Relevant Jurisdiction Notice**") not later than six (6) months prior to the scheduled delivery date of the applicable Products. In such event, the JSC shall promptly designate a joint team to identify differences, if any, between the applicable regulations and laws of such country and then-existing Relevant Jurisdictions that would need to be accommodated in LONZA's manufacture of Products hereunder for such country, and the timing and costs to implement any changes necessary to accommodate such differences. The joint team shall update the JSC regarding its findings no later than sixty (60) days following the formation of the joint team, and LONZA shall notify CLIENT, no later than the next JSC meeting following the date that is sixty (60) days after the formation of the joint team to make such determination, whether LONZA is willing to manufacture Products for such country in accordance with the applicable regulations and laws of such country. In the event that LONZA notifies CLIENT that LONZA is willing to so manufacture Products for such country, such country shall thereafter be a "Relevant Jurisdiction" for purposes of this Agreement and LONZA will use Best Efforts to comply with the applicable regulations and laws of such country, provided that such regulations and laws do not conflict with the laws and regulations of any of the other Relevant Jurisdictions. CLIENT shall pay for any additional costs and expenses incurred by LONZA associated with complying with the applicable regulations and laws of such country. If LONZA does not notify CLIENT at or before the applicable JSC meeting that LONZA is willing to so manufacture Products for such

country, (i) such country shall not be a “Relevant Jurisdiction” for purposes of this Agreement, (ii) CLIENT may, notwithstanding Sections 4.4.1 and 4.4.2, obtain Product for such country from a Third Party Manufacturer, and (iii) Product manufactured for sale in such country, or for use in clinical trials conducted in such country, shall be excluded for purposes of determining CLIENT’s worldwide requirements pursuant to Sections 4.4.1 and 4.4.2. If a given Relevant Jurisdiction Notice includes two or more countries, the foregoing shall apply with respect to each such country on a country-by-country basis; provided, however, to the extent CLIENT identifies more than two countries in a given Relevant Jurisdiction Notice, then (A) the time periods set forth in this Section 4.9 shall run only with respect to two countries at any one time, beginning with the first two countries identified in the Relevant Jurisdiction Notice; (B) the time periods set forth in this Section 4.9 shall not run with respect to each additional country identified in the Relevant Jurisdiction Notice until such additional country becomes subject to consideration as described in the following clause (C); and (C) as a determination is made with regard to one or both of the two countries then under consideration, either because (1) LONZA notifies CLIENT whether LONZA is willing to manufacture Products for either or both of the two countries under consideration or (2) the date of the applicable JSC meeting if LONZA does not notify CLIENT at or before the applicable JSC meeting with respect to either or both of the two countries under consideration, then the time periods set forth in this Section 4.9 shall begin to run from such date with respect to next country on the Relevant Jurisdiction Notice (or the next two countries, if such determination is made with respect to both countries under consideration at the same time), and so on in a sequential fashion until a determination has been made with respect to all countries set forth in the Relevant Jurisdiction Notice.

4.10 Quality Agreement. Upon the decision to manufacture and supply a Product according to a Draft Plan pursuant to Section 4.1 above, the Parties shall enter into a separate quality agreement, containing terms and conditions standard and customary in the pharmaceutical industry, setting forth the Parties’ respective responsibilities for quality control and quality assurance with respect to such Product (the “**Quality Agreement**”). The Parties agree that the quality agreement entered into under the Prior MSA will apply in the short run to activities started under the Prior MSA and continuing under this Agreement, and to such other activities under this Agreement as the Parties may mutually agree, but also agree that (i) a separate Quality Agreement shall be separately negotiated to address long-term supply arrangements under this Agreement, (ii) the Parties shall each endeavor to enter into such separate Quality Agreement, upon mutually agreed terms, within sixty (60) days after the Effective Date, and (iii) such Quality Agreement shall, when mutually agreed and executed by the Parties, be appended to this Agreement. The Quality Agreement will not be intended and shall not be construed to limit any of the rights and obligations of the Parties set forth in this Agreement. If there is any conflict or inconsistency between the terms of the Quality Agreement and the terms set forth in this Agreement, the terms set forth in this Agreement shall control.

4.11 Sourcing of Materials.

4.11.1 Procurement. LONZA shall be responsible for the procurement of all Materials (other than CLIENT Materials) necessary for the manufacture and supply of Products. Such Materials shall be obtained from Third Parties at reasonably available prices, consistent with and having regard to such matters as security and sources of supply, quality of product, volume requirements and terms and conditions of supply. Without limiting the foregoing,

LONZA may procure such Materials under its arrangements (including pricing) with its existing Third Party suppliers for such Materials as of the Effective Date; and LONZA may procure such Materials from other Third-Party suppliers upon prior written consent from CLIENT, which consent shall not be unreasonably withheld or delayed. LONZA (or any of its Affiliates) may manufacture any or all of such Materials upon prior notice to, and written consent from, CLIENT, which consent shall not be unreasonably withheld or delayed.

4.11.2 Compliance. All Materials hereunder shall comply with the Specifications applicable thereto as mutually agreed upon by the Parties and as set forth in the current Batch Records and/or other appropriate documentation (provided that such specifications may only be amended upon CLIENT's prior written approval). LONZA shall comply with all Applicable Laws pertaining to the procurement of Materials, including any testing or documentation required.

4.12 Changes to Process or Specifications.

4.12.1 Changes. Subject to Sections 4.12.2 and 4.12.3 below, LONZA shall not make any changes to the Specifications or the Process related to a Product (including any Materials, formulations, processes, equipment, facilities, tests or any other item use in the manufacture and supply of such Product) in any manner that would impact the manufacturing or processing activities related to such Product, or affect any Regulatory Approval related to such Product (or the manufacture of the foregoing) in a Relevant Jurisdiction, without the prior written consent of CLIENT.

4.12.2 Required Changes. LONZA shall promptly make and implement changes to the Specifications or the Process related to a Product as are required (a) to address any concerns of CLIENT or any Regulatory Authority in Relevant Jurisdictions as to the toxicity, safety or efficacy of such Product, or (b) to comply with Applicable Laws or the requirements or suggestions of any Regulatory Authority in Relevant Jurisdictions ("**Required Changes**"). Prior to implementation, all Required Changes shall be subject to CLIENT's written approval, including without limitation the timelines, estimated effect on costs to manufacture such Product and other issues regarding such implementation. LONZA shall implement such Required Changes in accordance with any Applicable Laws and written instructions provided by CLIENT, and the terms and conditions set forth in Article 3. Notwithstanding the foregoing, LONZA shall not be liable for any delays or costs arising from or relating to (i) the time CLIENT takes to provide its written approval of Required Changes or (ii) if CLIENT does not approve the Required Changes; provided, however, that if more than one potential change to the Specifications or Process related to the Product would accomplish any given Required Change, LONZA and its Affiliates agree to reasonably cooperate to accommodate CLIENT's direction as to which specific change(s) should be implemented.

4.12.3 Process Modifications and Improvements. Either Party may propose certain changes to the Specifications or the Process related to a Product, which it reasonably believes will improve the manufacturing process or lower costs related to such Product. Each Party shall promptly notify the other Party regarding any such potential changes that it identifies pursuant to this Section 4.12.3 ("**Discretionary Changes**"), and the Parties shall discuss which Discretionary Changes, if any, should be further developed or implemented, with CLIENT making the final decision as to which Discretionary Changes shall be developed or implemented.

4.13 Pricing.

4.13.1 Early Stage Clinical Supply Pricing. The price for the manufacture and supply of Products for use in preclinical work (if any) and/or clinical trials other than Phase 2b Clinical Trials or later stage human clinical trials will be specified in the applicable Statement of Work and shall be calculated based on time, materials, suite space and applicable Third Party testing expenses, all using Most Favored Rates. Engineering runs that are conducted prior to setting the initial price schedule for the applicable Product as described in Section 4.13.2, below, shall be priced on the same basis.

4.13.2 Late Stage Clinical Supply and Commercial Supply Pricing. With respect to the manufacture and supply of Products for use in Phase 2b Clinical Trials or later stage human clinical trials, or for commercial sale (including testing and validation Batches) ("**Late-Stage Clinical and Commercial Supply**"), the initial base price schedule per Batch or per dose, for various volumes, will be set by the Parties on a Product-by-Product basis, reflecting time, materials, suite fees and Third Party testing expenses as they are reasonably projected for the Late-Stage Clinical and Commercial Supply based on information obtained in applicable engineering runs for such Product, all using Most Favored Rates. If the Parties cannot agree on the initial base price schedule for a given Product, then either Party may refer such matter for resolution by binding arbitration pursuant to Section 19.13.2 below; provided that price for the for Late-Stage Clinical and Commercial Supply of such Product prior to resolution will continue on a time and materials basis as set forth under Section 4.13.1 above. The initial base pricing schedule will be set to reflect all applicable cost savings attributable to process modifications or improvements initiated prior to the Effective Date. Pricing may be further adjusted for cost reductions attributable to subsequent process modifications or improvements as described in Section 4.13.4, below.

4.13.3 Discount on Commercial Supplies. For various reasons, including desire to improve plant utilization and increased overhead absorption, LONZA wishes to encourage increased throughput regarding the manufacture and supply under this Agreement of Products for commercialization, and CLIENT would like to obtain discounted pricing on Products in early stages of commercialization in order to help offset high costs associated with seeking and obtaining Regulatory Approval for Products and market entry for Products; accordingly, the Parties agree to a discount on Products purchased for commercialization under this Agreement as set forth in this Section 4.13.3. Beginning on the second anniversary of First Commercial Launch, and thereafter on each successive anniversary of First Commercial Launch, the Parties will compare the dollar amount invoiced for the purchase of Products (determined prior to the application of any discount described in this Section 4.13.3) in aggregate over the immediately preceding twelve (12) months, with the dollar amount invoiced for the purchase of Products (determined prior to the application of any discount described in this Section 4.13.3) in aggregate during prior twelve (12) months, and, if the aggregate amounts in the later 12-month period represents a year-over-year increase of at least [***] compared to the prior 12-month period, then CLIENT (and its Affiliates and designees) shall be entitled to a discount on Products purchased under this Agreement that are invoiced in the succeeding 12-month period until the

next anniversary of First Commercial Launch. (For purposes of illustration, if Products invoiced between the first and second anniversaries of First Commercial Launch represent a year-over-year increase of [***] over Products invoiced between First Commercial Launch and the first anniversary of First Commercial Launch, then a discount pursuant to this Section 4.13.3 shall apply with respect to Products invoiced between the second and third anniversaries of First Commercial Launch.) The discount under this Section 4.13.3, if applicable, shall be equal to [***] of Net Sales of Products invoiced during the applicable period in which the discount applies; provided, however, that the discount under this Section 4.13.3 with respect to Products invoiced prior to the 30-month anniversary of First Commercial Launch (if applicable) shall be [***] of Net Sales of Products. In order to ensure that the discount described herein does not continue beyond the Term, the Parties agree that the discount described in this Section 4.13.3 shall expire at such time as the total aggregate amount of all discounts provided under this Section 4.13.3 equals the amount of all True-Up Payments, if any, paid to LONZA with respect to periods prior to the First Commercial Launch (including the pro-rata portion of any True-Up Payment made for the calendar year in which First Commercial Launch occurs). As used herein, “**Net Sales**” means the amount invoiced by LONZA or its Affiliate for sale of Products to CLIENT or its Affiliate or designee, less (to the extent included in the amounts invoiced and not separately charged) (i) rebates or trade, volume or cash discounts, (ii) refunds or credits for returns or rejections, (iii) shipping, transportation and associated insurance costs, (iv) tariffs and customs duties, and (v) sales tax, value added tax or consumption tax charged on LONZA’s or its Affiliate’s sale of the applicable Products.

4.13.4 Adjustment to Share Cost Reductions from Process Modifications. After the initial price schedule for a Product has been set, the price schedule will be adjusted, as needed from time to time, but in no event more than once per calendar year, to reflect a sharing of decreases in LONZA’s and its Affiliates’ costs in producing Products that are attributable to modifications or improvements to the Products or related manufacturing Processes (such cost savings determined in comparison to LONZA’s or its Affiliates’ cost to produce similar volumes of Product if such modification or improvement had not been implemented), on the following schedule: (i) the price schedule for Products manufactured during the first twelve (12) months following implementation of a given modification or improvement will be adjusted to reduce the price of the applicable Product by [***] of the cost savings attributable to such modification or improvement, (ii) the price schedule for Products manufactured during the next following twelve (12) months (i.e., months 13 through 24 following implementation) will be reduced by [***] of such cost savings, (iii) the price schedule for Products manufactured during the next following twelve (12) months (i.e., months 25 through 36 following implementation) will be reduced by [***] of such cost savings, and (iv) the price schedule for Products manufactured thereafter will be reduced by [***] of such cost savings. Notwithstanding the foregoing, in the event that CLIENT proposes a modification or improvement to the Process or Product that was developed by CLIENT or its Affiliate, or by a Third Party, and LONZA is able to implement such modification or improvement without need for material modification or development by LONZA, then price schedule for Products manufactured thereafter will be reduced by the full amount of the cost savings attributable to such modification or improvement. The price reductions described in this Section 4.13.4 shall initially be based upon the applicable percentage of projected cost reductions based on then-current models at the time the modification or improvement is implemented, and

will be adjusted after [***] of actual manufacturing experience following implementation to reflect the applicable percentage of actual cost reductions that will result from implementation of such modification or improvement, which adjusted reduction amounts will thereafter apply. In the event that multiple modifications or improvements are made at different times, incremental cost savings attributable to the subsequent modifications or improvements will similarly reduce the price schedule for Products in the same manner, based on the time from implementation of the applicable modification or improvement. For the avoidance of doubt, adjustments to the pricing schedule as described in this Section 4.13.4 shall apply with respect to cost savings from modifications or improvements resulting from activities in the process development program as well as to cost savings from modifications or improvements based on technology developed or acquired by LONZA independently of the process development program.

4.14 Records. LONZA will maintain accurate and complete records and samples relating to the manufacture of the Product, as necessary to evidence compliance with this Agreement and Applicable Laws, including without limitation, Master Production Record, all Batch Records, LONZA Operating Documents, certificates of analysis, quality control and laboratory testing and other data required by Applicable Laws. LONZA will retain possession of the Master Production Record, all Batch Records and LONZA Operating Documents, and will make copies thereof available to CLIENT upon CLIENT's request and at CLIENT's expense. LONZA Operating Documents will remain LONZA Confidential Information. CLIENT will have the right to use and reference any of the foregoing in connection with filings for Regulatory Approval or other filings with Regulatory Authorities in any jurisdiction with respect to MPC Products or as otherwise authorized by the Agreement (provided, for the avoidance of doubt, that LONZA shall not be responsible for ensuring compliance thereof with respect to any country that is not a Relevant Jurisdiction).

4.15 CLIENT Access.

4.15.1 CLIENT's employees and agents (including its independent contractors) (collectively, "**CLIENT Personnel**") may participate in the production of Products only in such capacities as may be approved in writing in advance by LONZA. CLIENT Personnel present at any Facility are required to comply with LONZA's Operating Documents and any other applicable safety or other policies applicable with respect to such Facility, consistently applied. For the avoidance of doubt, CLIENT Personnel may not physically participate in the production or manufacture of any Product that may be used in or on humans.

4.15.2 CLIENT Personnel working at the Facility will be and remain employees of CLIENT, and CLIENT will be solely responsible for the payment of compensation for such CLIENT Personnel (including applicable Federal, state and local withholding, FICA and other payroll taxes, workers' compensation insurance, health insurance, and other similar statutory and fringe benefits). CLIENT covenants and agrees to maintain workers' compensation benefits and employers' liability insurance as required by applicable Federal and Maryland laws with respect to all CLIENT Personnel working at the Facility.

4.15.3 CLIENT will pay for the actual cost of repairing or replacing to its previous status (to the extent that LONZA determines, in its reasonable judgment, that repairs

cannot be adequately effected) any property of LONZA damaged or destroyed by CLIENT Personnel, provided CLIENT shall not be liable for repair or replacement costs resulting from ordinary wear and tear.

4.15.4 CLIENT Personnel visiting or having access to any Facility will abide by LONZA standard policies, operating procedures and the security procedures established by LONZA. CLIENT will be liable for any breaches of security by CLIENT Personnel. In addition, CLIENT will reimburse LONZA for the cost of any lost security cards issued to CLIENT Personnel, at the rate of \$50 per security card. All CLIENT Personnel will agree to abide by LONZA policies and SOPs established and consistently applied by LONZA, and will sign an appropriate confidentiality agreement.

4.15.5 CLIENT will indemnify and hold harmless LONZA from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) arising out of any injuries suffered by CLIENT Personnel while at any Facility or elsewhere, except to the extent caused by the negligence, willful misconduct or intentional wrongful omission on the part of any LONZA Party.

5. PROJECT MANAGEMENT; JOINT STEERING COMMITTEE

5.1 Joint Steering Committee. Promptly after execution of this Agreement, the Parties shall establish a steering committee to oversee, review and coordinate the activities of the Parties under this Agreement (the "**Joint Steering Committee**" or "**JSC**"). Each Party shall name a mutually agreed upon equal number of representatives for the Joint Steering Committee, each of whom shall be a knowledgeable specialist in an appropriate discipline, and at least one level of seniority above the most senior member of the each Party's members of the Project Team; provided, however, that the Joint Steering Committee shall, at a minimum, consist of the head of operations for the Walkersville Facility (or, once it is Validated and Ready, the Singapore Facility), the relevant divisional heads for each Party and the key account manager. The Joint Steering Committee shall meet at least once per calendar quarter during the Term of the Agreement, or as otherwise mutually agreed by the Parties. The Joint Steering Committee shall, among other things, (a) review and determine whether to approve the Statements of Work (including subsequent review and determination whether to approve Statements or Work, or modified or amended Statements of Work that have been implemented by the Project Team pending subsequent JSC review, as set forth in Section 2.1), (b) resolve disputes of the various Project Teams, (c) oversee the progress of the Products through the development and clinical manufacture stages, (d) oversee commercial supply of the Products, and (e) review technology collaboration opportunities in support of the product portfolio. Decisions of the Joint Steering Committee shall be made by unanimity, with each Party having one vote. In the event that the Joint Steering Committee does not reach unanimity with respect to a particular matter, and the Joint Steering Committee is unable to resolve the dispute after endeavoring for fifteen (15) business days to do so, then (i) either Party may, upon written notice, refer such matter the President of each Party's respective business unit (or their designee having authority to resolve the dispute) ("**Senior Executives**"), for attempted resolution by good faith negotiations within ten (10) business days after such written notice, and (ii) if the Senior Executives do not reach resolution on such a matter within ten (10) business days after such notice, then CLIENT shall thereafter have final decision-making authority with respect to formulation or composition of the

Product, or any matter regarding the clinical development or Regulatory Approval of the Product (excluding matters relating to Facility requirements), and the decision of CLIENT regarding such matters shall thereafter be deemed to be the decision of the JSC, and other matters that are not mutually agreed shall be referred to arbitration pursuant to Section 19.13.1. The JSC shall regularly discuss and review the competitive landscape for MPC Products and cell therapy products generally at its quarterly meetings, including a discussion of regulatory filings for similar or competitive products.

5.2 Person in Plant. CLIENT shall be permitted to have, at no additional cost, one (1) employee (or a larger number of employees, if mutually agreed) at each Facility where activities are performed hereunder, as reasonably requested by CLIENT, from time to time and at any time during the Term of this Agreement for the purpose of observing, reporting on, and consulting as to the performance under this Agreement, subject to the provisions in Section 4.15 and provided, further that such employee shall be subject to and agree to abide by confidentiality obligations to third parties and LONZA's customary practices and operating procedures regarding persons in plant.

5.3 Project Teams. In connection with the execution of each Statement of Work, the Parties will establish a "Project Team" (which may be the same as a Project Team designated for one or more other Statements of Work) to coordinate the activities under such Statement of Work and that the activities of the Parties stay within the estimated timelines and budgets in the applicable Project Plan and Budget therefor; it being understood that a single Project Team may coordinate the activities under multiple Statements of Work. Each Project Team will prepare a proposed Project Plan and Budget (to be updated at least annually) for comment and approval by the JSC. Each Project Team will meet at least monthly (either by phone or in person), unless otherwise agreed, with more frequent interactions on an *ad hoc* basis. In addition, at least annually the Parties will conduct a technical update meeting with members of all Project Teams participating so that each Project Team is taking advantage of then-current best practices. Each Project Team will endeavor to make all decisions by unanimity; however, any matters for which unanimity cannot be reached will be escalated to the Joint Steering Committee for resolution. Each Party will keep the other Party fully informed on a regular basis through the Project Teams with respect to the activities for which it is responsible under the applicable Statement(s) of Work and the results thereof (including the occurrence of any Payment Milestone or Deliverable).

5.4 Project Manager. With respect to each Statement of Work, each Party will appoint a project manager who will be responsible for overseeing, day-to-day activities under such Statement of Work and be the principal point of contact between the Parties. The project manager of each Party shall attend all Project Team meetings.

6. PRODUCT WARRANTIES; ACCEPTANCE AND REJECTION OF PRODUCTS

6.1 Product Warranties. LONZA warrants that, at the expiration of the Non-Release Period, all Product manufactured by LONZA pursuant to this Agreement: (a) conforms to the applicable Specifications; (b) was manufactured in accordance with the applicable Master Production Record; and (c) was manufactured in accordance with cGMP, the applicable terms and conditions of this Agreement (including the applicable Statement of Work and Quality Agreement) and all Applicable Laws ("**Product Warranties**").

6.2 Approval of Shipment.

6.2.1 Prior to each release of Product to be delivered hereunder, LONZA will perform appropriate quality control procedures and inspections (including any such procedures and inspections specified in the Specifications therefor) to verify that such Product to be shipped conforms to the Product Warranties. When Product ordered by CLIENT is ready for delivery, LONZA will notify CLIENT and supply CLIENT with the required documentation set forth in the applicable Statement of Work, including a copy of the executed Batch Records and a certificate of analysis, in the form specified in the applicable Specifications, describing all current requirements of such Specifications and results of tests performed certifying that such Product to be shipped has been manufactured, controlled and released according to the Specifications, Master Production Record, cGMP, and all Applicable Laws (the “**Release Documentation**”).

6.2.2 Within fifteen (15) calendar days after CLIENT’s or its designee’s receipt of Release Documentation regarding a release of Product (the “**Non-Release Period**”), CLIENT shall determine by review of such Release Document whether or not to approve such release of the Product. If CLIENT believes such shipment of Product does not comply with the Product Warranties set forth in Section 6.1 above, then CLIENT will deliver to LONZA, in accordance with the notice provisions set forth in Section 19.3 hereof, written notice of disapproval (the “**Disapproval Notice**”) of such Product release, stating in reasonable detail the basis for such assertion of non-compliance with the Product Warranties. If a valid Disapproval Notice is received by LONZA during the Non-Release Period, then LONZA and CLIENT will provide one another with all related paperwork and records (including, but not limited to, quality control tests) relating to both the production of such shipment of Product and the Disapproval Notice. If a valid Disapproval Notice is not received during the Non-Release Period, then the shipment of Product will be deemed released and approved for shipment. Notwithstanding the foregoing, any such release and approval for shipment pursuant to this Section 6.2.2 shall not limit CLIENT’s rights and remedies under the rest of this Article 6.

6.3 Delivery and Acceptance. Upon the receipt of an approval by CLIENT pursuant to Section 6.2.2 above to release a Product for delivery or upon the expiration of the Non-Release Period without receipt of a Disapproval Notice, LONZA shall deliver to CLIENT such shipment of Product in accordance with the terms and conditions of Section 4.8 above, and CLIENT shall accept or reject delivery thereof, within fifteen (15) days after the receipt of such shipment. CLIENT may reject all or part of the shipment during such fifteen (15) day period on the grounds that such Product fails to conform to the Product Warranties therefor set forth in Section 6.1, which rejection shall be accomplished by giving written notice to LONZA stating in reasonable detail the basis for such assertion of non-compliance with the Product Warranties (the “**Rejection Notice**”). The shipment of Products shall be deemed accepted if CLIENT fails to reject the Product within such fifteen (15) day period. Title and risk of loss to such Product shall pass to CLIENT at the time of Product release.

6.4 Latent Defects. CLIENT shall have the further right to reject such quantities of Product accepted pursuant to Section 6.3 above by providing a Rejection Notice on the grounds that all or part of the shipment fails to comply with the Product Warranties to the extent such non-conformance could not have reasonably been determined by a visual inspection; provided that such non-conformance is unrelated to the shipping or storage of the Product after acceptance.

6.5 Dispute Resolution. If LONZA does not agree with CLIENT's determination that the Product fails to conform to the Product Warranties as provided under a Disapproval Notice or Rejection Notice sent pursuant to Section 6.2.2, 6.3 or 6.4 above, LONZA shall respond in writing to any such Disapproval Notice or Rejection Notice within fifteen (15) days from receipt thereof ("**Dispute Notice**"). LONZA and CLIENT shall use good faith efforts to resolve any dispute regarding the conformity of a shipment of Product with the Product Warranties; provided that if such dispute cannot be settled within thirty (30) days from the receipt of the Dispute Notice and submission by each Party of such related paperwork and records to the other Party, then CLIENT and LONZA will each submit a sample of the Batch of the disputed shipment to an independent testing laboratory of recognized repute selected by CLIENT and approved by LONZA (such approval not to be unreasonably withheld, conditioned or delayed) (the "**Laboratory**") for analysis, under quality assurance approved procedures, of the conformity of such shipment of Product with the Specifications and for analysis of whether such Product was stored and handled properly. The determination of the Laboratory with respect to whether any shipment of Product conforms to the Product Warranties shall be final and binding upon the Parties, absent clear error. The costs associated with such analysis by such independent testing laboratory will be paid by the Party whose assessment of the conformity of the shipment of Product with the Product Warranties was mistaken.

6.6 Remedies for Non-Conforming Product.

6.6.1 Prior to First Commercial Launch. In the event that the Parties agree, or a Laboratory determines, pursuant to Section 6.5, that a Batch of Product manufactured prior to First Commercial Launch materially fails to conform to the Product Warranties due to the failure of: (a) LONZA personnel properly to execute the Master Production Record, (b) LONZA personnel to comply with cGMP, or (c) the Facility utilities, then, at CLIENT's request, LONZA will at CLIENT's election promptly produce for CLIENT sufficient quantities of Product to replace the non-conforming portion of such Batch of Product (the "**Production Rerun**"), in accordance with the provisions of this Agreement and at no additional cost to CLIENT (i.e., if CLIENT has first paid for the original Batch of Product, such replacement with conforming quantities shall be without charge, and LONZA will pay for shipment, duties and the like with respect to the replacement Products or if CLIENT has not yet paid for the original Batch of Product, CLIENT shall be obligated to pay for the replacement with conforming quantities in accordance with the terms of this Agreement); provided, however, that to the extent that the Parties agree, or a Laboratory determines, pursuant to Section 6.5, that a Batch of Product materially failed to conform to the Product Warranties for any reason other than as set forth in the preceding sentence, then LONZA shall have no liability to CLIENT with respect to such Batch and LONZA will, at CLIENT's request, produce for CLIENT a Production Rerun at CLIENT's expense. For the avoidance of doubt, any failure to conform that prevents the release of any one or more lots of Product, or that prevents the use of Product in clinical trials or the sale of Products for use in humans shall be deemed to constitute a circumstance in which such Product "materially fails to conform" to the Product Warranties.

6.6.2 After First Commercial Launch. In the event that the Parties agree, or a Laboratory determines, pursuant to Section 6.5, that a Batch of Product that is ordered on a dose basis and is manufactured for or after commercial launch materially fails to conform to the Product Warranties other than as a result of Force Majeure or as a direct result of instructions from CLIENT Personnel, LONZA will at CLIENT's election promptly produce a Production Rerun (the "**Production Rerun**"), in accordance with the provisions of this Agreement and at no additional cost to CLIENT (i.e., if CLIENT has first paid for the original Batch of Product, such replacement with conforming quantities shall be without charge, and LONZA will pay for shipment, duties and the like with respect to the replacement Products or if CLIENT has not yet paid for the original Batch of Product, CLIENT shall be obligated to pay for the replacement with conforming quantities in accordance with the terms of this Agreement); provided, however, that to the extent that the Parties agree, or a Laboratory determines, pursuant to Section 6.5, that a Batch of Product conformed to the Product Warranties at delivery, but materially failed to conform to the Product Warranties because of causes arising after delivery, then LONZA shall have no liability to CLIENT with respect to such Batch and LONZA will, at CLIENT's request, produce for CLIENT a Production Rerun at CLIENT's expense. For the avoidance of doubt, any failure to conform that prevents the release of any one or more lots of Product, or that prevents the use of Product in clinical trials or the sale of Products for use in humans shall be deemed to constitute a circumstance in which such Product "materially fails to conform" to the Product Warranties.

6.6.3 If Product that materially fails to conform to the Product Warranties is released and shipped by or on behalf of LONZA, then the remedies set forth in this Section 6.6 shall not preclude CLIENT from pursuing all rights and remedies it may have under this Agreement. In all other cases, CLIENT acknowledges and agrees that its sole remedy with respect to the failure of Product to conform with any of the Product Warranties is as set forth in Sections 6.6.1 and 6.6.2 and Section 4.7.3(a), and in furtherance thereof, CLIENT hereby waives all other remedies at law or in equity regarding the foregoing claims.

7. DAMAGE OR DESTRUCTION OF MATERIALS AND/OR PRODUCT; STORAGE AND HANDLING

7.1 If during the manufacture of Product pursuant to this Agreement, Product and/or Materials are destroyed or damaged by LONZA personnel, and such damage or destruction resulted from LONZA's failure to execute the Process in conformity with the Master Production Record, or from the negligence, willful misconduct or intentional wrongful omission of LONZA or its Affiliate, agent or subcontractor, then LONZA, as soon as it is commercially practicable to do so, will provide CLIENT with additional Product production time equal to the actual time lost because of the destruction or damage of the Product and/or Materials, and will replace such Product and/or Materials, at no additional cost to CLIENT. CLIENT acknowledges and agrees that its sole remedy with respect to damaged or destroyed Materials and/or Product (except for the non-conformity of released and shipped Product described in Section 6, including Section 6.6.3) is as set forth in this Section 7.1, and in furtherance thereof, CLIENT hereby waives all other remedies at law or in equity regarding the foregoing claims. Notwithstanding anything to

the contrary set forth in this Section 7.1, if during the manufacture of Product pursuant to this Agreement, Product or Materials are destroyed or damaged by LONZA personnel as a direct result of instruction of CLIENT Personnel, then LONZA will have no liability to CLIENT as the result of such destruction or damage.

7.2 Pre-Production. With respect to the manufacture and supply of a Product, LONZA will store any CLIENT Materials, equipment or other property delivered pursuant to the applicable Statement of Work or the applicable Draft Plan related to such Product to the applicable Facility by CLIENT (collectively, "**CLIENT Property**"), and if such storage begins more than thirty (30) days prior to the first Commencement Date for a Batch of the applicable Product, such storage will be at the expense of CLIENT for that portion of the storage period more than thirty (30) days prior to the first Commencement Date. LONZA will reasonably cooperate as CLIENT may from time to time request to implement efficient and timely procedures for "just-in-time" delivery in order to minimize such storage at the expense of CLIENT. The storage rates will be set forth in the Statement of Work and may be amended from time to time by LONZA; provided that such storage rates shall set at no more than the Most Favored Rate. No storage fees will be charged during the period starting thirty (30) days prior to the first Commencement Date for the applicable Product and ending upon the expiration or termination of the Production Term for such Product.

7.3 Post-Production. With respect to the manufacture and supply of a Product, LONZA will store at the applicable Facility free of charge any in-process materials, CLIENT Materials, equipment and other CLIENT property that remains at such Facility on the date of expiration or termination of the Production Term for such Product (collectively, "**Remaining CLIENT Property**"), for up to fifteen (15) calendar days. If CLIENT has not provided any instructions as to the shipment or other disposition of Remaining CLIENT Property prior to the expiration of such fifteen (15) day period, LONZA shall continue to store such Remaining CLIENT Property at the applicable Facility, and may notify CLIENT that LONZA intends to destroy such Remaining CLIENT Property; provided, however, that LONZA shall not destroy any Remaining CLIENT Property unless LONZA has first given CLIENT thirty (30) days advance written notice in order to permit CLIENT to arrange for the transfer or other disposition of such Remaining CLIENT Property. In the event that LONZA continues to store such Remaining CLIENT Property, CLIENT will pay to LONZA a storage charge at LONZA's then-standard storage rates for the period beginning on the sixteenth (16th) day after the expiration or termination of the Production Term; provided, however, that with respect to storage of Product, such storage charges shall not begin until the thirtieth (30th) day after the expiration or termination of the Production Term. For the avoidance of doubt, with respect to permitted delays by CLIENT of the delivery of Product pursuant to Section 4.6, the time periods described above in this Section 7.3 shall be tolled during the period of any such permitted delay, and shall not begin to run unless and until such permitted delay period has expired.

7.4 General. Unless CLIENT agrees otherwise in writing, at CLIENT's expense, LONZA and its Affiliates shall store Products, the master cell banks, and other critical materials related to the Process or the manufacture of Products in at least two (2) separate places in each Facility where such Products or materials are stored (e.g., for frozen materials, at least two different freezers in each Facility). At CLIENT's expense, the CLIENT Property and Remaining CLIENT Property stored at any Facility pursuant to this Article 7 shall be (i) stored in suitable

conditions as set forth in the applicable Statement of Work, Applicable Laws and other written instructions provided by CLIENT, (ii) kept separate from all other products or materials which may be at such Facility and will be marked such that they can be identified as the property of CLIENT, (iii) insured against, loss, theft and damage for the benefit of CLIENT, and (iv) returned to CLIENT upon CLIENT'S request. LONZA confirms CLIENT will retain all right, title and interest in and to such CLIENT Property, CLIENT Remaining Property and Products at all times. LONZA shall keep all such CLIENT Property, CLIENT Remaining Property and Products free of all security interests, liens and other encumbrances, and LONZA shall retain control thereof and shall not transfer the same to any Third Parties unless otherwise instructed by CLIENT in writing. LONZA shall comply, and ensure that its Affiliates and subcontractors comply, with all Applicable Law in connection with the disposal of wastes related to the manufacture of Products and other activities hereunder, including without limitation disposal of failed batches, by-products and waste from manufacture and/or Remaining CLIENT Property destroyed or disposed of by LONZA (if any).

8. CLIENT COMMITMENT AND SINGAPORE EXCLUSIVITY; COMPETING PRODUCTS

8.1 Minimum Spending Commitments for Singapore Exclusivity. In consideration of the exclusivity set forth in Section 8.2, below, CLIENT agrees to minimum spending commitments as described below in this Section 8.1. Amounts paid by CLIENT'S Affiliates, and by CLIENT'S and its Affiliates' licensees and designees purchasing Products shall be counted as money spent by CLIENT for purposes of the commitments set forth in this Section 8.1.

8.1.1 Initial Commitment Through Calendar Year 2013. Subject to Section 8.1.4 below, from July 25, 2011 through the end of calendar year 2013, CLIENT commits to spend (i) amounts under this Agreement and/or the Prior MSA (for services invoiced after July 25, 2011) with respect to activities for Singapore, in aggregate, totaling at least [***] during each of calendar years 2012 and 2013 and totaling at least [***] during calendar years 2012 and 2013 combined, and (ii) aggregate total amounts spent under this Agreement and/or the Prior MSA (for services invoiced after July 25, 2011) (including without limitation amounts spent with respect to activities for Singapore described in (i), above) during the period from signing of this Agreement until the end of calendar year 2013 totaling at least [***].

8.1.2 Readiness of Singapore Facility. In the event that the Singapore Facility is not ready for engineering runs on or before April 1, 2012, or is not ready for "clinical thaw" on or before June 1, 2012, or is not Validated and Ready by September 1, 2012, then (A) amounts spent by CLIENT with respect to activities in the Walkersville Facility or other facilities of LONZA or its Affiliate to conduct activities which would have been conducted in or for the Singapore Facility, had the Singapore Facility been ready for engineering runs and/or "clinical thaw" and/or been Validated and Ready on the indicated dates ("**Singapore Replacement Amounts**"), shall be included for purposes of determining the amounts spent with respect to activities for Singapore for the applicable period(s) under this Section 8.1 (and also, for the avoidance of doubt, with respect to determining whether CLIENT has met the overall aggregate spending commitments under this Section 8.1 for the applicable period), (B) LONZA will make capacity available in its Walkersville Facility to conduct the activities described in clause (A),

and shall bear incremental costs (if any) associated with the transfer of such activities from the Singapore Facility to the Walkersville Facility, and with the subsequent re-transfer to the Singapore Facility, and (C) if the conduct of such activities in the Walkersville Facility makes it impractical to conduct certain future activities in the Singapore Facility that had been planned to be conducted in the Singapore Facility because such activities have already been initiated in the Walkersville Facility and cannot be re-transferred back to the Singapore Facility without significant delay (either in the re-transfer itself or in the clinical development or commercialization activities of CLIENT or its Affiliate or designee as a result of changing the manufacturing location), the spending commitment as to amounts with respect to activities for Singapore for the period in which such future activities were to be conducted shall be reduced by the amounts anticipated to be paid for such activities, except in each case to the extent any failure of the Singapore Facility to be ready by such dates is attributable to a delay resulting from a change requested by CLIENT, which change is not reasonably anticipated as a regular activity in the conduct of process development program or manufacturing activities that are contemplated to be conducted under this Agreement as of the Effective Date. In addition to the foregoing, if the Singapore Facility is not Validated and Ready by June 30, 2013, then (A) CLIENT's purchase requirements under Section 4.4.1 and its Continuing Purchase Requirement shall no longer apply, (B) LONZA shall promptly refund to CLIENT any True-Up Payment paid by CLIENT to LONZA, if any, and CLIENT's obligation to pay additional True-Up Payments shall cease unless and until the Singapore Facility is Validated and Ready, (C) CLIENT may immediately terminate this Agreement, and (D) at CLIENT's reasonable request, LONZA will implement a Technology Transfer in accordance with the terms of this Agreement, at CLIENT's cost; except in each case to the extent any failure of the Singapore Facility to be Validated and Ready by June 30, 2013 is attributable to a delay resulting from a change requested by CLIENT, which change is not reasonably anticipated as a regular activity in the conduct of process development program or manufacturing activities that are contemplated to be conducted under this Agreement as of the Effective Date. Notwithstanding the preceding sentence, if the Singapore Facility is not Validated and Ready by June 30, 2013 and CLIENT does not terminate this Agreement, then on the date the Singapore Facility is Validated and Ready, CLIENT's purchase requirements under Section 4.4.1 and its Continuing Purchase Requirement shall apply and its obligation, if any, to pay True-Up Payments shall apply and its rights set forth in (C) and (D) above, as they apply in this Section 8.1.2, shall no longer apply. CLIENT acknowledges and agrees that its sole remedies with respect to the failure of LONZA to meet the dates set forth in this Section 8.1.2 are as set forth in this Section 8.1.2, and in furtherance thereof, CLIENT hereby waives all other remedies at law or in equity regarding the foregoing. LONZA shall provide CLIENT's manufacturing team and quality assurance personnel reasonable opportunities to review and comment on the master validation plan and any sub-validation plans for the Singapore Facility, which review and comment CLIENT shall perform promptly.

8.1.3 Extensions. Following calendar year 2013, CLIENT's minimum spending commitments, together with LONZA's exclusivity obligations with respect to Singapore set forth in Section 8.2 below, shall automatically extend for successive periods of one calendar year unless CLIENT has given LONZA written notice of CLIENT's termination of CLIENT's minimum spending obligation on or before June 30th of the preceding calendar year. For the avoidance of doubt, (i) CLIENT may not terminate its minimum spending obligations as described in the preceding sentence with respect to the minimum spending commitments described in Section 8.1.1 for periods through the end of calendar year 2013, and (ii) after

CLIENT's minimum spending obligation under this Section 8.1 have been terminated, they shall not apply in subsequent calendar years. Unless earlier terminated, CLIENT's minimum spending obligation with respect to such extensions shall be as follows:

(a) Calendar Year 2014. Subject to Section 8.1.4 below, during calendar year 2014, CLIENT's spending commitments will be (i) amounts under this Agreement with respect to activities for Singapore, in aggregate, totaling at least [***], and (ii) aggregate total amounts spent under this Agreement (including without limitation amounts spent with respect to activities for Singapore described in (i), above) totaling at least [***];

(b) Calendar Year 2015. Subject to Section 8.1.4 below, during calendar year 2015, CLIENT's spending commitments will be (i) amounts under this Agreement with respect to activities for Singapore, in aggregate, totaling at least [***], and (ii) aggregate total amounts spent under this Agreement (including without limitation amounts spent with respect to activities for Singapore described in (i), above) totaling at least [***]; and

(c) Subsequent Years. For calendar years after 2015, the minimum spending commitment (which will be subject to Section 8.1.4 below) will be negotiated and mutually agreed by the Parties in June of the preceding year (e.g., the minimum spending commitment amount for 2016 would be negotiated in June 2015), taking into account appropriate factors and considerations, including appropriate growth rates.

8.1.4 True-Up Payments. In the event that the amounts actually spent by CLIENT (and its Affiliates and licensees) related to Products during a particular period (aggregate total spend and/or Singapore-related spend) are less than the applicable minimum spending commitment, then CLIENT shall pay the shortfall at the end of the applicable calendar year (a "True-Up Payment").

8.1.5 Timing; Determination of Singapore-Related Amounts; Certain Currency Conversion. For purposes of determining whether amounts spent by CLIENT under this Agreement and/or the Prior MSA (for services invoiced after July 25, 2011) meet the applicable minimum spending commitment described in this Section 8.1, the amounts spent by CLIENT shall be taken into account based on the time the applicable payment is invoiced, provided that such invoice is not unreasonably delayed. For purposes of this Section 8.1, amounts spent by CLIENT under this Agreement and/or the Prior MSA (for services invoiced after August 1, 2011) that are spent "with respect to activities for Singapore" include (i) amounts spent for activities conducted in Singapore, (ii) amounts spent by CLIENT for purchase of equipment to be owned by LONZA, and media and other materials and goods used in or intended for use in Singapore, (iii) amounts for QA/QC activities, release testing, cell bank testing, stability testing and other ancillary or supporting activities conducted anywhere in the world that relate to Products produced in Singapore, (iv) any amounts paid by CLIENT for transfer of documentation, specifications, and production process by LONZA to any Singapore Facility, and (v) other amounts reasonably related to the production of, and preparatory activities to produce, Products in Singapore or otherwise associated with the establishment and validation of the Singapore Facility. LONZA will use reasonable efforts to indicate in its invoices to

CLIENT which amounts LONZA believes would qualify as amounts spent hereunder “with respect to activities for Singapore.” Solely for purposes of determining whether CLIENT has satisfied applicable spending commitments pursuant to Section 8.1, the Parties agree that amounts paid in Singaporean dollars shall be converted to United States dollars (and vice versa, where applicable) using the applicable market exchange rates of the European Central Bank (available, as of the Effective Date, from the European Central Bank at www.ecb.int) on the last day of the calendar month in which such payment is made. For example, if LONZA invoices CLIENT 200,000 SGD in a calendar month, and the market exchange rate of the European Central Bank is 1 SGD = 0.815 USD on the last day of that calendar month, the amount applied towards the spending commitments equals 163,000 USD.

8.1.6 Subpar Yields. In the event that Subpar Yields are obtained in the comparability runs in the Singapore Facility used to confirm whether the Process and manufacturing of Products has successfully been transferred to the Singapore Facility from the Walkersville Facility, (i) CLIENT may then require LONZA to move production of Products to the Walkersville Facility until such time as the comparability runs are successfully completed and production can be moved back to LONZA’s Singapore Facility without significant likelihood of further Subpar Yields, (ii) LONZA shall bear the expense associated with the transfer of production from the Singapore Facility to the Walkersville Facility, and subsequent retransfer to the Singapore Facility, to and (iii) amounts spent with respect to such production of Products in the Walkersville Facility during the interim shall be taken into account as amounts spent “with respect to activities for Singapore” for purposes of this Section 8.1. In the event that Batch failures occur or Subpar Yields are obtained with respect to Products produced in Singapore after the comparability runs confirm that the Process and manufacturing of Products has successfully been transferred to the Singapore Facility from the Walkersville Facility, efforts to remedy the problem will be undertaken at the Singapore Facility, and LONZA shall not be obligated to transfer the manufacture of Products to the Walkersville Facility. As used herein, “**Subpar Yield**” means a yield in comparability runs in the Singapore Facility that is more than [***] lower than the average yield obtained in new Process validation runs conducted in the Walkersville Facility.

8.1.7 CLIENT-Approved Third Party Use of Singapore Facility. From time to time during the period in which the exclusivity provisions with respect to Singapore set forth in Section 8.2 are in effect, CLIENT may propose that a Third Party identified by CLIENT be permitted to use some or all of the capacity in the First Singapore Suite, Second Singapore Suite or any other suite in the Singapore facility that has been converted or reserved for use in the production of Products, or may request the LONZA reasonably help CLIENT identify such a Third Party (subject to approval of such Third Party in CLIENT’s discretion). In such event, LONZA will cooperate to negotiate with such Third Party for the use of such capacity, such use solely to occur on terms approved by CLIENT and mutually acceptable to both Parties and to the applicable Third Party. In the event that such a Third Party does enter into an agreement with LONZA or its Affiliate with respect to use of such capacity, all facility and labor costs paid by such Third Party to LONZA and its Affiliates shall be included for purposes of determining the amounts spent by CLIENT with respect to activities for Singapore for the applicable period(s) under this Section 8.1 (and also, for the avoidance of doubt, with respect to determining whether CLIENT has met the overall aggregate spending commitments under this Section 8.1 for the applicable period).

8.2 Exclusivity in Singapore. From the Effective Date through the end of calendar year 2013, and thereafter continuing for each successive calendar year during which CLIENT's minimum spending commitments under Section 8.1 are extended, LONZA agrees that it shall not (and agrees to ensure that its Affiliates do not) manufacture (or prepare to manufacture, including without limitation building or preparing another facility to manufacture) any allogeneic Cell Therapy Product anywhere in Singapore, except in cases where the cells that are the intended therapeutic agent in such Cell Therapy Product are (i) embryonic or iPS cells, (ii) cells manufactured and supplied for projects requested and funded by Singapore government research entities, (iii) cells that are fully differentiated (e.g., fibroblasts and keratinocytes), (iv) diseased cells, or (v) gene therapy products, in each of cases (i), (iii), (iv), and (v) which are not derived from MSCs (as defined below). For the avoidance of doubt, proteins that are expressed by allogeneic cells in the course of their production are not intended to be included within "allogeneic Cell Therapy Products" as used in this Section 8.2, so long as the cells themselves are not administered as part of the therapy. Upon termination of CLIENT's minimum spending obligation under Section 8.1, the exclusivity obligations set forth in this Section 8.2 shall also terminate and not apply in subsequent calendar years. LONZA agrees to use reasonable efforts to amend its existing agreements with Singaporean governmental entities to permit the exception in clause (ii), above, to be narrowed. In the event that LONZA succeeds in obtaining such an amendment or another amendment in its agreements with Singaporean governmental entities that permits the language in clause (ii) to be narrowed, the Parties agree to amend this Section 8.2 to narrow the exception in clause (ii) correspondingly.

8.3 Competing Products.

(a) CLIENT's Products. During the Term of this Agreement, LONZA shall not, and shall ensure that its Affiliates do not, manufacture or supply any Product, or any Biosimilar version of CLIENT's Products, for or on behalf of any Third Party (other than permitted Third Party designees of CLIENT pursuant to this Agreement).

(b) LONZA Products. During the Term of this Agreement, LONZA shall not, and shall ensure that its Affiliates do not, manufacture or supply any allogeneic Cell Therapy Product containing CD105-positive mesenchymal lineage cells ("MSCs") that will be used for commercialization (as defined in Section 8.3(g) below) by LONZA or its Affiliate under an arrangement other than fee-for-service contract manufacturing services for a Third Party as historically conducted by LONZA and its Affiliates, including by a joint venture in which LONZA or its Affiliate participates with an economic interest in commercial success of the MSC Cell Therapy Product(s) other than as contract manufacturer of a Third Party's MSC Cell Therapy Product (i.e., participation in a joint venture other than for risk-sharing in connection with manufacture of a Third Party's product in a manner similar to LONZA's and its Affiliates' historical practices in its contract manufacturing business model). For the avoidance of doubt, (i) products containing MSCs for use solely as non-clinical research reagent products are not prohibited by the foregoing, and (ii) LONZA's or its Affiliate's construction of a purpose-built facility on behalf of a Third Party in a manner similar to LONZA's and its Affiliates' historical practices in its contract manufacturing business model will not in and of itself be deemed to be a prohibited joint venture. To clarify the intent of the Parties, the foregoing restrictions on manufacture or supply of products "that will be used for commercialization" do not prohibit LONZA's providing or supplying materials for activities conducted prior to Regulatory

Approval of the applicable product that may also be used after Regulatory Approval (for example, cell banks), but do prohibit supply of applicable products by LONZA and its Affiliates after Regulatory Approval, even if manufactured or ordered before formal Regulatory Approval.

(c) Certain Biosimilars. During the first three years after the Effective Date, and thereafter during the Term of this Agreement:

(i) for so long as LONZA or any of its Affiliates is manufacturing or supplying one or more allogeneic Cell Therapy Products containing any MSC or mesenchymal stem cell described in U.S. patent 5,486,359 for or to the applicable Third Party innovator of such Cell Therapy Product (or to an acquirer of such innovator's Intellectual Property with respect to such Cell Therapy Products, or the licensee or collaboration partner of such innovator or such acquirer), LONZA shall not, and shall ensure that its Affiliates do not, manufacture or supply, for clinical development that will be used for trials after completion of a Phase 2b trial or for commercialization, an allogeneic Cell Therapy Product that (1) is a Biosimilar of such approved allogeneic Cell Therapy Product of the applicable Third Party innovator of such Cell Therapy Product (or to an acquirer of such innovator's Intellectual Property with respect to such Cell Therapy Products, or the licensee or collaboration partner of such innovator or such acquirer) for whom LONZA or any of its Affiliates is manufacturing or supplying such Cell Therapy Product and (2) contains any MSC or mesenchymal stem cell described in U.S. patent 5,486,359; and

(ii) for so long as Net Sales associated with CLIENT's programs or Products (including all such payments under this Agreement), in aggregate, represent the lower of [***], or at least [***] of LONZA's cell therapeutics business unit revenues relating to contract manufacturing and process development activities for Cell Therapy Products, in each case in the applicable calendar year, LONZA shall not, and shall ensure that its Affiliates do not, manufacture or supply, for clinical development that will be used for trials after completion of a Phase 2b trial or for commercialization, an allogeneic Cell Therapy Product that (1) is a Biosimilar of any approved allogeneic Cell Therapy Product and (2) contains any MSC or mesenchymal stem cell described in U.S. patent 5,486,359.

To clarify the intent of the Parties, the foregoing restrictions on manufacture or supply of products "that will be used for trials after completion of a Phase 2b trial" do not prohibit LONZA's providing or supplying materials for activities conducted prior to completion of a Phase 2b trial that may also be used after completion of Phase 2b trials (for example, cell banks), but do prohibit supply of clinical trial supplies intended for use in a later stage trial (for example, Phase 3 clinical trial supplies), even if manufactured or ordered before formal completion of the applicable Phase 2b trials. For the avoidance of doubt, once the restrictions set forth in clauses (i) and (ii) of Section 8.3(c) have expired or are no longer satisfied, such restrictions shall not thereafter be re-instated in the event that one or more of the conditions described above is subsequently satisfied. For so long as the restrictions set forth in clause (i) or (ii) of this Section 8.3(c) apply, and subject to all applicable provisions of Article 12, LONZA agrees to keep CLIENT reasonably informed on a quarterly basis regarding LONZA's cell therapeutics business unit revenues in the then-current calendar year and LONZA's good faith projections therefor for at least the next two subsequent upcoming calendar years, and to update CLIENT regarding significant changes in the foregoing.

(d) Certain Terms Regarding Subsections (b) and (c). After the end of calendar year 2016, the restrictions set forth in clauses (b) and (c) above shall only apply with respect to Cell Therapy Products commercialized, or under development for, an indication with respect to which CLIENT (or its Affiliate or designee) has commenced clinical trials and is actively developing or commercializing one or more Products.

(e) Terms Regarding STRO-1 MPC Products.

(i) STRO-1 MPC Products. During the Term of this Agreement, subject to Section 8.3(e)(iv) below, LONZA shall not, and shall ensure that its Affiliates do not, manufacture or supply STRO-1 MPC Products, if any, that are listed on the STRO-1 MPC Product List as described below, or any other product that LONZA has Knowledge is a STRO-1 MPC Product, for commercialization by or for a Third Party anywhere in the world (other than to CLIENT, or to its Affiliates or authorized designees, as Products under this Agreement); provided, however, that:

(A) LONZA shall not be required to perform any analysis or other review to determine whether a particular product is STRO-1 MPC Product; and

(B) the restrictions in this Section 8.3(e) shall not prevent LONZA or its Affiliates from continuing the manufacture and supply to a Third Party of any product that LONZA or its Affiliate is currently manufacturing or supplying to such Third Party as of the Effective Date. For clarification, the exception described in this clause (B) includes line extensions, modifications and changes to products where such product is a STRO-1 MPC Product as of the Effective Date, but does not extend to a modification or change after the Effective Date that causes a product to become a STRO-1 MPC Product if such product is not a STRO-1 MPC Product as of the Effective Date; and

(C) if a product is not added to the STRO-1 MPC Product List and LONZA does not have Knowledge that such product is a STRO-1 MPC Product, in each case by the date LONZA enters into an agreement with a Third Party to manufacture such product for commercialization by or for such Third Party anywhere in the world, provided that such agreement is entered no earlier than the conclusion of Phase II clinical trials (the "Agreement Date"), then such product may not be added to the STRO-1 MPC Product List and the restrictions in this Section 8.3(e) shall not prevent LONZA or its Affiliates from the manufacture or supply to a Third Party of such product anywhere in the world. For clarification, the exception described in this clause (C) includes line extensions, modifications and changes to products where such product is a STRO-1 MPC Product as of the the Agreement Date, but does not extend to a modification or change after the Agreement Date that causes a product to become a STRO-1 MPC Product if such product is not a STRO-1 MPC Product as of the Agreement Date.

To clarify the intent of the Parties, the foregoing restrictions on manufacture or supply of products "for commercialization" do not prohibit LONZA's providing or supplying materials for

activities conducted prior to Regulatory Approval of the applicable product that may also be used after Regulatory Approval (for example, cell banks), but do prohibit supply of applicable products by LONZA and its Affiliates after Regulatory Approval, even if manufactured or ordered before formal Regulatory Approval.

(ii) **Certain Terms.** For purposes of this Section 8.3(e): (A) “STRO-1 MPC Product” means a product containing a population of allogeneic STRO-1 MPCs, including without limitation such a product in a final packaged form and labeled for use in clinical trials or for commercial sale to end users; (B) “**STRO-1 MPC**” means any mesenchymal precursor cell selected for, or a population of cells that has been enriched for, STRO-1; and (C) “**Knowledge**” means that LONZA believes or understands that the applicable product is a STRO-1 MPC Product; provided, however, that notice from CLIENT or its Affiliate that a given product of a Third Party is a STRO-1 MPC Product shall not by itself constitute “Knowledge” by LONZA, but any such notice shall be deemed as a proposal by CLIENT to have such Third Party product added to the STRO-1 MPC Product List, in which case the provisions in Section 8.3(e)(iii) shall apply.

(iii) **STRO-1 MPC Product List.** The Parties, coordinating through the JSC, shall maintain and update a list of products that are STRO-1 MPC Products (the “**STRO-1 MPC Product List**”) and shall regularly discuss products that may be STRO-1 MPC Products for inclusion on such list. Either Party may propose, at a JSC meeting or by written notice, that a product, which the proposing Party believes is a STRO-1 MPC Product, be added to the STRO-1 MPC Product List. If the Parties agree (or both Parties’ representatives on the JSC agree) that such proposed product is a STRO-1 MPC Product, then such product shall then be added to the STRO-1 MPC Product List. If one Party proposes that a product be added to the STRO-1 MPC Product List, and the other Party does not agree, then on request of either Party such matter shall be referred to a mutually acceptable independent third party expert, having applicable background and qualifications, for a determination of whether or not such proposed product is a STRO-1 MPC Product, and if such expert determines that the proposed product is a STRO-1 MPC Product, then such product shall then be added to the STRO-1 MPC Product List, otherwise such product shall not be added to the STRO-1 MPC Product List, unless such product is later agreed or determined to be a STRO-1 MPC Product in accordance with the terms of this provision, in which case, at that time, it may be added to the STRO-1 MPC Product List. The costs of the independent third party expert shall be borne by the Party whose assessment of whether the proposed product is a STRO-1 MPC Product is incorrect. At the first JSC meeting, the JSC shall discuss products for inclusion on the STRO-1 MPC Product List, and shall prepare at such meeting an initial STRO-1 MPC Product List that contains all products that have been mutually agreed by the Parties to be STRO-1 MPC Products.

(iv) **STRO-1 MPC Thresholds; Discontinuation.** Beginning with the earlier of the second year after First Commercial Launch or January 1, 2020 and with respect to each year thereafter, measured from one anniversary of such date to the next, if CLIENT and its Affiliates and designees do not, in aggregate, order Products for delivery in such yearly period having Net Sales equaling or exceeding the STRO-1 MPC Thresholds set forth below, then during the three (3) month period after such yearly period LONZA, in its sole discretion, may, upon written notice to CLIENT given during such three (3) month period, elect to discontinue the restrictions on LONZA and its Affiliates under this Section 8.3(e) with respect

to STRO-1 MPC Products, effective as of the date of such notice, in which event (A) the provisions of this Section 8.3(e) shall thereafter no longer apply, and (B) the percentage set forth in Section 4.4.2 with respect to the Continuing Purchase Requirements shall thereafter be reduced from [***] to [***]. CLIENT (or its Affiliate or designee) may, at any time during a given yearly period, elect to pre-pay for purchases of any portion of Products to be delivered in the following yearly period in order to meet the current year's STRO-1 MPC Threshold (in which event, such prepayment shall apply in the yearly period when paid for purposes of determining whether the STRO-1 MPC Threshold has been met, and not with respect to the subsequent year period, for purposes of determining whether the STRO-1 MPC Threshold has been met in such subsequent year). In the event that CLIENT, together with its Affiliates and designees, have ordered in accordance with the Forecasts amounts of Product for delivery in a given year that would meet the STRO-1 MPC Product Threshold, but LONZA and its Affiliates fail to deliver Products so ordered (except to the extent such failure is attributable to cancellations or requests for delays by CLIENT or its Affiliate or designee, or written changes or instructions by CLIENT), then CLIENT shall be deemed to have satisfied the STRO-1 MPC Product Threshold for the applicable year. The STRO-1 MPC Thresholds are as follows:

STRO-1 MPC Product Threshold	Yearly Period
[***]	The earlier of second year after First Commercial Launch (i.e., from the first anniversary of First Commercial Launch to the second anniversary) or from January 1, 2020 through December 31, 2020
[***]	The earlier of third year after First Commercial Launch or calendar year 2021
[***]	The earlier of fourth year after First Commercial Launch or calendar year 2022
[***]	The earlier of fifth year after First Commercial Launch or calendar year 2023
[***]	The earlier of sixth year after First Commercial Launch or calendar year 2024
[***]	The earlier of seventh year after First Commercial Launch or calendar year 2025, and each yearly period thereafter

(f) Notwithstanding anything to the contrary set forth herein, immediately upon notice of termination pursuant to Section 8.1.2, 16.2, 16.3, 16.4 or 16.5, LONZA and its Affiliates may build up its inventory of any of the products set forth in Sections 8.3(a), (b), (c) and (e); provided, however, LONZA or its Affiliates may not sell any such products until the Agreement terminates, unless otherwise permitted under the terms of this Agreement.

(g) For purposes of Sections 8.3(b), 8.3(c) and 8.3(e), supply "for commercialization" shall mean sales or supply by LONZA or its Affiliate of the applicable product after Regulatory Approval of such product.

9. FACILITIES

9.1 Reasonable Efforts to Utilize Tax-Advantaged Jurisdictions. The Parties agree to work together and reasonably cooperate to utilize available tax breaks and have Product supplied by LONZA and its Affiliates to CLIENT and its designees from tax-advantaged jurisdictions where LONZA, at the time, has existing Facilities (including using reasonable efforts to take tax considerations into account in connection with additional capacity and/or the Purpose-Built Facility described in Section 9.4 below), and LONZA and its Affiliates shall use all reasonable efforts to produce and supply Products to CLIENT and its Affiliates and designees from the jurisdiction requested by CLIENT.

9.2 Process Development. LONZA shall initially conduct the activities to be performed pursuant to Article 3 above at LONZA's Walkersville Facility, and with respect to such activities begun under the Prior MSA LONZA agrees to continue and assume the performance of such activities in accordance with the terms and conditions of this Agreement. The Parties acknowledge that LONZA or its Affiliate intends to complete the build-out and validation of a first allogeneic cell-manufacturing suite within the Singapore Facility having capabilities to manufacture Products (such suite, the "**First Singapore Suite**") and, upon CLIENT's request, agrees to use reasonable efforts in consultation with CLIENT to transfer the conduct of activities in the process development program, to the extent they can reasonably be conducted in the Singapore Facility, as expeditiously as practicable under the circumstances; provided, however, CLIENT acknowledges that the Singapore Facility does not, and is not anticipated to, include any process development facility. For the avoidance of doubt, process development activities shall not be transferred to the Singapore Facility unless and until requested by CLIENT, in its discretion, and agreed to in writing by LONZA.

9.3 Manufacture of Product; Facilities. LONZA shall initially manufacture the Products pursuant to Article 4 above at LONZA's Facility in Walkersville, Maryland, and agrees to use reasonable efforts in consultation with CLIENT (i) to expeditiously complete the First Singapore Suite and make it Validated and Ready, and (ii) thereafter, to transfer the manufacturing of Products under this Agreement to the Singapore Facility as expeditiously as practicable under the circumstances (using reasonable efforts to minimize disruptions in the supply of Products to CLIENT and its Affiliates and designees). For so long as CLIENT retains exclusivity in Singapore as described in Section 8.2, (a) the First Singapore Suite (and, if built, the Second Singapore Suite) shall be reserved for use in the production of Products on behalf of CLIENT or its Affiliate or designee, and (b) upon written request by CLIENT, LONZA or its Affiliate shall complete the build-out and validation of a second allogeneic cell-manufacturing suite within the Singapore Facility having capabilities to manufacture Products (the "**Second Singapore Suite**") for use in the manufacture and supply of the Products under this Agreement and conduct of related Processes. If CLIENT requests LONZA or its Affiliate to complete the Second Singapore Suite, then for so long as the exclusivity provisions with respect to Singapore set forth in Section 8.2 are in effect and for one (1) year thereafter, CLIENT shall purchase (including purchases by CLIENT's Affiliates and designees) from LONZA or its Affiliates, in each applicable year after the Second Singapore Suite begins production (following validation, regulatory approval and receipt of all applicable permits and licenses for the production of Products for clinical or commercial supply), the following percentages of the capacity of the Second Singapore Suite for each of the years indicated in the table below:

<u>Percentage of Second Singapore Suite Capacity</u>	<u>Time Period</u>
[***]	In the first year after the Second Singapore Suite begins production (following regulatory approval of the Second Singapore Suite for the manufacture of clinical or commercial supply, and receipt of all applicable permits and licenses)
[***]	In the second year
[***]	In the third through seventh years

9.4 Purpose-Built Facility.

9.4.1 Pre-Build Activities. Upon written notice from CLIENT (a "**Pre-Build Notice**"), LONZA and CLIENT shall undertake planning and other activities in accordance with Exhibit 9.4.1 ("**Pre-Build Activities**") in preparation for the construction and establishment of a potential purpose-built facility for the manufacture of Products (the "**Purpose-Built Facility**").

9.4.2 Construction of Purpose-Built Facility; Related Terms. Upon written request of CLIENT (a "**Build Notice**") and subject to the terms of Exhibit 9.4.2, including the escrow and deposit requirements set forth therein, LONZA agrees to build, at its own expense, a Purpose-Built Facility for the manufacture and supply of Products to CLIENT and its Affiliates and designees. The Parties anticipate that it would take between two and three years from the date of the Build Notice for such a Purpose-Built Facility to be completed and ready to supply

confirming Products to CLIENT. The Purpose-Built Facility shall be constructed on the Final Site and in accordance with the Construction Planning Parameters and Design Development Documents approved by the JPBC in the conduct of the Pre-Build Activities under the terms of Exhibit 9.4.1, except to the extent otherwise approved by CLIENT in advance, in writing. In the event that CLIENT provides a Build Notice, the provisions of Sections B and C of Exhibit 9.4.2 shall apply, and in the event that the Purpose-Built Facility is completed, validated, has received all necessary regulatory approvals, and obtained all necessary permits and licenses, for the Production of Products for clinical and commercial supply, and is otherwise fully ready to supply confirming Products to CLIENT, the terms of Section A of Exhibit 9.4.2 shall apply. Each Party shall have the right to announce the commencement of construction of the Purpose-Built Facility. CLIENT shall have no obligation to provide a Build Notice hereunder, and as between the Parties, CLIENT may decide in its sole discretion whether to provide a Build Notice to LONZA.

9.4.3 Option to Purchase Purpose-Built Facility. In the event that the Purpose-Built Facility is built, CLIENT shall have an option to purchase the Purpose-Built Facility from LONZA or its Affiliate, as applicable, on the terms set forth in Exhibit 9.4.3. Each Party shall have the right to announce CLIENT's exercise of such option and CLIENT's (or its Affiliate's or designee's) purchase of the Purpose-Built Facility.

9.5 Communication Regarding Other Facilities; Costs if Used. LONZA agrees to keep CLIENT reasonably informed, and to update CLIENT from time to time, regarding facilities that LONZA and its Affiliates have available (including new facilities and expansions to existing facilities), anywhere in the world, that are of the type that are used or available for use, or that LONZA is planning to adapt for use, in the production of allogeneic cell products such as Products ("**LONZA Allogeneic Facilities**"). Without limiting the provisions of this Agreement regarding pricing of Products, if LONZA or its Affiliate manufactures Products or conducts Processes for CLIENT or CLIENT's designee in a LONZA Allogeneic Facility in which LONZA or its Affiliate also manufactures products or conducts manufacturing processes for a Third Party, CLIENT will be offered Most Favored Rates with respect to facility costs associated with such LONZA Allogeneic Facility (suite time, labor and the like).

10. REGULATORY MATTERS

10.1 Permits and Approvals. During the Production Term for a Product, LONZA shall obtain and maintain all material licenses, permits and approvals necessary for the manufacture and supply of such Product in the applicable Facility(ies), and otherwise to perform its obligations under this Agreement, and in the event of any failure to maintain such licenses, permits and approvals, shall use its Best Efforts to remedy such failure as expeditiously as possible. LONZA will promptly notify CLIENT if LONZA receives notice that any such license, permit, or approval is or may be revoked or suspended.

10.2 Inspections/Quality Audit by CLIENT. During the Term of this Agreement, upon not less than 30 days' prior written notice, up to one (1) time per calendar year per Facility where Products are manufactured and in each instance for no more than four (4) business days, LONZA will permit CLIENT or its authorized representatives to inspect and audit (a) the parts of the Facility where the manufacture or supply of a Product is carried out and/or (b) any of LONZA's manufacturing and quality control records and all other documentation relating to the

manufacturing and processing activities performed hereunder (including any internal quality control audits or reviews conducted by LONZA) in order to assess LONZA's compliance with this Agreement (including the applicable Statement of Work and Quality Agreement) and Applicable Laws, and to discuss any related issues with LONZA's management personnel. In addition, CLIENT may conduct such an inspection and audit, for cause, at any time upon 30 days' prior written notice (provided, however, that with respect to a "for cause" inspection and audit, LONZA shall use reasonable efforts to accommodate a shorter notice period if circumstances necessitate action on a more expeditious time frame). CLIENT Personnel engaged in such inspection will abide by the terms and conditions set forth in Section 4.15 and Article 12.

10.3 Inspections by Regulatory Agencies. LONZA shall allow representatives of any Regulatory Authority to inspect the relevant parts of the Facility where the manufacture or supply of a Product is carried out and to inspect the Master Production Record and Batch Records to verify compliance with Applicable Laws and other practices or regulations and shall cooperate with such Regulatory Authority with respect to such inspections and any related matters. LONZA shall promptly notify CLIENT of the scheduling of any such inspection relating to the manufacture and supply of Product and shall keep CLIENT informed about the results and conclusions of each such regulatory inspection relating to a Product, including actions taken by LONZA to remedy conditions cited in such inspections. In addition, LONZA shall allow CLIENT or its representative to assist in the preparation for and be present at such inspections relating to a Product. LONZA will promptly send to CLIENT a copy of any reports, citations, warning letters, or other correspondence received by LONZA from any Regulatory Authority, including, but not limited to, FDA Form 483, Notices of Observation, and all related correspondence, to the extent such documents relate to the Product, its manufacture or general manufacturing concerns applicable to Products (including facility compliance or the like). Prior to responding to any reports, requests, directive or other communications issued by any Regulatory Authority relating to a Product or its manufacture, to the extent practicable, LONZA shall provide CLIENT a copy of its proposed response for CLIENT's review and comments and LONZA shall take under careful consideration and use good faith efforts to implement any comments or recommendations provided by CLIENT with respect thereto prior to submitting such response to the applicable Regulatory Authority.

10.4 Support for Regulatory Approvals. As requested by CLIENT from time to time and at CLIENT's expense, LONZA shall reasonably cooperate with and provide assistance to CLIENT or its designee in connection with the preparation, submission and maintenance of regulatory applications and other filings to the FDA and other applicable Regulatory Authorities to obtain Regulatory Approvals for Products. Accordingly, LONZA shall promptly provide CLIENT as requested, at CLIENT's expense, with all available information in LONZA's control necessary or useful for CLIENT to apply for, obtain, and maintain Regulatory Approvals in any country for the Products, including information relating to the Facilities, or the equipment, Processes, methodology and materials used in the manufacture and processing of such Product. Without limiting the foregoing, LONZA agrees to promptly inform CLIENT when any such information is no longer current and reflective of current manufacturing practices, procedures or the Specifications and to provide updated information to CLIENT. Further, LONZA agrees, at CLIENT's request and expense, to execute, acknowledge and deliver such further instruments, and take such other actions, all as promptly as possible, which may be necessary or appropriate

to assist in the filing for, preparation, submission and maintenance of such Regulatory Approvals for Products. For the avoidance of doubt, CLIENT may include Confidential Information of LONZA related to the manufacture of Products in CLIENT's regulatory filings with Regulatory Authorities as reasonably necessary to facilitate the manufacture, development and/or commercialization of Products.

10.5 Recalls. Any recalls of Products shall be the sole responsibility of CLIENT, provided, however, that if LONZA reasonably believes a recall may be necessary with respect to any Product supplied under this Agreement, LONZA shall immediately notify CLIENT thereof in writing. Upon request from CLIENT, LONZA shall assist CLIENT, at CLIENT's expense, in any recall of Products, including by providing such documentation or information that LONZA owns or controls as CLIENT may request. Notwithstanding the foregoing, if a recall of any Product arises out of or results from: (i) the negligence, willful misconduct or intentional wrongful omission of LONZA or (ii) any material breach by LONZA of this Agreement (including a breach of any of its representations or warranties), LONZA shall bear all the costs and expenses of such recall. For avoidance of doubt, CLIENT shall bear all costs and expenses of recalls of Products, except to the extent otherwise provided in the foregoing sentence.

11. FINANCIAL TERMS

11.1 Payments. CLIENT will make payments to LONZA in the amounts set forth in an undisputed invoice within thirty (30) days of receipt of such an invoice from LONZA pursuant to Section 11.2 below. In the event that CLIENT has not paid an undisputed invoice within thirty (30) days of receipt, CLIENT's failure shall be considered a material breach under Section 16.2, subject to the cure provisions set forth therein. Further, in addition to all other remedies available to LONZA, in the event that CLIENT has not paid an undisputed invoice within sixty (60) days of receipt of such invoice, LONZA may elect upon written notice to CLIENT to suspend the provision of all or a portion of the services under this Agreement until CLIENT pays such undisputed invoice, provided that CLIENT shall remain liable for all fees owed pursuant to the Statement of Work during any such suspension.

11.2 Invoices. Within thirty (30) days of the end of each month, LONZA, or its designee, will provide CLIENT with an invoice setting forth a detailed account of any such fees, expenses, or other payments payable by CLIENT under this Agreement for the preceding month. All pricing excludes taxes and costs relating to shipping, validation and regulatory filings. The price of a Product manufactured outside of the United States shall be invoiced to CLIENT in either the local currency of the location of the Facility in which such Product is manufactured or such other currency as may be mutually agreed, in writing and in advance, by the Parties.

11.3 Taxes. CLIENT agrees that it is responsible for and will pay any sales tax, use tax, levies, imposts, duties, fees, and other taxes, including VAT (the "Sales Taxes") due on LONZA's import of Materials and the manufacture, sale and delivery of Products to CLIENT under this Agreement, and LONZA shall remain responsible for all other taxes on LONZA's business (including without limitation income tax or personal property taxes payable by LONZA). To the extent invoiced by LONZA but not paid by CLIENT, CLIENT will indemnify and hold harmless the LONZA parties from and against any and all penalties, fees, expenses and costs whatsoever attributable to failure by CLIENT to pay the Sales Taxes. The Parties shall

reasonably cooperate and take any reasonable steps necessary to reduce or eliminate applicable Sales Taxes. LONZA will not collect any Sales Taxes from CLIENT in connection with the supply of any Product hereunder if CLIENT provides to LONZA appropriate valid exemption certificates or other appropriate evidence that such Sales Taxes are not due.

11.4 Interest. Any fee, charge or other payment due to LONZA by CLIENT under this Agreement that is not paid within thirty (30) days after receipt of such invoice therefor will accrue interest on a daily basis at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after such date.

11.5 Method of Payment. All payments to LONZA hereunder by CLIENT will be in either the local currency of the location of the Facility in which such Product is manufactured or such other currency as may be mutually agreed, in writing and in advance, by the Parties and will be by check, wire transfer, money order, or other method of payment approved by LONZA. Bank information for wire transfers is as follows, unless otherwise changed in writing by LONZA:

Mailing address for wire transfer payments:

For Payments where local currency of the location of the Facility is USD
(Walkersville Facility):
[***]

For Payments where local currency of the location of the Facility is SGD
(Singapore Facility):
[***]

11.6 After the first anniversary of the Effective Date, LONZA may annually adjust the various costs and rates set forth in the Statement of Work to reflect changes in LONZA's or its

Affiliate's actual costs in connection with the production of Product under this Agreement; provided, however, that any increases in costs of materials and testing shall not exceed the actual increase in such costs and any increases for facility costs or labor rates shall not exceed any percentage increase in the Producers Price Index, or other comparable index based on the location of the Facility in which the Product is manufactured, for the most recently published percentage change for the 12-month period preceding the applicable contract anniversary date. LONZA agrees to provide CLIENT with written notice of any such cost adjustment. In addition to the foregoing, the price may be changed by LONZA, upon reasonable prior written notice to CLIENT (not less than [***] in advance) providing reasonable detail in support thereof, to reflect any material change in an environmental or regulatory standard that substantially increases or decreases LONZA's cost and ability to manufacture Product. If requested by CLIENT, LONZA agrees to reasonably discuss any such increase with CLIENT, including the basis for such adjustment and the manner in which the amount of such increase was determined.

11.7 Financial Records and Audit Rights.

11.7.1 Books and Records. LONZA shall keep complete, true and accurate books of account and detailed records with respect to all services performed under this Agreement. All such books and records shall be maintained for a period of five (5) years following the relevant calendar year to which such records pertain.

11.7.2 Audit Rights. During the Term of this Agreement and the record-keeping period set forth above, CLIENT shall have the right to inspect and audit LONZA's books and records, at the location(s) where the books and records are maintained by LONZA. Such inspection and audits shall be performed on behalf of CLIENT by an independent Third Party auditor selected by CLIENT and reasonably acceptable to LONZA. Such audits shall be conducted during the normal business hours of LONZA upon at least thirty (30) days advance notice to LONZA and shall be made no more than once each four consecutive calendar quarters. The auditor selected by CLIENT shall be required to execute a reasonable confidentiality agreement, no less stringent in scope than the confidentiality obligations set forth herein, and for a reasonable and customary time period (which in no event shall be less than five (5) years from the disclosure of the Confidential Information to such auditor), prior to commencing any such audit and shall only disclose to CLIENT, with a copy to LONZA, (a) whether or not the relevant payments were accurate, or the reasons why the accuracy of the relevant payments could not be determined, and any recommended actions needed to ensure the accuracy of relevant future payments, and (b) if the payments were not accurate, the amount of any under- or over-payment, as well as detail concerning the nature, scope and circumstances of the discrepancy so that such discrepancy can be equitably resolved. CLIENT shall bear the costs and expenses of audits conducted under this Section 11.7.2, unless a variation or error producing an overpayment exceeding five percent (5%) of the total amount paid by CLIENT for the period covered by the audit, in which case LONZA shall bear the costs and expenses associated with such audit.

11.8 Security Deposit. In the event that a given Statement of Work provides for a mutually agreed security deposit (a "Security Deposit"), such Security Deposit, as defined in the Statement of Work, will be returned to CLIENT within thirty (30) days after LONZA receives payment for all fees, charges, and other amounts due in connection with charges incurred prior to the completion or termination of the applicable Statement of Work, or expiration or termination

of this Agreement as applicable, including, but not limited to, charges for lost, destroyed, stolen or damaged property of LONZA to the extent attributable to the negligence, willful misconduct or intentional wrongful omission of CLIENT or its employees (all such fees, charges, or other payments for which CLIENT is responsible being called “**Obligations**”). If any Obligations remain outstanding after the completion or termination of the applicable Statement of Work (or the date of expiration or termination of this Agreement, if applicable), then LONZA shall be entitled to apply the Security Deposit against the payment of such Obligations. The amount of the Security Deposit remaining, if any, after such application will be returned to CLIENT. CLIENT shall remain liable to LONZA for any deficiencies remaining after the application of the Security Deposit against the Obligations.

12. CONFIDENTIAL INFORMATION

12.1 Definition. “**Confidential Information**” means all information (including without limitation, technical, scientific and other know-how and information, trade secrets, knowledge, technology, means, methods, processes, practices, formulas, instructions, skills, techniques, procedures, specifications, data, results and other material, pre-clinical and clinical trial results, manufacturing procedures, test procedures and purification and isolation techniques, and any tangible embodiments of any of the foregoing, and any scientific, manufacturing, marketing and business plans, any financial and personnel matters relating to a Party or its present or future products, sales, suppliers, customers, employees, investors or business) that has been disclosed by or on behalf of one Party or its Affiliates to the other Party or its Affiliates either in connection with the discussions and negotiations pertaining to this Agreement or in the course of performing this Agreement. The Parties acknowledge that the Confidential Information of a Party may include information originally disclosed by a Third Party to such Party. Without limiting the foregoing, all the CLIENT Documentation (including without limitation, the Master Product Records and Draft Plan) and other records and reports generated from LONZA’s performance of the services hereunder will be deemed “Confidential Information” of CLIENT and will be subject to the terms and conditions set forth in this Article 12; provided, however that proprietary information of LONZA or its Affiliates that is incorporated in such CLIENT Documentation and other records and reports generated from LONZA’s performance of the services hereunder and that does not relate specifically and primarily to Products, shall remain LONZA’s Confidential Information.

12.2 Exclusions. Notwithstanding the foregoing Section 12.1, any information disclosed by a Party to the other Party will not be deemed “Confidential Information” to the extent that the receiving Party can demonstrate such information:

(a) at the time of disclosure is in the public domain;

(b) becomes part of the public domain, by publication or otherwise, through no fault of the Party receiving such information;

(c) at the time of disclosure is already in the rightful possession of the Party who received such information, as established by contemporaneous written records;

(d) is lawfully provided to a Party, without restriction as to confidentiality or use, from a Third Party lawfully entitled to disclose such Confidential Information; or

(e) is independently developed by the receiving Party without use of or reference to the other Party's Confidential Information, as established by contemporaneous written records.

12.3 Disclosure and Use Restriction. The Parties agree that for the Term of the Agreement and the ten (10)-year period following any termination or expiration of the Agreement, each Party and its Affiliates will keep completely confidential and will not publish or otherwise disclose any Confidential Information of the other Party, its Affiliates or sublicensees, except in accordance with Section 12.4 or as otherwise permitted under this Agreement. Neither Party will use Confidential Information of the other Party except as reasonably necessary to perform its obligations or to exercise its rights under this Agreement.

12.4 Permitted Disclosures. Each receiving Party agrees to take at least those measures that it employs to protect its own confidential information of a similar nature (in no event less than reasonable care) to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the disclosing Party, including without limitation, (i) institute and maintain security procedures to identify and account for all copies of Confidential Information of the disclosing Party and (ii) limit disclosure of the disclosing Party's Confidential Information to its Affiliates in Agreed Countries and each of its and their respective officers, directors, employees, agents, consultants, advisors, and independent contractors, actual or potential acquirers, distributors having exclusive rights to distribute and market Products in one or more countries (or to other distributors, provided such disclosure is pursuant to a three-way confidentiality agreement with CLIENT and LONZA) and licensees, and others having a need to know such Confidential Information for purposes of this Agreement ("**Permitted Recipients**"); provided that such persons or entities are informed of the terms of this Agreement and are subject to written obligations of confidentiality, non-disclosure and non-use (which written obligations shall include confidentiality agreements executed by employees as part of such employees' employment with the receiving Party) no less restrictive in scope than those set forth herein and for a reasonable time period, which period shall with respect to any technical information regarding manufacture be (a) at least five (5) years from the disclosure of the Confidential Information to such persons or entities in the case of actual or potential acquirers, distributors having exclusive rights to distribute and market Products in one or more countries and licensees, and (b) at least ten (10) years from the disclosure of the Confidential Information to such persons or entities in other cases; and provided further that the receiving Party shall be fully liable for any and all breaches by its Permitted Recipients. Each Party shall have the right to disclose the Confidential Information of the other Party in its regulatory filings and other communications with Regulatory Authorities in connection with the manufacture, development and/or commercialization of Products, and otherwise (subject to Section 12.5 below, if applicable) to the extent reasonably necessary to comply with Applicable Law, including securities laws, regulations or guidance, or with applicable rules of a public stock exchange.

12.5 Compelled Disclosure. If a duly constituted government authority, court or regulatory agency orders that a receiving Party hereto disclose any Confidential Information of the other Party, such Party shall have rights to comply with such order, provided that (i) the

receiving Party subject to such disclosure requirement shall notify the other Party as soon as reasonably practicable under the circumstances, (ii) the receiving Party shall assist the other Party to apply to a court of record for relief from the order or other appropriate remedies; (iii) if the disclosing Party fails to obtain any protective order or other remedy, the receiving Party shall furnish only that portion of the Confidential Information that is legally required to be disclosed; and (iv) any Confidential Information so disclosed shall be treated as confidential for all purposes other than such legally compelled disclosure.

12.6 Confidential Terms; Press Release. Each Party agrees not to disclose to any Third Party the terms of this Agreement without the prior written consent of the other Party hereto, except each Party may disclose the terms of this Agreement: (a) to its Permitted Recipients on a need to know basis, in each case under appropriate confidentiality provisions substantially equivalent in scope to those in this Agreement and for a reasonable and customary time period of at least five (5) years from the disclosure of the Confidential Information, or to governmental or quasi-governmental authorities in connection with discussions or submissions regarding potential or actual manufacturing of Products in a jurisdiction applicable to such governmental or quasi-governmental authority, provided that the disclosing Party shall, to the extent practicable, use Best Efforts to make such disclosures under appropriate confidentiality provisions substantially equivalent in scope to those in this Agreement and for a reasonable and customary time period of at least five (5) years from the disclosure of the Confidential Information; or (b) to the extent necessary to comply with Applicable Laws and court orders, including securities laws, regulations or guidance, or with applicable rules of a public stock exchange; provided that in the case of the foregoing clause (b), the disclosing Party shall promptly notify the other Party and to the extent practicable under the circumstances allow the other Party a reasonable opportunity to oppose with the body initiating the process and, to the extent allowable by law, to seek limitations on the portion of the Agreement that is required to be disclosed. Notwithstanding the foregoing, each Party shall in all events have the right to make such disclosure of the terms of this Agreement as such Party reasonably believes is necessary to comply with securities laws, regulations or guidance or with applicable rules of a public stock exchange. Notwithstanding the foregoing, the Parties shall agree upon a mutual press release to announce the execution of this Agreement, together with a corresponding Question & Answer outline for use in responding to inquiries about such event; and thereafter, each Party may each disclose to Third Parties the information contained in such press release and Question & Answer outline without the need for further approval by the other Party.

12.7 Prior Agreements. This Agreement supersedes the Non Disclosure Agreement between the Parties dated January 24, 2005 (the “**Prior CDA**”), and all confidential or proprietary information exchanged between the Parties under the Prior CDA, together with all confidential or proprietary information exchanged or developed under the Prior MSA (which is superseded and terminated as set forth in Section 19.4 below), shall be deemed Confidential Information of the applicable Party for purposes of this Agreement and shall be subject to the terms of this Article 12.

12.8 Publicity. Neither Party will refer to, display or use the other’s name, trademarks or trade names confusingly similar thereto, alone or in conjunction with any other words or names, in any manner or connection whatsoever, including any publication, article, or any form of advertising or publicity, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

13. INTELLECTUAL PROPERTY

13.1 Ownership.

13.1.1 Background IP. Except as expressly otherwise provided herein, neither Party will, as a result of this Agreement, acquire any right, title, or interest in any Background Intellectual Property of the other Party.

13.1.2 IP Developed under This Agreement. With respect to any and all Intellectual Property that LONZA, its Affiliates, contractors or agents develops, conceives, invents, first reduces to practice or makes, solely or jointly with CLIENT or others in the course of LONZA's performance of the activities under this Agreement (collectively, "New IP"), the following shall apply:

(a) Generally Applicable Intellectual Property. As between the Parties, New IP that is generally applicable to LONZA's business of developing, producing and manufacturing biological materials, meaning general processes, materials or technologies, including, but not limited to, for: (i) collection, (ii) formulation, (iii) quality assurance or quality control, (iv) packaging, (v) storage, (vi) characterization or (vii) developing, manufacturing, or distributing Cell Therapy Products ("LONZA New IP") shall be owned by LONZA, and CLIENT agrees to assign and hereby assigns to LONZA all of CLIENT's right, title and interest in and to LONZA New IP. For the avoidance of doubt, LONZA New IP shall also include modifications and improvements to, and direct derivatives of, LONZA's Background Intellectual Property that are not specific to Products or to Processes for manufacturing Products. [***]

(b) Other New IP. As between the Parties, all New IP other than LONZA New IP ("CLIENT New IP") shall be owned by CLIENT, and LONZA agrees to assign and hereby assigns to CLIENT, and undertakes to have its Affiliates assign to CLIENT, all of LONZA's and its Affiliates' right, title and interest in and to CLIENT New IP.

(c) Disclosure and Documentation. LONZA agrees to promptly disclose to CLIENT in writing all New IP. Each Party shall execute, and shall cause its personnel as well as its Affiliates and its Affiliates' personnel involved in the performance of this Agreement to execute, any documents reasonably required to confirm or perfect the other Party's ownership of the New IP that is owned by such other Party pursuant to Section 13.1.2(a) or 13.1.2(b), as the case may be, and any documents required for such other Party to apply for, maintain and enforce any patent or other right in such New IP.

13.2 License Grants.

13.2.1 License for LONZA to Perform. During the Term of this Agreement, CLIENT hereby grants to LONZA a fully paid, non-exclusive license under any and all CLIENT Intellectual Property that is necessary for LONZA to perform its obligations under this

Agreement for the sole and limited purpose of LONZA's performance of its obligations under this Agreement, including, without limitation, the development of the Process and the manufacture of Product for CLIENT. The license set forth in this Section 13.2.1 does not include any right or license to perform services using CLIENT Intellectual Property on behalf of any Third Party, and no license is granted from CLIENT to use CLIENT Intellectual Property to manufacture any product the composition, manufacture or use of which is covered by the CLIENT Intellectual Property for any Third Party (or to sell or otherwise provide any such product to any Third Party), and LONZA agrees that it and its Affiliates shall not do so without the express prior written consent of CLIENT.

13.2.2 LONZA Licenses to CLIENT.

(a) LONZA New IP. Subject to the terms and conditions set forth herein (including such payments as may be required under this Agreement), LONZA hereby grants to CLIENT a non-exclusive, worldwide, irrevocable license (with the right to grant and authorize sublicenses, subject to the restrictions on transfer set forth in Section 4.7.3(c) if applicable) under the LONZA New IP to manufacture Products or MPC Products developed or commercialized by or under authority of CLIENT or its Affiliate and to develop, use, sell, offer for sale and otherwise exploit such Products or MPC Products. For the removal of doubt, the non-exclusive component of the license granted in this Section 13.2.2(a) shall not supercede the non-compete provisions set forth in Section 8.3 to the extent applicable. With respect to Products or MPC Products that are manufactured by a Third Party (including Third Party licensees or collaborators of CLIENT), such license shall be subject to the applicable CMO License Royalty, if any, pursuant to Section 4.7.3(c), and otherwise (including with respect to Products or MPC Products manufactured by CLIENT or its Affiliate) such license shall be royalty-free and fully paid.

(b) LONZA Background IP and Third Party IP. With respect to any Background Intellectual Property and Confidential Information of LONZA (or its Affiliates), or any Intellectual Property of a Third Party that is licensed to LONZA (or its Affiliate) and is sublicensable to CLIENT, in each case that is incorporated into or is otherwise necessary to manufacture, use or exploit any Product or MPC Product or the Process (collectively, "**Incorporated Technologies**"), subject to the terms and conditions set forth herein, LONZA hereby grants to CLIENT a non-exclusive, worldwide, irrevocable license (with the right to grant and authorize sublicenses, subject to the restrictions on transfer set forth in Section 4.7.3(c) if applicable) under the Incorporated Technologies to manufacture Products or MPC Products developed or commercialized by or under authority of CLIENT or its Affiliate and to develop, use, sell, offer for sale and otherwise exploit such Products or MPC Products. For the removal of doubt, the non-exclusive component of the license granted in this Section 13.2.2(b) shall not supercede the non-compete provisions set forth in Section 8.3 to the extent applicable. With respect to Products or MPC Products that are manufactured by a Third Party (including Third Party licensees or collaborators of CLIENT), such license shall be subject to the applicable CMO License Royalty, if any, pursuant to Section 4.7.3(c), below, and otherwise (including with respect to Products or MPC Products manufactured by CLIENT or its Affiliate) such license shall be royalty-free and fully paid.

(c) Process for Incorporation of Incorporated Technologies. LONZA agrees not to incorporate or use in the Products or the Process any Intellectual Property that is

covered in whole or in part by (A) LONZA's Background Intellectual Property, or (B) Intellectual Property owned or controlled by a Third Party; in each case, without CLIENT's prior express written consent.

(i) **Disclosure; Decision to Incorporate.** LONZA agrees to disclose to the JSC Background Intellectual Property of LONZA (or its Affiliates), and Intellectual Property of Third Parties that is licensed to LONZA (or its Affiliate), in each case that LONZA has the right to incorporate in any Product or Process that has a reasonable likelihood of improving production costs or other qualities of such Product or Process, promptly after LONZA becomes aware that such Intellectual Property may potentially be useful for Products or associated Process, which Intellectual Property will be incorporated into Products or associated Processes as determined by the JSC, and CLIENT shall have the final decision with respect to such matters if the JSC is unable to make a decision (and any such Intellectual Property that is incorporated into the Product or Process shall be "Incorporated Technology" as defined in Section 13.2.2(b), above). At the time the JSC determines to incorporate or use (but prior to any such incorporation or use) a proposed Incorporated Technology the purpose of which is not primarily intended for cost savings, the Parties shall negotiate and agree upon appropriate consideration, if any, that will be payable to LONZA as CMO License Payments in respect of such proposed Incorporated Technology in the event that CLIENT sublicenses such proposed Incorporated Technology to a Third Party to manufacture MPC Products. If the JSC or CLIENT decides not to incorporate into the Product or Process any such Background Intellectual Property of LONZA (or its Affiliates) or Intellectual Property of Third Parties that is licensed to LONZA (or its Affiliate), and such Intellectual Property is not in fact incorporated into the Product or Process by LONZA, then CLIENT shall not be permitted to use or otherwise acquire such Intellectual Property without LONZA's prior written consent.

(ii) **Additional Terms Regarding Incorporated Technologies of a Third Party.** If LONZA desires to use or otherwise incorporate any Intellectual Property of a Third Party in any Process or Product or otherwise in the performance of the activities under this Agreement, or otherwise has reason to believe such Third Party Intellectual Property is necessary, then LONZA shall notify CLIENT and describe such Third Party Intellectual Property and how such Third Party Intellectual Property would be used or otherwise incorporated in Products, the Process or performance of the activities hereunder, and if LONZA does not have a license to such Third Party Intellectual Property together with the right to grant CLIENT a sublicense thereunder on the terms described in the license above, the Parties will discuss and agree on the terms and conditions to negotiate for a license from or other appropriate agreement with such Third Party pursuant to which CLIENT will be able to obtain the license rights set forth above with respect to such Third Party Intellectual Property.

13.3 Prosecution of Patents.

13.3.1 LONZA will have the sole right and discretion to file, prosecute and maintain patent applications and patents claiming LONZA New IP at LONZA's expense. CLIENT will cooperate with LONZA to file, prosecute, maintain and enforce patent applications and patents claiming LONZA New IP.

13.3.2 CLIENT will have the sole right and discretion to file, prosecute and maintain patent applications and patents claiming CLIENT New IP at CLIENT's expense. LONZA will cooperate with CLIENT to file, prosecute, maintain and enforce patent applications and patents claiming CLIENT New IP.

13.4 Marking Requirements. LONZA will comply with the reasonable requirements of CLIENT with respect to the marking of articles sold or manufactured under the license herein that are trademarks of CLIENT. CLIENT will mark any products made using a process covered by a LONZA patent, subject to any license from LONZA to CLIENT granted herein, with the number of each such patent and with respect a such LONZA patent, will respond to any requests for disclosure under 35 U.S.C. Sec.287(b)(4)(B) by notifying LONZA of the request for disclosure. LONZA will keep CLIENT reasonably informed from time to time of patents that are the subject of such marking requirements, and will reasonably respond to informational requests from CLIENT regarding such matters.

14. REPRESENTATIONS AND WARRANTIES

14.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder and to grant to the other Party the rights granted to such other Party under this Agreement; (b) it has obtained all necessary corporate approvals to enter into and execute this Agreement; and (c) it is not presently a party to, nor will it enter into or assume during the Term of this Agreement, any contract or other obligation with a Third Party that would in any way limit the performance of its obligations under this Agreement.

14.2 By CLIENT. CLIENT hereby represents and warrants to LONZA that as of the Effective Date, to the best of its knowledge, it has the requisite Intellectual Property and legal rights to authorize (i) the use of CLIENT Materials in the performance of LONZA's obligations under this Agreement and (ii) performance of LONZA's obligations under this Agreement, including the performance of each Statement of Work to the extent such Intellectual Property and legal rights relate to the Products themselves or their use, or to Process or other Intellectual Property or materials provided by CLIENT; provided, however, that CLIENT makes no representation or warranty with respect to any LONZA Background IP, LONZA New IP, Third Party Intellectual Property or other Intellectual Property or materials provided or introduced by LONZA, or any aspects of the Process developed by LONZA. Such representation and warranty will not apply to any production equipment supplied by LONZA. CLIENT hereby represents and warrants to LONZA that each employee of CLIENT who will receive or have access to Confidential Information of LONZA or who will perform obligations under this Agreement will agree in writing to assign any and all right, title and interest in and to all Intellectual Property of LONZA and to protect the Confidential Information of LONZA in accordance with this Agreement, prior to the earlier of any disclosure of Confidential Information of LONZA to such employee or the commencement of any such performance by such employee.

14.3 By LONZA. LONZA hereby represents and warrants to CLIENT that, (i) to the best of its knowledge, it has the requisite Intellectual Property and legal rights in its equipment and Facilities, and in its Background Intellectual Property and any Third Party Intellectual Property or other Intellectual Property or materials provided or introduced by LONZA, or any

aspects of the Process developed by LONZA, to be able to perform its obligations under this Agreement without giving rise to any potential cause of action by a Third Party against CLIENT for infringement of Intellectual Property; provided, however, that LONZA makes no representation or warranty with respect to any CLIENT Background IP, CLIENT New IP, Third Party Intellectual Property or other Intellectual Property or materials provided by CLIENT, or any aspects of the Process provided to LONZA by CLIENT; (ii) LONZA shall perform all the services hereunder in a workman-like manner in accordance with this Agreement (including the applicable Statement of Work and Quality Agreement) all Applicable Laws and relevant industry standards; (iii) all Products supplied under this Agreement will be free and clear of any security interest, lien, or other encumbrance; (iv) each employee and permitted subcontractor of LONZA who will receive or have access to Confidential Information of CLIENT or who will perform obligations under this Agreement will agree in writing to assign any and all right, title and interest in and to all Intellectual Property of CLIENT and to protect the Confidential Information of CLIENT in accordance with this Agreement, prior to the earlier of any disclosure of Confidential Information of CLIENT to such employee or permitted subcontractor or the commencement of any such performance by such employee or permitted subcontractor; (v) LONZA shall ensure the compliance of its Affiliates with, the terms and conditions of this Agreement; and (vi) neither LONZA nor any of its employees or permitted subcontractors performing or involved with its performance under this Agreement have been “debarred” by the FDA or a Regulatory Authority in any jurisdiction outside the U.S., nor have debarment proceedings against LONZA or any of its employees or permitted subcontractors been commenced. LONZA will promptly notify CLIENT in writing if any such proceedings have commenced or if LONZA or any of its employees or permitted subcontractors is debarred by the FDA or a Regulatory Authority in any jurisdiction outside the U.S.

15. DISCLAIMER; LIMITATION OF LIABILITY

15.1 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR GRANTS ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, MATERIALS, AND SERVICES PROVIDED UNDER THIS AGREEMENT, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE WITH RESPECT TO SUCH PRODUCTS, MATERIALS, OR SERVICES.

15.2 Disclaimer of Consequential Damages. EXCEPT FOR LIABILITIES ARISING FROM ANY BREACH OF SECTION 8.2, 8.3 OR 16.6.2, OR OF ARTICLE 12 OR ANY INDEMNIFICATION OBLIGATION UNDER ARTICLE 17, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE

LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES SUFFERED OR INCURRED BY THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT.

15.3 Limitation of Liability. EXCEPT FOR LIABILITIES ARISING FROM ANY BREACH OF SECTION 8.2, 8.3 OR 16.6.2, OR OF ARTICLE 12 OR ANY INDEMNIFICATION OBLIGATION UNDER ARTICLE 17, BOTH PARTIES HEREBY AGREE THAT TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY'S LIABILITY TO THE OTHER PARTY, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES, WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, ERRORS, OMISSIONS OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL CHARGES PAID BY CLIENT TO LONZA UNDER THE APPLICABLE STATEMENT OF WORK DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. TO THE EXTENT THAT THIS CLAUSE CONFLICTS WITH ANY OTHER CLAUSE, THIS CLAUSE SHALL TAKE PRECEDENCE OVER SUCH CONFLICTING CLAUSE. IF APPLICABLE LAW PREVENTS ENFORCEMENT OF THIS CLAUSE, THEN THIS CLAUSE SHALL BE DEEMED MODIFIED TO EFFECT THE INTENT OF THE PARTIES TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW.

16. TERM AND TERMINATION

16.1 Term. Unless earlier terminated pursuant to this Article 16 below, the term of this Agreement will commence on the Effective Date and will continue until the later of (i) December 31, 2020 and (ii) three (3) years after First Commercial Launch (the "**Initial Term**"); provided, however, that CLIENT may request in writing, at its option, to extend the term of this Agreement for ten (10) years following expiration of the Initial Term (the "**Extended Term**") by providing written notice thereof to LONZA prior to the first anniversary of First Commercial Launch. In the event that the Parties agree to extend this Agreement for the Extended Term, then CLIENT may request to extend this Agreement for successive three (3)-year periods following expiration of the Extended Term, which extensions shall be subject to LONZA's written consent, which shall not be unreasonably withheld, upon written notice to LONZA no later than eighteen (18) months prior to expiration of the then-current Term. The Initial Term, together with the Extended Term and any further extension(s) of the term of this Agreement shall be collectively referred to herein as the "**Term**."

16.2 Termination for Material Breach. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement in its entirety upon thirty (30) days' prior written notice to the other Party referencing this Section 16.2 and specifying in reasonable detail the facts and circumstances constituting such material breach of this Agreement, unless such breach is cured within such thirty-day period; provided, however, that if such breach is not capable of being cured within such thirty-day period and the breaching Party has commenced and diligently continued actions to cure such breach within such thirty-day period, except in the case of a payment default, the cure period shall be extended to one hundred twenty (120) days, so long as the breaching Party is making diligent efforts to do so. Such

termination shall be effective upon expiration of such cure period. Notwithstanding the foregoing, in the event that there is a good faith dispute regarding whether a payment is due to LONZA under this Agreement, CLIENT shall pay LONZA any undisputed portion of such payment and may, upon written notice to LONZA, pay fifty percent (50%) of the disputed portion into escrow pending resolution of such dispute pursuant to Section 19.13, and the cure period described above shall be tolled pending final resolution of such dispute; provided, however, that if LONZA is finally determined to be entitled to the disputed amounts, the escrowed amounts shall be paid to LONZA and CLIENT shall promptly pay the balance owed (and in any event within fifteen (15) days after such final resolution). The Party that is determined to be entitled to such escrowed amounts shall also be entitled to receive the interest earned on such amount while in escrow, and the costs of the escrow shall be borne by CLIENT if LONZA is determined to be entitled to the escrowed amounts, by LONZA if CLIENT is determined to be entitled to the escrowed amounts, and allocated pro rata between the Parties if LONZA is determined to be entitled to part, but not all, of the escrowed amounts.

16.3 Termination Without Cause; Payments. By written notice given any time after First Commercial Launch, (i) CLIENT may terminate this Agreement in its entirety, or upon a Product-by-Product basis, upon two (2) year's prior written notice to LONZA referencing this Section 16.3, and (ii) LONZA may terminate this Agreement in its entirety, or upon a Product-by-Product basis, upon five (5) years' written notice to CLIENT referencing this Section 16.3. Notwithstanding the foregoing, if CLIENT provides LONZA a Build Notice in accordance with Section 9.4.2 and neither Party has provided notice of termination pursuant to this Section 16.3 prior to such Build Notice, then neither Party may terminate this Agreement pursuant to this Section 16.3, in its entirety or with respect to Product(s) that are anticipated to be manufactured in the Purpose-Built Facility, with an effective date of termination prior to the date three years following regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical supply, and receipt of all applicable permits and licenses, unless either (i) the Parties mutually agree to discontinue building of the Purpose-Built Facility or (ii) the Purpose-Built Facility has not been completed with regulatory approval and all applicable permits and licenses received within three (3) years after the Build Notice due to the negligence or willful misconduct of LONZA or any of its Affiliates, or to LONZA's willful failure to undertake, or willful discontinuation of, activities for the construction and completion of the Purpose-Built Facility. For the avoidance of doubt, in the event of termination by CLIENT under this Section 16.3, CLIENT shall remain liable for all fees owed pursuant to any outstanding Statement of Work and Binding Purchase Order, including any applicable Cancellation Payments, in each case with respect to the applicable Product(s) with respect to which such termination applies, during such two-year period.

16.4 Termination for Product Failure. In the event the development, manufacture or commercialization of a Product is abandoned, suspended or materially delayed due to results from clinical trials relating to such Product or notice or other guidance from any Regulatory Authority in the Relevant Jurisdiction relating to such Product, CLIENT may terminate this Agreement (including all applicable Statements of Work) with respect to such Product upon at least two (2) months' written notice to LONZA referencing this Section 16.4. For the avoidance of doubt, in the event of termination by CLIENT under this Section 16.4, CLIENT shall remain liable for all fees owed pursuant to any outstanding Statement of Work and Binding Purchase Order with respect to such Product, including any applicable Cancellation Payments, during such two-month period.

16.5 Termination for Insolvency. Either Party may terminate this Agreement in its entirety upon written notice referencing this Section 16.5 to the other Party, upon (a) the dissolution, termination of existence, liquidation or business failure of the other Party; (b) the appointment of a custodian or receiver for the other Party who has not been terminated or dismissed within ninety (90) days of such appointment; (c) the institution by the other Party of any proceeding under national, federal or state bankruptcy, reorganization, receivership or other similar laws affecting the rights of creditors generally or the making by such Party of a composition or any assignment for the benefit of creditors under any national, federal or state bankruptcy, reorganization, receivership or other similar law affecting the rights of creditors generally, which proceeding is not dismissed within ninety (90) days of filing. All rights and licenses granted pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11 of the United States Code, licenses of rights of “intellectual property” as defined therein.

16.6 Effects of Termination.

16.6.1 General. Upon expiration or termination of this Agreement in its entirety, this Agreement (including all applicable Statements of Work) shall, except as otherwise provided herein, be of no further force or effect and neither Party shall have any further liability under this Agreement. Upon termination of the Agreement with respect to one or more given Products (but not of the Agreement in its entirety), then this Agreement shall continue in full force and effect with respect to the other Products for which it is not terminated. Further, except as otherwise provided herein, expiration or termination of this Agreement for any reason shall not release any Party hereto from any obligation or liability which, at the time of such termination, has already accrued to the other Party or which is attributable to a period prior to such expiration or termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement.

16.6.2 Transfer. In the event of any expiration or termination of this Agreement, in its entirety or with respect to a Product, the Parties will promptly cooperate, as CLIENT may reasonably request and at CLIENT’s expense (on a time and materials basis), to expeditiously and efficiently transfer the activities set forth under the applicable Statements of Work to CLIENT or its designee, including all processes and other subject matter developed under such Statements of Work, and implement Technology Transfer (subject to the terms of Section 4.7.3(c)) for all Products and Processes developed, manufactured or prepared under this Agreement. The Parties will reasonably cooperate to agree on the specific procedures and protocols for such transfer consistent with the foregoing, which it is anticipated will include a period during which personnel of CLIENT or its designee will be stationed at the Facilities where the applicable activities are being performed and personnel of LONZA will be stationed at the Facilities to which such activities will be transferred (“**Transfer Period**”). The right set forth in this Section 16.6.2 for CLIENT to have personnel at such Facilities will not apply to any personnel of any designee that could benefit from LONZA know-how other than that related directly to the CLIENT Process without written agreement preventing the designee from using said know-how with other research, clinical or commercial projects. Additionally, during such

Transfer Period, at CLIENT's request, LONZA will continue to perform such activities set forth under the applicable Statements of Work, provided that LONZA will have no further obligation to continue to perform such services after the Agreement terminates or expires. For the avoidance of doubt, LONZA's obligation under this Section 16.6.2 is to cooperate and facilitate the transfer of the Process and activities to CLIENT or its designee as set forth herein, and LONZA does not guarantee that such transfer will be successful.

16.6.3 Option to Lease. Upon expiration or termination of this Agreement in its entirety, CLIENT shall have the option to enter a long-term lease of the Singapore Facility or the portion of the Singapore Facility where Products are manufactured or purchase the Singapore Facility if production of Products occupy one hundred percent (100%) of the Singapore Facility or are the only products manufactured in the Singapore Facility, provided that such option shall be subject to good faith negotiations between the Parties regarding the terms of any such lease or purchase agreement, on terms and conditions to be negotiated in good faith and included in the lease. Notwithstanding the foregoing, if CLIENT exercises such option, LONZA will have the right to rent back those portions of the Singapore Facility necessary to continue to use the Singapore Facility to fulfill existing manufacturing obligations until such obligations are able to be reasonably transitioned to other Facilities.

16.6.4 Accrued Rights. Expiration or termination of this Agreement for any reason will be without prejudice to any rights that will have accrued to the benefit of a Party prior to such expiration or termination. Such expiration or termination will not relieve a Party of obligations that are expressly indicated to survive the expiration or termination of this Agreement.

16.6.5 Disposition of Remaining CLIENT Property and Confidential Information. Upon termination or expiration of this Agreement, LONZA will inform CLIENT in writing, in reasonable specificity, of all Remaining CLIENT Property, and will store any Remaining CLIENT Property as set forth in Section 7.3 above. At CLIENT's option, LONZA shall return or destroy, or transfer to any Affiliate or Third Party designated by CLIENT, any CLIENT Confidential Information and CLIENT Materials (including all copies and embodiments thereof) in the possession or control of LONZA. Likewise, CLIENT will, at LONZA's option, return or destroy any LONZA Confidential Information (including all copies and embodiments thereof) in the possession or control of CLIENT, except to the extent such LONZA Confidential Information is reasonably necessary for CLIENT or its Affiliates or designees to practice under the licenses granted in this Agreement. Notwithstanding the foregoing provisions: (i) LONZA may retain and preserve, at its sole cost and expense, samples and standards of each Product following termination or expiration of this Agreement solely for use in determining LONZA's rights and obligations hereunder; and (ii) each Party may retain a single copy of the other Party's Confidential Information for documentation purposes only and which shall remain subject to the obligations of nonuse and confidentiality set forth in this Agreement.

16.6.6 Security Deposits. Upon any termination of this Agreement by LONZA pursuant to Section 16.2, LONZA will have the right to offset any Security Deposit paid to LONZA pursuant to a Statement of Work against amounts owed by CLIENT to LONZA under this Agreement, in addition to any other rights LONZA has in law or in equity.

16.6.7 Survival. Articles 1, 12, 15, 17, and 18, and Sections 2.3.3, 2.3.4, 2.3.5, 2.3.6, 4.7.3(c), 4.7.3(d), 4.14, 6.5, 6.6, 7.3, 7.4, 10.4, 11.1, 11.2, 11.3, 11.4, 11.5, 11.7, 11.8, 13.1, 13.2, 13.3, 13.4, 16.6, 19.3, 19.5, 19.7, and 19.13, of this Agreement, together with any appendices referenced therein, will survive any expiration or termination of this Agreement.

17. INDEMNIFICATION

17.1 Indemnification of Client. LONZA will indemnify CLIENT, its Affiliates, and their respective directors, officers, employees and agents, and defend and hold each of them harmless, from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) in connection with any and all liability suits, investigations, claims or demands (collectively, "**Losses**") to the extent such Losses arise out of or result from any claim, lawsuit or other action or threat by a Third Party (each, a "**Claim**") arising out of: (a) any material breach by LONZA of this Agreement (including without limitation any of its representations or warranties, including the Product Warranties), (b) infringement, by the Background Intellectual Property of LONZA or any of its Affiliates, or of the LONZA New IP, or of any Third Party Intellectual Property or other Intellectual Property provided or introduced by LONZA in any Process or Product, or by LONZA's or its Affiliate's use thereof in performance of activities under this Agreement, of the patent rights or other Intellectual Property rights of any Third Party in the manufacture and/or supply of MPC Products hereunder (including without limitation any such Intellectual Property infringed by methods and/or processes used by LONZA or its Affiliates, but excluding patents or other Intellectual Property in and to the composition or use of the MPC Products themselves), or (c) the negligence, willful misconduct or intentional wrongful omission on the part of one or more of the LONZA Parties in performing any activity contemplated by this Agreement, except in each case, with respect to Losses caused in whole or part by one or more of the causes described in clauses (a) through (d) of Section 17.2, below, to the extent such Loss is attributable to such cause(s).

17.2 Indemnification of LONZA. CLIENT will indemnify LONZA and its Affiliates, and their respective directors, officers, employees and agents (the "**LONZA Parties**"), and defend and hold each of them harmless, from and against any and all Losses to the extent such Losses arise out of or result from any Claim arising out of: (a) any material breach by CLIENT of this Agreement (including without limitation any of its representations or warranties), (b) CLIENT's (and its Affiliates' and licensees') use or sale of Products, except to the extent such Losses arise out of or result from a breach by LONZA of its representations and warranties (including without limitation, the Product Warranties), (c) the negligence, willful misconduct or intentional wrongful omission on the part of CLIENT or its Affiliates in performing any activity contemplated by this Agreement, or (d) the use or practice by LONZA of any process, invention or other Intellectual Property supplied by CLIENT to LONZA under this Agreement, except in each case, with respect to Losses caused in whole or part by one or more of the causes described in clauses (a) through (c) of Section 17.1, above, to the extent such Loss is attributable to such cause(s).

17.3 Indemnification Procedure; Insurance.

17.3.1 An “**Indemnitor**” means the indemnifying Party. An “**Indemnitee**” means the indemnified Party, its Affiliates, and their respective directors, officers, employees and agents.

17.3.2 An Indemnitee which intends to claim indemnification under Section 17.1 or Section 17.2 hereof shall promptly notify the Indemnitor in writing of any Claim in respect of which the Indemnitee intends to claim indemnification under Section 17.1 or 17.2, as applicable. The Indemnitee shall permit the Indemnitor to control the defense, settlement or other disposition of such Claim; provided, however, the Indemnitor shall not enter into any settlement that admits fault, wrongdoing, damages or otherwise adversely affect the Indemnitee’s rights under this Agreement or impose any obligations on the Indemnitee in addition to those set forth herein without the Indemnitee’s prior written consent, such consent not to be unreasonably withheld or delayed. The Indemnitee shall not settle any Claim without the prior written consent of the Indemnitor, and the Indemnitor shall not be responsible for any legal fees or other costs incurred other than as provided herein. The Indemnitee shall cooperate fully with the Indemnitor and its legal representatives in the investigation and defense of any claim, lawsuit or other action covered by this indemnification, including by providing information and reasonable assistance as the Indemnitor may request, all at the reasonable expense of the Indemnitor. The Indemnitee shall have the right, but not the obligation, to be represented by counsel of its own selection and expense.

17.4 Insurance. Each Party shall maintain, at all times during the Term of this Agreement and for three years thereafter, (a) product liability insurance for [***] per occurrence and in the aggregate during any one policy period and (b) general liability insurance for [***] per occurrence (collectively, the “**Insurance Policy**”). Notwithstanding the foregoing, each Party may have its Affiliate(s) maintain such Insurance Policy, which shall cover such Party. Each Party or its Affiliate shall provide a Certificate of Insurance to the other Party upon request. If any Insurance Policy of a Party is cancelled before the expiration date thereof or if there is a material reduction to the coverage of such Insurance Policy, written notice to the other Party shall be delivered in accordance with the Insurance Policy provisions.

18. ADDITIONAL COVENANTS

18.1 Non-Solicitation. During the Term of this Agreement and for one (1) year thereafter, each of the Parties agrees not to seek to induce or solicit any employee of the other Party or its Affiliates to discontinue his or her employment with such other Party or its Affiliate in order to become an employee or an independent contractor of the soliciting Party, its Affiliate or any Third Party; provided, however, that neither Party shall be in violation of this Section 18.1 as a result of making a general solicitation for employees or independent contractors. For the avoidance of doubt, the publication of an advertisement shall not constitute solicitation or inducement. For the avoidance of doubt, in this event that CLIENT purchases the Purpose-Built Facility, this Section 18.1 shall not apply with respect to the solicitation or hiring of LONZA’s or its Affiliates’ employees working in the Purpose-Built Facility prior to such purchase.

19. MISCELLANEOUS

19.1 Independent Contractors. Each of the Parties is an independent contractor and nothing herein contained shall be deemed to constitute the relationship of partners, joint venturers, nor of principal and agent between the Parties. Neither Party shall at any time enter into, incur, or hold itself out to Third Parties as having authority to enter into or incur, on behalf of the other Party, any commitment, expense, or liability whatsoever.

19.2 Force Majeure. Neither Party shall be in breach of this Agreement if there is any failure of performance under this Agreement (except for payment of any amounts due under this Agreement; provided, however, that a reasonable delay in payment necessitated by a Force Majeure Event, as defined below, shall not be a breach) occasioned by any reason beyond the reasonable control of, and without the fault or negligence of, the Party affected thereby, including, without limitation, an act of God, fire, flood, act of government or state, war, civil commotion, insurrection, acts of terrorism, embargo, sabotage, prevention from or hindrance in obtaining energy or other utilities, a shortage of raw materials or other necessary components, labor disputes of whatever nature, or any other reason beyond the reasonable control of, and without the fault or negligence of, the Party affected thereby (a "**Force Majeure Event**"). Such excuse shall continue as long as the Force Majeure Event continues. Upon cessation of such Force Majeure Event, the affected Party shall promptly resume performance under this Agreement as soon as it is commercially reasonable for the Party to do so. Each Party agrees to give the other Party prompt written notice of the occurrence of any Force Majeure Event, the nature thereof, and the extent to which the affected Party will be unable to fully perform its obligations under this Agreement. Each Party further agrees to use commercially reasonable efforts to correct the Force Majeure Event as quickly as practicable (provided that in no event shall a Party be required to settle any labor dispute) and to give the other Party prompt written notice when it is again fully able to perform such obligations.

19.3 Notices. Any notice required or permitted to be given under this Agreement by any Party shall be in writing and shall be (a) delivered personally, (b) sent by registered mail, return receipt requested, postage prepaid, (c) sent by a nationally-recognized courier service guaranteeing next-day or second day delivery, charges prepaid, or (d) delivered by facsimile (with documented evidence of transmission), to the addresses or facsimile numbers of the other Party set forth below, or at such other addresses as may from time to time be furnished by similar notice by any Party. The effective date of any notice under this Agreement shall be the date of receipt by the receiving Party.

If to Lonza:

Lonza Walkersville, Inc.
Attn: Vice President, Cell Therapy Bioservice
8830 Biggs Ford Road
Walkersville, Maryland 21793
Fax: (301) 845-6099

With a copy to:
General Counsel
Lonza America, Inc.

90 Boroline Road
Allendale, NJ 07401
Fax: (201) 696-3589

If to Client:

Mesoblast Switzerland SA
c/o Mesoblast Limited
Attn: Chief Executive Officer
Level 39, 55 Collins Street
Melbourne, Victoria 3000
Australia
Fax: +61 3 9639 6030

With a copy to:
General Counsel
Mesoblast Limited
Level 39, 55 Collins Street
Melbourne, Victoria 3000
Australia
Fax: +61 3 9639 6030

Either Party may change its address for notice by giving notice thereof in the manner set forth in this Section 19.3.

19.4 Entire Agreement; Amendments. This Agreement, including the Exhibits and Appendices attached hereto and referenced herein, constitutes the full understanding of the Parties and a complete and exclusive statement of the terms of their agreement with respect to the specific subject matter hereof and supersedes all prior agreements and understandings, oral and written, among the Parties with respect to the subject matter hereof, including the Process Development and Manufacturing Services Agreement, dated August 24, 2005, between Cambrex Bio Science Walkersville, Inc. and Mesoblast Limited (the "**Prior MSA**"). The Parties acknowledge that the Prior MSA is to be terminated by the parties to the Prior MSA by the Termination Agreement entered into concurrently with execution of this Agreement. No terms, conditions, understandings or agreements purporting to amend, modify or vary the terms of this Agreement (including any Appendix hereto) shall be binding unless hereafter made in a written instrument referencing this Agreement and signed by each of the Parties.

19.5 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to its conflicts of laws provisions. Subject to the arbitration provisions set forth in Section 19.13, the Parties consent to the exclusive jurisdiction of the state and federal courts in and for New York for enforcement of arbitration awards, application for interim relief pending resolution of arbitration, and any other dispute or claim arising from or relating to this Agreement.

19.6 Counterparts. This Agreement and any amendment hereto may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of

which shall constitute the same instrument. This Agreement shall be effective upon full execution by facsimile or original, and a facsimile signature shall be deemed to be and shall be as effective as an original signature.

19.7 Severability. If any part of this Agreement shall be found to be invalid or unenforceable under applicable law in any jurisdiction, such part shall be ineffective only to the extent of such invalidity or unenforceability in such jurisdiction, without in any way affecting the remaining parts of this Agreement in that jurisdiction or the validity or enforceability of the Agreement as a whole in any other jurisdiction. In addition, the part that is ineffective shall be reformed in a mutually agreeable manner so as to as nearly approximate the intent of the Parties as possible.

19.8 Titles and Subtitles. All headings, titles and subtitles used in this Agreement (including any Appendix hereto) are for convenience only and are not to be considered in construing or interpreting any term or provision of this Agreement (or any Appendix hereto).

19.9 Exhibits. All "RECITALS", "DEFINITIONS", exhibits and appendices referred to herein form an integral part of this Agreement and are incorporated into this Agreement by such reference.

19.10 Interpretation. Unless specified to the contrary, references to Articles, Sections or Exhibits mean the particular Articles, Sections or Appendices to this Agreement and references to this Agreement include all Exhibits hereto. Unless the context clearly requires otherwise, whenever used in this Agreement: (a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation," whether or not such additional words are written; (b) the word "or" shall have its inclusive meaning of "and/or" except when paired as "either/or"; (c) the word "day" or "quarter" or "year" means a calendar day or calendar quarter or calendar year unless otherwise specified; (d) the word "notice" shall require notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other communications contemplated under this Agreement; (e) the words "hereof," "herein," "hereunder," "hereby" and derivative or similar words refer to this Agreement (including the Exhibits hereto); (f) provisions that require that a Party, the Parties or a committee hereunder "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter or otherwise; (g) words of any gender include the other gender; (h) words using the singular or plural number also include the plural or singular number, respectively; (i) references to any specific law, article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement thereof; and (j) dollars (and amounts indicated with the symbol "\$") mean United States dollars unless expressly stated otherwise. Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under U.S. Generally Accepted Accounting Principles, or other generally accepted cost accounting principles in the applicable territory, but only to the extent consistent with its usage and the other definitions in this Agreement.

19.11 Assignment. This Agreement shall be binding upon the successors and assigns of the Parties and the name of a Party appearing herein shall be deemed to include the names of its successors and assigns. LONZA shall not assign its interest under this Agreement without the

prior written consent of CLIENT, such consent not to be unreasonably withheld; provided, however, LONZA shall be entitled to assign this Agreement, without the prior written consent of CLIENT but upon written notice to CLIENT, to an Affiliate of LONZA or to any person or entity that acquires all or substantially all of LONZA's assets or capital stock relating to the business or activities that are the subject matter of this Agreement, whether through purchase, merger, consolidation or otherwise. CLIENT may assign this Agreement upon written notice to LONZA. Any permitted assignment of this Agreement by either Party will be conditioned upon that Party's permitted assignee agreeing in writing to comply with all the terms and conditions contained in this Agreement. Any purported assignment in violation of the foregoing shall be void. No assignment shall relieve any Party of responsibility for the performance of any obligation that accrued prior to the effective date of such assignment.

19.12 Waiver. The failure of any Party at any time or times to require performance of any provision of this Agreement (including any Appendix hereto) will in no manner affect its rights at a later time to enforce the same. No waiver by any Party of any term, provision or condition contained in this Agreement (including any Appendix hereto), whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition or of any other term, provision or condition of this Agreement (including any Appendix hereto).

19.13 Dispute Resolution. If the Parties are unable to resolve a dispute, despite its good faith efforts, either Party may refer the dispute to the President of each Party's respective business unit (or other designee having authority to resolve the dispute). In the event that no agreement is reached by the Presidents (or other designees) with respect to such dispute within thirty (30) days after its referral to them, either Party may refer such matter (other than disputes regarding the scope, validity or enforceability of any patent right) for resolution by arbitration as set forth in this Section 19.13. With respect to disputes regarding the scope, validity or enforceability of any patent right, either Party may pursue such matter with any court or governmental authority with competent jurisdiction, and seek any and all corresponding remedies that may be available at law or in equity.

19.13.1 Arbitration. Except with respect to disputes regarding the scope, validity or enforceability of any patent right, or matters subject to short-form arbitration as set forth in Section 19.13.2 below, the Parties agree that any dispute or controversy arising under this Agreement, or regarding the validity, enforceability, construction, performance, alleged breach or enforcement of this Agreement, shall be finally settled by binding arbitration under this Section 19.13.1 under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "ICC Rules") by one or more arbitrators appointed in accordance with the rules thereof and the decisions of the arbitrator shall be final and binding on the Parties hereto. The place of the arbitration proceeding shall be in New York, New York. The Parties agree that the decision shall be the sole, exclusive and binding remedy between them regarding determination of the matters presented to the arbitrator. The costs of such arbitration, including administrative and arbitrator's fees, shall be shared equally by the Parties, and each Party shall bear its own expenses and attorney's fees incurred in connection with the arbitration. The Parties shall use good faith efforts to complete arbitration under this Section 19.13.1 within ninety (90) days following the initiation of such arbitration, and the arbitrator shall establish reasonable additional procedures to facilitate and complete such arbitration within such ninety-(90) day period.

19.13.2 Short Form Arbitration for Certain Pricing Disputes. In the event the Parties are unable to agree upon the initial base price schedule for a given Product, or annual adjustments thereto, for Late Stage Clinical and Commercial Supply as described in Section 4.13.2 above, such matter shall, after referral of the matter to arbitration by either Party, be resolved by final binding arbitration in accordance with the procedures set forth in Section 19.13.1, except that the procedures for the conduct of the arbitration shall be modified as follows:

(a) Arbitration under this Section 19.13.2 shall be conducted by a single neutral arbitrator, selected in accordance with ICC Rules, or as otherwise agreed by the Parties. The arbitrator shall engage an independent expert with relevant experience in biopharmaceutical manufacturing, and pricing thereof, to advise the arbitrator.

(b) Each Party shall provide the arbitrator and the other Party with a written report providing (i) such Party's proposal for pricing for Late Stage Clinical and Commercial Supply of the applicable Product (together with the pricing last proposed by such Party to the other Party, if different), and (ii) a brief written explanation (not to exceed 15 pages excluding any supporting affidavits, unless requested by the arbitrator) of such Party's position and reasoning regarding why such proposed pricing is reasonable for Late Stage Clinical and Commercial Supply of the applicable Product such pricing. Each Party may submit a revised report and position to the arbitrator within fifteen (15) days of receiving the other Party's report. If so requested by the arbitrator, each Party shall make oral or other written submissions to the arbitrator in accordance with procedures to be established by the arbitrator; provided that other Party shall receive copies of all written submissions and have the right to be present during any oral submissions. The arbitrator shall then determine the pricing that will apply under this Agreement with respect to such Late Stage Clinical and Commercial Supply of the applicable Product; *provided, however*, that such pricing shall not be below the lowest pricing proposal, or above the highest pricing proposal, submitted by the Parties to the arbitrator.

(c) In an arbitration under this Section 19.13.2, the arbitrator shall not have the authority to modify or amend any terms or conditions of this Agreement or render any substantive decision on any open issue other than to determine the pricing for Late Stage Clinical and Commercial Supply of the applicable Product.

(d) In any arbitration under this Section 19.13.2, the arbitrator and the Parties shall use their Best Efforts to resolve such matter within thirty (30) days after the selection of the arbitrator or as soon thereafter as is practicable, and the arbitrator shall establish reasonable additional procedures to facilitate and complete such arbitration within such thirty-(30) day period.

19.14 No Presumption Against Drafter. For purposes of this Agreement, CLIENT hereby waives any rule of construction that requires that ambiguities in this Agreement (including any Appendix hereto) be construed against the drafter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last signed by the Parties hereto.

MESOBLAST SWITZERLAND SA

By: _____
Name:
Title:

LONZA WALKERSVILLE, INC.

By: _____
Name:
Title:

LONZA BIOSCIENCE SINGAPORE PTE. LTD.

By: _____
Name:
Title:

Date

Date

Date

Exhibit 1.47

Validated and Ready

Without limiting the definition set forth in Section 1.47 of the Agreement, the following must be successfully completed to the reasonable satisfaction of CLIENT in order for the Singapore Facility to be “Validated and Ready”:

1. All material certifications of the Singapore site and certificate of occupancies
2. All material instrumentation in place with IQ, OQ, and PQ, if applicable, completed and signed off
3. Quality Assurance program in place
4. Implementation of all relevant material SOPs
5. Quality Control processes validated
6. Aseptic validation by media challenge
7. Completion of three independent half scale runs with complete QC testing. Each of these runs must pass current release criteria for MPC production for Products.
8. Completion of a 3 month environmental monitoring program within facility. Documentation of a plan for continuing the EM plan for 1 year.
9. Validation of the storage facility, containers and shipping procedures.
10. Final report on all studies.
11. Written Technology Transfer Protocol (TPP) for transfer of MPC manufacturing process from the Walkersville Facility to the Singapore Facility in place and approved by CLIENT manufacturing/quality groups
12. Validation of the facilities (e.g., HVAC systems), clean utility systems (e.g., WFI, PW, CA, and other medical gasses used, and manufacturing and quality control equipment used for manufacture and control of the cellular therapy product(s). These validation activities must materially conform to the standards and requirements of the Lonza Corporate Quality Management System.
13. Any computerized manufacturing and / or control systems must also be validated according to the Good Automated Manufacturing Practice (GAMP) Guides published by the International Society of Pharmaceutical Engineers (ISPE).
14. Any quality control (QC) test methods related to patient safety, e.g., sterility, mycoplasmas, and apyrogenicity by LAL, must be validated according to the USP/EP to the same extent as they are currently done in the Walkersville Facility.

15. Any non-compedia QC methods must be qualified (and, at CLIENT's election validated) according to the requirements of the USP to the same extent as they are currently done in the Walkersville Facility.
16. The bio-analytical methods must be qualified to the same extent as they are currently done in the Walkersville Facility
17. Any additional assays used for additional characterization of the cells must be qualified to the same extent as they are currently done in the Walkersville Facility.



Exhibit 4.7.3(c)(ii)(A)

List of Certain Technology not Subject to CMO License Royalty

- [***],
- [***],
- [***],
- [***],
- [***],
- [***],
- [***],
- [***],

and all other Intellectual Property incorporated in any batch records prior to the date of this Agreement



Exhibit 4.7.3(c)(ii)(B)

Three-Way CDA for Tech Transfer

CONFIDENTIALITY AGREEMENT
(the "Agreement")

between

[Insert Lonza Entity and Address] ("Lonza")

and

[Insert First Counterparty Name and Address] ("Company 1"),

and

[Insert MSB Entity Name and Address] ("MSB"),

Each of Company 1, MSB and Lonza are individually referred to herein as a "Party" and, as more than one Party, the "Parties".

Effective as of [Insert Date] (the "Effective Date")

Recitals

WHEREAS, Lonza (or its Affiliate) and MSB (or its Affiliate) have entered into that certain Manufacturing Services Agreement dated [Insert date] (the "Lonza-MSB MSA")

WHEREAS, the Parties anticipate making certain confidential information available to each other relating to technology transfer from Lonza to [Company 1] for [Company 1's] use in manufacturing MPC Products (as defined in the Lonza-MSB MSA) for MSB and its Affiliates and designees, as provided for under the Lonza-MSB MSA (such technology transfer and/or manufacturing referred to herein as the "Purpose");

WHEREAS, the Parties desire to regulate the terms and conditions of how such Confidential Information is to be shared and treated by the Parties in order to define the obligations of the Receiving Party and protect the interests and proprietary rights of the Disclosing Party with respect to the Confidential Information;

WHEREAS, the Parties acknowledge that the Confidential Information of each Party is commercially valuable and secret and has the potential to remain secret for a quantified number of years after the disclosure made under this Agreement;

1. For the purposes of this Agreement:
 - (a) “Affiliate” means any company, partnership or other entity which directly or indirectly Controls, is Controlled by or is under common Control with the relevant Party to this Agreement. “Control” means the ownership of more than fifty per cent (50%) of the issued voting share capital of an entity or any other comparable equity or ownership interest, or the legal power to direct or cause the direction of the management of the Party in question.
 - (b) “Disclosing Party” means the Party disclosing Confidential Information to another Party.
 - (c) “Confidential Information” means all confidential or proprietary information disclosed by a Disclosing Party relating to the Purpose, including but not limited to information with respect to the Disclosing Party’s customers, competitors, suppliers, manufacturers, sales and marketing plans, market share, pricing and other commercial terms, strategies or data, raw material uses, patent or other intellectual property rights or licenses, personnel, consultants, process know-how or other trade secrets, scheduling, product specifications, formulations, equipment, or tooling, and any samples provided hereunder, as well as information derived therefrom. Confidential Information shall also include the Confidential Information of each Party’s Affiliates, disclosure of which shall be governed by the terms of this Agreement.
 - (d) “Purpose” has the meaning as defined in the first Recital above.
 - (e) “Receiving Party” means the Party receiving Confidential Information from another Party.
2. The Receiving Party agrees to strictly keep secret any and all Confidential Information received from or on behalf of another Party using at least the same level of measures as it uses to protect its own Confidential Information, but in any case at least commercially reasonable and customary efforts. Confidential Information shall include information disclosed in any form including but not limited to in writing, orally, graphically or in electronic or other form to the Receiving Party, observed by the Receiving Party or its employees, agents, consultants, or representatives, or otherwise learned by the Receiving Party under this Agreement, which the Receiving Party knows or reasonably should know is confidential or proprietary.
3. Notwithstanding the foregoing, Receiving Party may disclose to any courts and/or other authorities Confidential Information which is or will be required pursuant to applicable governmental or administrative or public law, rule, regulation or order. For the avoidance of doubt, the foregoing includes, without limitation, disclosure to regulatory authorities in connection with seeking, obtaining or maintaining regulatory approval of pharmaceutical products containing, or made using, MPCs (as defined in the Lonza-MSB MSA). In such case each Party that received the Confidential Information will to the extent legally permitted, inform the other Parties promptly in writing and cooperate with the Disclosing Party in seeking to minimize the extent of Confidential Information which has to be disclosed to the courts and/or authorities.
4. The obligation to maintain confidentiality under this Agreement does not apply to Confidential Information, which:
 - (a) at the time of disclosure was publicly available; or
 - (b) is or becomes publicly available other than as a result of a breach of this Agreement by the first Receiving Party; or

- (c) the Receiving Party can establish by competent proof, was rightfully in its possession at the time of disclosure by the Disclosing Party and had not been received directly or indirectly from Disclosing Party; or
 - (d) is supplied to a Receiving Party by a third party which was not in breach of an obligation of confidentiality to Disclosing Party or any other party; or
 - (e) is developed by the Receiving Party independently from and without use of the Confidential Information, as evidenced by contemporaneous written records.
5. The Receiving Party will use Confidential Information only for the Purpose and will not make any use of the Confidential Information for its own separate benefit or the benefit of any third party including, without limitation, with respect to research or product development or any reverse engineering or similar testing. Upon termination or expiration of this Agreement, the Receiving Party agrees to return or destroy promptly (and certify such destruction), on the Disclosing Party's request, all written or tangible Confidential Information of the Disclosing Party, except that one copy of such Confidential Information may be kept by the Receiving Party in its confidential files for record keeping purposes only. Notwithstanding the foregoing, Lonza and MSB acknowledge and agree that this Agreement does not limit the rights of Lonza (or its Affiliate) and MSB (or its Affiliate) under the Lonza-MSB MSA, and that, as between Lonza and its Affiliates and MSB and its Affiliates, all Confidential Information disclosed by Lonza and its Affiliates and MSB and its Affiliates in connection with this Agreement shall be governed by the Lonza-MSB MSA and not by this Agreement.
6. Each Receiving Party will restrict the disclosure of Confidential Information to such officers, employees, consultants and representatives of itself and its Affiliates who have been informed of the confidential nature of the Confidential Information and who have a need to know such Confidential Information for the Purpose. Prior to disclosure to such persons, the Receiving Party shall bind its officers, employees, consultants and representatives by confidentiality obligations no less stringent than those set forth herein. The Receiving Party shall notify the Disclosing Party as promptly as practicable of any unauthorized use or disclosure of the Confidential Information.
7. The Receiving Party shall at any time be fully liable for any and all breaches of this Agreement by itself, any of its employees, consultants and representatives of itself or its Affiliates.
8. The Parties shall not be obligated under this Agreement to enter into any further agreement with another Party relating to the Confidential Information or otherwise. For the avoidance of doubt, the foregoing sentence shall not be construed to limit any such obligation of Lonza or MSB that may exist or arise under the Lonza-MSB MSA. Disclosing Party grants no license or other rights to Receiving Party to use the Confidential Information outside the Purpose.
9. This Agreement shall automatically terminate on the second (2nd) anniversary of the Effective Date, or for such longer time as [Company 1] manufactures Products (as defined in the Lonza-MSB MSA) for MSB or its Affiliates or designees. The obligations of confidentiality, non-disclosure and non-use set forth herein shall remain in full force and effect during the term of this Agreement and for a period of five (5) years thereafter.

10. If any provision hereof is or becomes at any time illegal, invalid or unenforceable in any respect, neither the legality, validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby. The Parties hereto undertake to substitute any illegal, invalid or unenforceable provision by a provision which is as far as possible commercially equivalent considering the legal interests and the Purpose.
11. Modifications and/or amendments of this Agreement must be in writing and signed by the Parties. Any Party may assign or otherwise transfer this Agreement without the express written consent of the other Parties. Any purported assignment or delegation in violation of this Clause shall be void.
12. Each Party hereto expressly agrees that any breach or threatened breach of the undertakings of confidentiality provided hereunder by a Party may cause irreparable harm to the other Parties (the "Non-Breaching Party") and that money damages may not provide a sufficient remedy to the Non-Breaching Party for any breach or threatened breach. In the event of any breach and/or threatened breach, then, in addition to all other remedies available at law or in equity, the Non-Breaching Party shall be entitled to seek injunctive relief and any other relief deemed appropriate by the Non-Breaching Party.
13. This Agreement is governed in all respects by the State of New York. The Parties agree to submit to the jurisdiction of the courts of the State of New York.
14. This Agreement contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. Each Party acknowledges that an original signature or a copy thereof transmitted by facsimile or by .pdf shall constitute an original signature for purposes of this Agreement.

Accepted and signed on behalf of

[Insert Lonza Entity]

[Insert Company 1's Name]

Signature(s)

Signature(s)

Printed Name(s) and Title(s)

Printed Name(s) and Title(s)

[Insert MSB Entity]

Signature(s)

Printed Name(s) and Title(s)

Exhibit 9.4.1

Terms Regarding Pre-Build Activities

The terms set forth in this Exhibit 9.4.1 shall apply from and after such time, if any, as CLIENT notifies LONZA in writing pursuant to Section 9.4.1 of the Agreement that CLIENT wishes the Parties to undertake the Pre-Build Activities. CLIENT may terminate the Pre-Build Activities described in this Exhibit 9.4.1 upon written notice to LONZA, in which event (i) both Parties shall use reasonable efforts to wind down all Pre-Build Activities and cancel those pre-build expenses which are cancellable and (ii) CLIENT shall reimburse LONZA for all costs and expenses incurred by LONZA through the date of termination of the Pre-Build Activities, including costs and expenses arising from or relating to a Lease/Purchase Option Agreement for the applicable site, if applicable. Notwithstanding the foregoing, in the event that a Lease/Purchase Option Agreement for the applicable site has been executed and LONZA either (a) retains lease rights to the applicable site thereunder and subsequently occupies the site, or transfers or subleases its lease rights under the Lease/Purchase Option Agreement to a Third Party for consideration, or (b) LONZA retains and subsequently exercises an option to lease or purchase the applicable site the Lease/Purchase Option Agreement, then CLIENT shall not be obligated to reimburse LONZA for amounts spent under such Lease/Option Agreement, subject to the following sentence, and if CLIENT has previously reimbursed LONZA therefor, LONZA shall then reimburse CLIENT, subject to the following sentence, for such amounts at such time as LONZA occupies such site, receives consideration for such transfer or sublease, or exercises such option to lease or purchase the applicable site. In the event that a Lease/Purchase Option Agreement for the applicable site has been executed and LONZA maintains such Lease/Purchase Option Agreement and the applicable site after the date of termination of the Pre-Build Activities, then each Party shall continue to bear its fifty percent (50%) of the costs and expenses related thereto through the date of termination of the Pre-Build Activities and for an additional period which shall expire on the earlier of (i) twelve (12) months after the date of termination of the Pre-Build Activities, (ii) the date LONZA receives consideration for a transfer or sublease to a Third Party or (iii) the date LONZA exercises an option to lease or purchase the applicable site.

A. **“Pre-Build Activities”** shall mean the activities engaged in to select and evaluate potential sites for the Purpose-Built Facility and establish Preliminary Construction Plans therefor pursuant to the terms of this Exhibit 9.4.1.

B. **Joint Pre-Build Committee.** Within thirty (30) days after the Pre-Build Notice under Section 9.4.1, the Parties shall establish a Joint Pre-Build Committee (or “JPBC”) for the overall coordination and oversight of the Parties’ Pre-Build Activities. The JPBC shall: (a) identify potential sites, collect information regarding such sites, and identify the lead site, (b) review, coordinate, and discuss the overall conduct of pre-construction activities with respect to the design and construction of the Purpose-Built Facility, and monitor the progress of such activities; (c) prepare and approve the Pre-Build Plan and Budget, and periodically review and amend the Pre-Build Plan and Budget in accordance with Section C.5 of this Exhibit 9.4.1; (d) review and approve the Preliminary Construction Plans in accordance with Sections C.1 through C.6 of this Exhibit 9.4.1 and the selection of Subcontractors in accordance with Section C.7 of this Exhibit 9.4.1; (e) serve as a forum for the Parties to exchange information and

keep the Parties informed with respect to matters pertaining to and status and results of the Pre-Build Activities; and (f) perform such other functions as expressly provided under this Agreement or as otherwise determined in writing by the Parties. The JPBC shall have only the powers assigned expressly to it in the provisions of this Section B of Exhibit 9.4.1, and shall not have any power to amend, modify or waive compliance with this Exhibit 9.4.1 or the Agreement.

B.1 Membership. Each Party shall designate two (2) representatives to serve on the Joint Pre-Build Committee by written notice to the other Party. Each Party may replace one or more of its JPBC representatives from time to time upon written notice, and either Party may designate substitutes for its representatives if one or more of its designated representatives is unable to be present at a meeting. CLIENT shall designate one of its representatives as “JPBC Secretary,” and the JPBC Secretary shall be responsible for (a) scheduling and organizing meetings, (b) preparing and circulating minutes of JPBC meetings, and (c) preparing and circulating agendas for upcoming JPBC meetings. The JPBC Secretary will include in the upcoming agenda any items requested by any other JPBC representative, and shall have no special authority over the other members of the Joint Pre-Build Committee.

B.2 Meetings.

B.2.1 Conduct. The JPBC shall meet at least monthly either (a) in person at either Party’s facilities or at such locations as the Parties may otherwise agree; or (b) by audio or video teleconference; provided that at least two (2) such meetings per year shall be in person. Meetings of the JPBC shall be effective only if at least one (1) representative of each Party is present. With the prior consent of the other Party’s representatives (such consent not to be unreasonably withheld or delayed), each Party may invite non-members to participate in the discussions and meetings of the JPBC, provided that such participants shall have no vote and shall be subject to the confidentiality obligations set forth in the Agreement. Additional meetings of the JPBC may also be held with the consent of each Party, and neither Party will unreasonably withhold or delay its consent to hold any such additional meeting. Each Party shall be responsible for the expenses incurred with respect to participation of its own personnel in the JPBC.

B.2.2 Progress Report. At each meeting of the JPBC, each Party shall summarize to the JPBC the progress of the Pre-Build Activities performed by or under authority of such Party or its Affiliates during the period since the last meeting of the JPBC, including all material decisions and actions relating to the Preliminary Construction Plans.

B.2.3 Joint Pre-Build Committee Decision Making. Decisions of the JPBC shall be made by consensus, with each Party having one (1) vote. Except as otherwise provided herein, if the JPBC cannot reach agreement on any matter for which it is responsible within fifteen (15) days after the date such matter was initially referred to the JPBC, then such matter shall be referred, by either Party upon written notice to the other Party, to the Senior Executives for attempted resolution by good faith negotiations. In the event that the Senior Executives are unable to resolve such matter within fifteen (15) days after such notice of referral, then (i) CLIENT shall have the final decision making authority with respect to the jurisdiction in which the Purpose-Built Facility will be built so long as the jurisdiction selected by CLIENT is one of the Agreed Countries, as defined in Section 4.7.3(c)(ii)(B)(1) of the Agreement, or India

or China (and otherwise, the consent of LONZA shall be required, such consent not to be unreasonably withheld), and specifications and technical requirements related to the MPC Technology or Products (including specifications therefor), and (ii) LONZA shall have the final decision making authority with respect to the Construction Planning Parameters for the construction of the Purpose-Built Facility (other than technical requirements specifically related to the MPC Technology or Products), the selection, engagement and management of Subcontractors for the Pre-Build Activities and the Preliminary Construction Budget and Schedule (and any changes thereto), and (iii) other matters, including the Pre-Build Plan and Budget (and any changes thereto), location of the Final Site (following selection of the jurisdiction by the JPBC or, if applicable, by CLIENT, in accordance with the terms set forth above), and the terms of the Lease/Purchase Option Agreement shall be subject to veto by either Party (provided, however, that in such event each Party shall reasonably endeavor in good faith, upon written request of either Party, to attempt to reach a mutually agreed resolution on such matter).

B.3 Guidelines. The JPBC shall perform its responsibilities under this Agreement based on the principles of facilitating completion of the Pre-Build Activities in a timely and expeditious manner while maximizing efficiencies in cost and minimizing, if practicable, increases in costs beyond the budgeted amounts set forth in the initial Pre-Build Plan and Budget. In all matters relating to this Agreement, each Party shall seek to comply with good pharmaceutical and environmental practices consistent with its own existing practices. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between CLIENT and LONZA with respect to all Pre-Build Activities is that of independent contractors, and neither Party shall have the power to bind or obligate the other Party in any manner, other than as may be expressly set forth in this Exhibit 9.4.1 or the Agreement. The Parties acknowledge that the JPBC committee structure and decision-making process set forth herein is independent of, and does not supplant, each Party's internal decision-making structures.

C. Pre-Build Activities.

C.1 Site Selection.

C.1.1 Jurisdiction; Initial Sites. Within sixty (60) days after the formation of the JPBC, the JPBC shall select, with the cooperation of and input from CLIENT and LONZA, the jurisdictions in which to locate the Purpose-Built Facility. Upon selection of the particular jurisdiction in which the Purpose-Built Facility will be located, the JPBC shall prepare a list of potential sites within such jurisdiction for the Purpose Built Facility for further evaluation pursuant to Section C.1.2 below ("Initial Sites"). The Parties acknowledge that CLIENT may evaluate the potential tax and/or other advantages of various jurisdictions and discuss such matters with governmental officials or others prior to providing the Pre-Build Notice, and LONZA agrees to discuss and reasonably assist with respect to such matters prior to CLIENT's Pre-Build Notice, as CLIENT may from time to time request on an ad hoc basis.

C.1.2 Initial Site Evaluation. The JPBC shall evaluate each Initial Site to determine the feasibility of constructing the Purpose-Built Facility at such Initial Site, including identification of any significant plant, equipment, zoning, building code, entitlement or

other governmental compliance issues (including transportation issues) that may exist in constructing the Purpose-Built Facility at such Initial Site and consideration of potential advantages of co-locating the Purpose-Built Facility near other LONZA facilities (including advantages from shared services and the like). LONZA may conduct inspections, evaluations, surveys and tests as may be necessary or appropriate to determine the feasibility of constructing the Purpose-Built Facility at such Initial Sites, consistent with the Pre-Build Plan and Budget.

C.1.3 Final Site Selection. The JPBC shall prepare an evaluation of the Initial Sites, including any issues identified by the JPBC with respect to the feasibility of constructing the Purpose-Built Facility at such Initial Site and potential plans for addressing such issues. Within thirty (30) days of completion of such evaluations, the JPBC shall select one (1) site (the "Final Site"), and may designate one or more back-up sites, and the Parties shall establish Preliminary Construction Plans pursuant to Section C.2 below for such Final Site. Promptly following determination of the Final Site, the JPBC shall prepare proposed terms and conditions for an option to lease or purchase such Final Site for use in connection with the Purpose-Built Facility consistent with this Agreement ("Proposed Terms"), which option shall be assignable and transferable to CLIENT without requiring consent or approval from any Third Party, and, if applicable, LONZA (and, at LONZA's request, the JPBC members) shall engage in good faith negotiations with the owner of such Final Site to enter into a written agreement for an exclusive option to lease or purchase such Final Site on such Proposed Terms ("Lease/Purchase Option Agreement"). To the extent such negotiations require material deviations from the Proposed Terms, LONZA shall first submit such proposed deviations to the JPBC. The JPBC shall review, and approve or disapprove, any such proposed deviations within fifteen (15) days after receipt; provided that CLIENT shall not be obligated to enter into the Lease/Purchase Option Agreement.

C.2. Preliminary Construction Plans. Promptly following formation of the JPBC, the Parties shall undertake preliminary activities related to the design and building of a Purpose-Built Facility suitable for the manufacture, in accordance with then-current Current Good Manufacturing Practices, of commercial supplies of Products to be supplied to CLIENT under the terms and conditions of the Agreement, based upon then-current best good faith estimates of forecasted supply requirements for such commercial supply of Products, and the Parties shall cooperate, in accordance with the terms and conditions of this Exhibit 9.4.1 and the Agreement, to select and evaluate the potential location, design, and construction of the Purpose-Built Facility and establish preliminary plans to build such Purpose-Built Facility ("Preliminary Construction Plans"). The Preliminary Construction Plans shall include (i) the location of the Final Site as determined in accordance with Section C.1 of this Exhibit 9.4.1 and any Proposed Terms and Lease/Purchase Option Agreement prepared in accordance with Section C.1.3 above; (ii) the Schematic Design Documents prepared in accordance with Section C.6.1 below; (iii) Design Development Documents prepared in accordance with Section C.6.2 below; (iv) Preliminary Construction Budget and Schedule prepared in accordance with Section C.6.2 below; and (v) such other documents or information as the JPBC reasonably concludes are necessary for making a go/no-go decision with respect to whether to proceed with construction of the Purpose-Built Facility. The Parties shall reasonably endeavor to complete the Preliminary Construction Plans as expeditiously as practicable. Following the JPBC's approval of the complete set of Preliminary Construction Plans pursuant the terms of this Section C, the JPBC shall provide to the Parties copies of the complete set of Preliminary Construction Plans as reviewed and approved by the JPBC.

C.3 Construction Planning Parameters. Within ninety (90) days following CLIENT's Pre-Build Notice, the Parties shall prepare and submit to the JPBC for approval an initial set of planning parameters related to the construction of the Purpose Built Facility, which shall include manufacturing requirements and specifications for Products, preliminary proposals and recommendations regarding architectural and design concepts and strategy, space requirements and adjacency relationships, number and functional responsibilities of personnel, implementation of capital equipment and systems (including usage of equipment and systems with MPC Technology in the manufacture of Products), human and material flow patterns, regulatory and governmental approval requirements and strategies, construction schedule requirements and construction budget requirements ("Construction Planning Parameters"). For the avoidance of doubt, the Construction Planning Parameters may include additional parameters beyond those described above upon approval of the JPBC. The JPBC may from time to time update the Construction Planning Parameters, and shall review and consider for approval any modifications or adjustments to the Construction Planning Parameters submitted by either Party within thirty (30) days of receipt of such proposed modifications or adjustments. The Construction Planning Parameters approved by the JPBC shall guide the Parties in performing the Pre-Build Activities and making decisions, through the JPBC, in establishing the Preliminary Construction Plans.

C.4 General Contractor; Task List. The Parties acknowledge that LONZA has prior knowledge and expertise in performing activities similar to the Pre-Build Activities, and agree that LONZA shall act in the role of a general contractor in performing the Pre-Build Activities, subject to the terms and condition of this Agreement. In furtherance of this role, LONZA shall regularly consult with the CLIENT, via the JPBC, regarding the Pre-Build Activities, including regarding the selection and use of potential sites and improvements thereto and selection of materials, building systems and equipment, and shall provide recommendations on construction feasibility and time requirements for procurement, installation and construction completion. LONZA shall have discretion regarding the manner in which it performs the Pre-Build Activities; provided, however, that such activities shall be conducted in accordance with the Pre-Build Plan and Budget and this Agreement. Within ninety (90) days of the JPBC's approval of the Construction Planning Parameters pursuant to Section C.3 above, LONZA shall prepare and submit to the JPBC a written task list (the "Pre-Build Task List") setting forth: (a) a description of the particular tasks within the Pre-Build Activities that will be performed directly by LONZA and/or its Affiliates, together with an estimate of costs therefor calculated based on expected payments to Third Parties (and excluding payment for time of such Party's or its Affiliates' personnel, which pursuant to Section D below are not shared), and (b) a description of the remaining tasks within the Pre-Build Activities (which may be subcontracted for performance by Subcontractors in accordance with Section C.7 below), together with an estimate of costs therefor. LONZA shall not delegate or otherwise transfer its responsibilities as general contractor under this Agreement without the prior written consent of the JPBC; *provided* that LONZA may utilize its Affiliates, and may engage Subcontractors in accordance with Section C.7 below, to assist with such responsibilities.

C.5 Pre-Build Plan and Budget. Within ninety (90) days of LONZA's submission of the Pre-Build Task List to the JPBC, the JPBC shall prepare and approve a workplan based upon the Construction Planning Parameters, including timelines and budget, for the Pre-Build Activities (the "Pre-Build Plan and Budget"). The JPBC shall review the Pre-

Build Plan and Budget, and if necessary approve updates or amendments thereto, at least once per quarter; provided that as a Subcontractor is engaged to perform a particular task pursuant to Section C.7 below, the JPBC shall update the Pre-Build Plan and Budget to reflect the actual amount proposed in the bid submitted by such Subcontractor. In the event LONZA anticipates or becomes aware that the costs of performing Pre-Build Activities will exceed the budgeted amount set forth for such activities under the Pre-Build Plan and Budget, LONZA shall notify the JPBC so that the JPBC can discuss the nature, cause and scope of the overrun and discuss whether to approve a change in the budget, a modification of the activities or timelines therefor, or take other action to address such overrun. The JPBC shall not increase the overall total budget under the Pre-Build Plan and Budget to an amount more than one hundred ten percent (110%) of the total budget set forth in the first approved Pre-Build Plan and Budget without the prior written consent of CLIENT and LONZA.

C.6 Design Development.

C.6.1 Schematic Design. Based on the Construction Planning Parameters and any modifications or adjustments thereto approved by the JPBC pursuant to Section C.3 above and the selection of the Final Site pursuant to Section C.1.3 above, LONZA shall prepare and submit to the JPBC for its review and approval schematic drawings, descriptive specifications and other documents appropriate to the design of the Purpose-Built Facility for the manufacture of Products, illustrating and describing the concept, quality, layout, scale and relationship of the Purpose-Built Facility components and equipment, which documents are collectively referred to as the "Schematic Design Documents." The Parties acknowledge that the conceptual design of the Purpose-Built Facility may initially be based upon LONZA's existing manufacturing facilities located in Singapore, as modified by the Construction Planning Parameters. The Parties shall, however, review alternative designs and construction methods relating to the Purpose-Built Facility as appropriate to accommodate the requirements and specifications for the MPC Technology and the manufacture and supply of Products.

C.6.2 Design Development and Preliminary Construction Budget and Schedule. Upon the JPBC's approval of the Schematic Design Documents for the Purpose-Built Facility, LONZA shall prepare and submit to the JPBC preliminary drawings of sufficient detail to describe the size, shape, configuration, and quantity of typical and non-typical elements of the Purpose-Built Facility, outline specifications and other documents that fix and describe the size and character of the Purpose-Built Facility as to architecture, engineering, structure, layout, electrical systems, mechanical systems, plumbing systems, materials and equipment, all of which documents are collectively referred to herein as the "Design Development Documents." Based on such Design Development Documents, LONZA shall further prepare and submit to the JPBC for approval a detailed preliminary budget and schedule of proposed work tasks to be completed and estimated costs to be incurred for the construction of the Purpose-Built Facility, which may utilize area, volume or similar conceptual estimating techniques and including schedules for procurement of long-lead time materials and equipment and cost evaluations of alternative materials and systems (the "Preliminary Construction Budget and Schedule").

C.7 Third Party Contractors.

C.7.1 **Subcontractors.** LONZA shall engage licensed and properly qualified subcontractors, sub-subcontractors, laborers, architects, design professionals, engineers, surveyors, consultants, attorneys, equipment lessors, and material suppliers (collectively, “Subcontractors”), subject to and in accordance with Section C.7.2 below and the terms and conditions of this Exhibit 9.4.1 and the Agreement, to perform Pre-Build Activities described in this Exhibit 9.4.1 that are not conducted directly by LONZA or its Affiliates. Prior to the engagement of any Subcontractors to perform Pre-Build Activities, LONZA shall prepare and submit to the JPBC (i) a list of at least three (3) potential Subcontractors to perform any Pre-Build Activities, together with proposed bids from each such Subcontractor, and (ii) LONZA’s analysis and recommendations for selecting a Subcontractor. LONZA agrees to use reasonable efforts to identify and obtain bids from three (3) potential Subcontractors with qualifications to perform the applicable Pre-Build Activities, but work may be subcontracted to a Subcontractor without first obtaining and reviewing bids from three (3) potential Subcontractors, but following discussion by the JPBC, provided that the cost for work by such Subcontractor is within the budgeted amounts therefor in the Pre-Build Plan and Budget and provided that arrangements with such Subcontractor are otherwise in compliance with the terms of this Agreement. Within ten (10) days of the receipt of such information, the JPBC shall review and approve one (1) Subcontractor to perform such activities.

C.7.2 **Subcontracting.** LONZA, in fulfilling the role of a general contractor, shall have responsibility to engage and manage all Subcontractors to perform the Pre-Build Activities pursuant to written subcontract agreements or material purchase orders, as applicable (each, a “Subcontract”). LONZA shall be responsible for ensuring that all Subcontractors comply with the terms and conditions of this Agreement and shall remain responsible to CLIENT for all activities of Subcontractors to the same extent as if such activities had been undertaken by LONZA itself. Without limiting the foregoing, LONZA shall ensure that all Subcontracts, so far as practicable, contain terms and conditions consistent with this Agreement, including Sections C.1 through C.7 of this Exhibit 9.4.1 to the extent applicable to Subcontractors. LONZA shall hold all Subcontractors, including all persons directly or indirectly employed by them, responsible for any damages due to breach of contract, negligence, willful misconduct or intentional wrongful omission and shall use reasonable diligent efforts to recover such damages. Nothing contained in this Agreement shall create a contractual relationship between CLIENT and such Subcontractors. LONZA shall keep the CLIENT, via the JPBC, reasonably informed from time to time regarding the negotiation of, and progress toward entering into, the various Subcontracts, and LONZA shall reasonably consult with CLIENT, via the JPBC, regarding the financial and other material terms of any Subcontract that are outside of the scope of a bid approved by the JPBC for such Subcontract, and the financial and other material terms of any Subcontract that was not the subject of a bid approved by the JPBC. LONZA shall not enter into any Subcontract which imposes obligations directly on CLIENT, or which contains terms that are not consistent with this Agreement, without the prior written approval of CLIENT.

D. **Sharing of Expenses; Reimbursement.** The Parties shall share costs relating to the conduct of Pre-Build Activities under this Exhibit 9.4.1 as set forth in this Section D. Within thirty (30) days of the end of each calendar quarter during which Pre-Build Activities are

conducted, the Parties shall each provide to the JPBC a detailed accounting of external costs and expenses paid to Third Parties, excluding expenses for participation in the JPBC, relating to the performance of Pre-Build Activities in accordance with Pre-Build Plan and Budget during such calendar quarter. Promptly following receipt, the JPBC shall reconcile such accountings and determine the amount of a single reconciled net payment due from one Party to the other so that each Party will bear [***] of such costs, which amount the paying Party shall pay to the other within thirty (30) days after such amount is determined by the JPBC. Each Party shall bear its internal costs and expenses for the performance of Pre-Build Activities under this Agreement as such internal costs and expenses are incurred, including the time of its and its Affiliate's employees engaged in such activities; provided, however, that if CLIENT reimburses LONZA for all costs and expenses incurred by LONZA as set forth in the initial paragraph of this Exhibit 9.4.1, such reimbursement shall include reimbursement of LONZA's internal costs and expenses. Notwithstanding the foregoing, neither Party shall have any obligation to pay or reimburse the other Party with respect to, and the JPBC shall not take into account, any costs or expenses that are not otherwise set forth in the Pre-Build Plan and Budget for a calendar quarter unless otherwise agreed in writing by the Parties.



Exhibit 9.4.2

Terms if Purpose-Built Facility is Built

In the event that LONZA builds, at its own expense, a Purpose-Built Facility having mutually acceptable specifications and characteristics (including capacity and selection of the jurisdiction in which the Purpose-Built Facility would be located), then the terms set forth below in this Exhibit 9.4.2 shall apply. For the avoidance of doubt, the terms set forth below in this Exhibit 9.4.2 shall not apply, except in such event.

A. Purchase Commitments in Connection with Purpose-Built Facility.

A.1 CLIENT shall purchase (including purchases by CLIENT's Affiliates and designees) from LONZA or its Affiliates, in each applicable year after the Purpose-Built Facility begins production (following validation, regulatory approval and receipt of all applicable permits and licenses for the production of Products for clinical or commercial supply), the greater of the amounts indicated in the tables under (A) or (B) below for the applicable year:

(A) Until the earlier of (i) [***] following regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply and receipt of all applicable permits and licenses, or (ii) such time as CLIENT, together with its Affiliates and designees, has purchased Product manufactured in the Purpose-Built Facility the cumulative aggregate Net Sales of which equals [***] times LONZA's construction costs for the Purpose-Built Facility, the following percentages of the capacity of the Purpose-Built Facility for each of the years indicated in the table below, as applicable, (starting with the initial productive capacity of the Purpose-Built Facility, and taking into account subsequent increases in the Purpose-Built Facility's capacity in a staged manner reflecting a similar obligation for incremental new capacity of the Purpose-Built Facility):

<u>Percentage of Purpose-Built Facility Capacity</u>	<u>Time Period</u>
[***]	In the first year after Purpose-Built Facility begins production (following regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply, and receipt of all applicable permits and licenses)
[***]	In the second year
[***]	In the third through seventh years

(B) The following percentages of CLIENT's worldwide requirements for Products:

<u>Percentage of Worldwide Requirements</u>	<u>Time Period</u>
[***]	In the first year after Purpose-Built Facility begins production (following regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply, and receipt of all applicable permits and licenses)
[***]	In the second year
[***]	In the third year, and each year thereafter until CLIENT (or its Affiliate) purchases the Purpose-Built Facility or CLIENT waives its option to purchase the Purpose-Built Facility

In the event that CLIENT purchases the Purpose-Built Facility, CLIENT's commitment to purchase Products from LONZA (i.e., from facilities other than Purpose-Built Facility), the purchase commitments set forth in (A) and (B) above would thereafter no longer apply, and CLIENT's commitment to purchase Products from LONZA would thereafter default to the general purchase commitment under Section 4.4.2 of the Agreement. If CLIENT elects in writing to permanently waive its option to purchase the Purpose-Built Facility, the commitment described in (B) above would default to the general purchase commitment under Section 4.4.2 of the Agreement after such waiver, but not prior to the [***] year. After the Purpose-Built Facility is on-line, CLIENT would need to purchase [***] of the output of the capacity of the Singapore Facility that has been converted for Products in order to continue to retain exclusivity in Singapore.

A.2 Ramp-Down for Existing Singapore Facility. To provide for a reasonable ramp-down of utilization of LONZA's Singapore Facility, CLIENT agree that if the Purpose-Built Facility is built, CLIENT (collectively with its Affiliates and designees) shall purchase Products produced from the Singapore Facility in at least the following amounts: (i) during the first year (after Purpose-Built Facility begins production following regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply, and receipt of all applicable permits and licenses), [***] of the capacity of the Singapore Facility for production of Products (as such capacity exists prior to regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply, and receipt of all applicable permits and licenses); and (ii) in the second year, [***] of such capacity. Thereafter, availability of the Singapore Facility for production of Products shall be subject to CLIENT, collectively with its Affiliates and designees, continuing to purchase (subject to applicable forecasting requirements set forth in the Agreement) Products in amounts at least equal to a maintenance minimum of [***] of such capacity. For the avoidance of doubt, CLIENT shall not be obligated to purchase the maintenance minimum amounts of Products from the Singapore Facility; provided, however, that if Binding Purchase Orders for Products from CLIENT received by LONZA as of the notice date, together with any additional amounts forecast in the Binding Portion of CLIENT's Forecasts, do not at least equal a maintenance minimum over any given calendar year, (A) LONZA may give CLIENT written notice referencing this Section A.2 of Exhibit 9.4.2 informing CLIENT that CLIENT (together with its Affiliates and designees) has failed to issue Binding Purchase Orders as of the notice date, together with any additional amounts forecast in the Binding Portion of CLIENT's Forecasts in amounts at least equal to a maintenance minimum (which notice shall also indicate the relevant capacity of the Singapore Facility and maintenance minimum amount, and the applicable

calendar year such maintenance minimum will not be met); (B) CLIENT shall thereafter have the right to increase the amounts set forth in the Binding Portion of its Forecasts or submit Binding Purchase Orders for Products produced from the Singapore Facility to meet such maintenance minimums, either for Products to be supplied within the then-current calendar year if LONZA provides the notice under clause (A) above on or before June 15th of the applicable calendar year, or for Products to be supplied prior to July 1st of the following calendar year if LONZA provides the notice under clause (A) above after June 15th of the applicable calendar year (and in each case LONZA shall permit such increase); and (C) if CLIENT does not, within sixty (60) days, so increase the Binding Portion of its Forecast or issue Binding Purchase Orders (together with purchases and binding orders of CLIENT's Affiliates and designees) to an amount that is at least equal to the maintenance minimum amount within the applicable time period described in clause (B), then LONZA may upon further written notice inform CLIENT that it has forfeited its right to capacity and LONZA may elect to use the Singapore Facility exclusively for another customer so that it is no longer available for manufacture of Products for CLIENT and its designees. For the avoidance of doubt, the foregoing ramp-down schedule refers to minimum purchases by CLIENT (together with its Affiliates and designees) from capacity of the Singapore Facility for production of Products (as such capacity exists prior to regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply, and receipt of all applicable permits and licenses), and are not required decreases in utilization of the Singapore Facility and shall not be construed to limit CLIENT's right to order Products consistent with the forecasting and other requirements of this Agreement.

A.3 Purchase Commitments Not Additive. With respect to the purchase commitments described above in Sections A.1 and A.2 of this Exhibit 9.4.2, as well as the commitment under Section 4.4.2 of the Agreement (and under Section 4.4.3, if applicable), the Parties acknowledge, for the avoidance of doubt, that purchases by CLIENT and its Affiliates and designees of Products from a given Facility may be used both to satisfy purchase commitments that CLIENT may have under this Agreement with respect to such Facility and to satisfy purchase commitments that CLIENT may have under this Agreement with respect to CLIENT's worldwide requirement for Products.

B. Use Only for CLIENT. No products (including Products) manufactured by LONZA or its Affiliate at the Purpose-Built Facility shall be sold or provided to any person or entity other than CLIENT, or an Affiliate of CLIENT or a Third Party designated by CLIENT, unless otherwise agreed by CLIENT in advance in writing.

C. Escrow of Funds During Construction of Purpose-Built Facility. In the event that LONZA builds the Purpose-Built Facility, at its sole expense, on request of CLIENT as set forth in Section 9.4.2 of the Agreement, CLIENT agrees to place into escrow (using an independent Third Party escrow agent reasonably acceptable to both Parties, under terms of a mutually agreed escrow agreement to be negotiated in good faith by the Parties, which escrow agreement, unless otherwise mutually agreed, will provide that the escrowed amounts are held in a bank account in the escrow agent's name and that CLIENT or its Affiliate will be entitled to interest earned thereon while in escrow) the greater of (i) [***] or (ii) [***] of the total forecasted construction cost upon achievement of the corresponding milestone set forth in the table below, which amounts are an advance against purchases to be made by CLIENT (or, as directed by CLIENT, purchases made by CLIENT's Affiliates or designees):

<u>Milestone Event Regarding Construction and Establishment of Purpose-Built Facility</u>	<u>Percentage of Total Escrow Amount to be Placed in Escrow</u>
Start of construction	[***]
Lonza commits to [***] of the total forecasted construction cost	[***]
Lonza commits to [***] of the total forecasted construction cost	[***]
Lonza commits to [***] of the total forecasted construction cost	[***]
Lonza commits to [***] of the total forecasted construction cost	[***]

Exhibit 9.4.3

CLIENT Option to Purchase the Purpose-Built Facility

A. CLIENT Option to Purchase Purpose-Built Facility.

A.1 CLIENT Option. In the event the Purpose-Built Facility is built, CLIENT shall have an exclusive option, exercisable upon twelve (12) months' prior written notice to LONZA, to purchase (or have its Affiliate purchase) the Purpose-Built Facility from LONZA or its Affiliate (the "**PBF Purchase Option**"). Unless mutually agreed by the Parties in writing, CLIENT may not exercise the PBF Purchase Option prior to the date twenty-four (24) months after the Purpose-Built Facility first begins production, following regulatory approval of the Purpose-Built Facility for manufacture of Products for clinical and commercial supply, and receipt of all applicable permits and licenses. In the event that CLIENT or its Affiliate exercises the PBF Purchase Option, LONZA shall sell (or cause its Affiliate to sell) the Purpose-Built Facility to CLIENT or CLIENT's Affiliate for a purchase price determined as set forth in Section A.2, below.

A.2 Price to Purchase Purpose-Built Facility. In the event that CLIENT or its Affiliate exercises the PBF Purchase Option, the purchase price for CLIENT's or its Affiliate's purchase of the Purpose-Built Facility from LONZA (or its Affiliate, if applicable) shall be the greater of [***] of LONZA's [***] for the Purpose-Built Facility calculated as of the closing date of the purchase, or [***] of LONZA's [***] for the Purpose-Built Facility; provided, however, that in the event that CLIENT provides a Build Notice and construction of the Purpose-Built Facility begins prior to First Commercial Launch, then the purchase price shall be the greater of [***] of LONZA's [***] for the Purpose-Built Facility calculated as of the closing date of the purchase, or [***] of LONZA's [***] for the Purpose-Built Facility. The Parties agree that in the event that the purchase of the Purpose-Built Facility is structured as an acquisition of a purpose-specific entity that owns the Purpose-Built Facility, then the purchase price shall be appropriately adjusted to reflect working capital of such entity and liabilities (if any) assumed in connection with such entity.

A.3 Certain Terms Regarding Purchase of Purpose-Built Facility. In the event that CLIENT or its Affiliate purchases the Purpose-Built Facility as described herein, then:

A.3.1 CLIENT or its Affiliate would make offers of employment to (and LONZA or its Affiliate would cooperate to make available for such employment, including waiving any inconsistent contractual obligations such employees may have to LONZA or its Affiliate) the employees then working at the Purpose-Built Facility who are involved in production of Products or related operations of the Purpose-Built Facility, other than certain specified management-level employees of LONZA or its Affiliate;

A.3.2 LONZA and its Affiliates will facilitate the Technology Transfer to CLIENT or its Affiliate in connection with such purchase, and the terms of Sections 4.7.3(c)(i) and 4.7.3(c)(ii) shall thereafter apply with respect to the Purpose-Built Facility, and any subsequent expansions thereof, and production of MPC Products therein (regardless of whether CLIENT or its Affiliate subsequently transfers the Purpose-Built Facility to a Third Party); and

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [* * *] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

A.3.3 LONZA agrees (and agrees to cause its Affiliates) to execute such documents, render such reasonable assistance, and take such other action as CLIENT or its Affiliate may reasonably request to apply for, register, perfect, confirm, and protect CLIENT's or its Affiliate's rights in the Purpose-Built Facility and otherwise effectuate the sale and transfer thereof to CLIENT or CLIENT's Affiliate for use in the production of MPC Products, including without limitation transfer of permits, registrations or licenses associated with the Purpose-Built Facility, execution and filing of documentation perfecting CLIENT's or its Affiliate's title to the Purpose-Built Facility, and the like.

B. Deposit of Funds in Connection with Purchase of the Purpose-Built Facility. In the event that CLIENT exercises the PBF Purchase Option, upon providing written notice of its exercise of the PBF Purchase Option, CLIENT shall provide to LONZA a deposit in the amount of [***] of the purchase price, which deposit shall be an advance against the purchase of the Purpose Built Facility and shall be non-refundable except in the event of material breach by LONZA.

CONFIDENTIAL

PURCHASE AGREEMENT

by and between

MESOBLAST INTERNATIONAL SÀRL

(“MSB”)

and

OSIRIS THERAPEUTICS, INC.

(“OTI”)

DATED AS OF OCTOBER 10, 2013

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PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of October 10, 2013, by and between Mesoblast International Sàrl, a Swiss société à responsabilité limitée, having an address at Route de Pre-Bois 20, c/o Accounting & Management Service SA, 1217 Meyrin, Switzerland ("MSB") and Osiris Therapeutics, Inc., a Maryland corporation ("OTI"). MSB and OTI are each referred to individually as a "Party" and together as the "Parties".

WITNESSETH:

WHEREAS, OTI owns the Business (as defined below) and as part thereof is developing and owns certain rights and assets related to ceMSCs and Products incorporating ceMSCs (each as defined below);

WHEREAS, OTI desires to sell certain assets to MSB, which together comprise all of the assets used in the Business; and

WHEREAS, each of the Board of Directors of OTI and the Board of Directors of MSB has approved the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Parties agree as follows:

ARTICLE 1

Definitions / Interpretation

1.1 Certain Definitions. Whenever used in this Agreement with an initial capital letter, the terms defined in this Article 1 and elsewhere in this Agreement, whether used in the singular or plural, shall have the meanings specified:

"Acquired Assets" means all right, title and interest in and to all of OTI's assets, properties and rights related to, held or used for the conduct of the Business, including the following:

- (a) the Assigned Books and Records;
- (b) the Assigned Contracts;
- (c) the Assigned Intellectual Property;
- (d) the Assigned Regulatory Materials and Authorizations;
- (e) the Inventory;

(f) the Tangible Personal Property;

(g) with respect to the Business; and

(h) all rights, claims, credits, causes of action or rights of set-off and other similar rights against third Persons to the extent relating to or arising from the Business or the Assumed Liabilities, including unliquidated rights under manufacturers' and vendors' warranties;

together in the case of each of (a), (c), (d) and (f) any and all Copyrights of OTI associated therewith or embodied therein, and in the case of each of (a), (b), (c), (d), (e) and (f) any and all Know-How associated therewith or embodied therein.

“Action” or “Actions” means any lawsuit, claim, litigation, audit, investigation, mediation, legal proceeding, administrative enforcement proceeding or arbitration proceeding by or before any Person.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person or group of Persons, means (a) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of voting securities or by contract or (b) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign entity in a particular jurisdiction) of the voting stock or other ownership interest in such corporation or other entity.

“Annual Net Sales” means, with respect to a particular calendar year, total Net Sales during such period.

“Assigned Books and Records” means all Books and Records of OTI related to, used or held for use in or generated from the conduct of the Business as listed on Schedule 1.1-A.

“Assigned Contracts” means all Contracts to which OTI is a party and which are related to, used or held for use in the Business or by which any other Acquired Assets are bound as listed on Schedule 1.1-B and includes all IP In-Licenses and IP Out-Licenses.

“Assigned Domain Names” means all Domain Names of OTI related to, used or held for use in the Business listed on Schedule 1.1-C, together with all goodwill associated with such Domain Names.

“Assigned Intellectual Property” means individually and collectively, (a) the Assigned Domain Names, (b) the Assigned Patents, (c) the Assigned Trademarks and in each case (a), (b) and (c) all rights (i) to file for and prosecute applications for the same and (ii) with respect to causes of action and enforcement thereof including rights to pursue damages, injunctive relief of other remedies with respect thereto.

“Assigned Patents” means all Patents owned by OTI claiming subject matter related to, used or held for use in or generated from the conduct of the Business as listed on Schedule 1.1-E.

“Assigned Regulatory Materials and Authorizations” means all Regulatory Materials and Authorizations owned by OTI related to, used or held for use in or generated from the conduct of the Business as listed on Schedule 1.1-F.

“Assigned Trademarks” means those Trademarks listed on Schedule 1.1-G, together with all goodwill associated with such Trademarks. For clarity, the Assigned Trademarks exclude the name “Osiris Therapeutics, Inc.” or “Osiris” and any and all derivatives thereof.

“Assumed Liabilities” means all Liabilities arising out of or relating to the Business or the Acquired Assets for periods from and after the Closing Date; provided that (a) with respect to any Acquired Asset (i) which is not a Scheduled Asset or (ii) is a Scheduled Asset but not delivered to MSB as provided in Section 6.1(a), OTI shall retain all Liabilities arising out of or relating to such Acquired Asset until such Acquired Asset is delivered to MSB or its designee (whether pursuant to Section 6.1(a), 6.1(b) or 6.3(d), and (b) if OTI retains possession of any Non-Assignable Asset, OTI shall retain all Liabilities arising out of relating to such Non-Assignable Asset until such Non-Assignable Asset is delivered to MSB or its designee (the “Retained Liabilities”). For clarity, Assumed Liabilities shall not include any Excluded Liabilities.

“Assumption Agreement” means the Assumption Agreement between the Parties substantially in the form attached hereto as Exhibit B.

“ASX” means the Australian Stock Exchange.

“Bill of Sale” means the Bill of Sale in the form of Exhibit C.

“Books and Records” means all books, files, papers, correspondence, databases, electronic files, documents and records in whatever medium, and whether original or copy, including the following (in each case to the extent the following exist): all records with respect to supply sources; all pre-clinical, clinical, research and process development data (including investigator brochures, results and reports relating to products or of any materials used in the research, development, manufacture, marketing, sale or other commercialization of products (including all raw data, compilations and reports, all case report forms)); clinical safety and efficacy reports and corresponding safety databases; all market research data, market intelligence reports, statistical programs used for marketing, sales, research or development; clinical trial budgets and forecasts; clinical trial expenditure reports for costs incurred to date over the trial life; supplier listing for invoicing purposes; sales forecasting models, medical education materials, web site content and advertising and display materials; market/marketing studies, pricing/discount studies and plans, launch plans, promotional and marketing materials, sales force plans and training materials, customer lists; manufacturing records, sampling records (including retained samples), standard operating procedures and batch records, related to manufacturing processes (including analytical and quality control data and stability data, other chemistry, manufacturing, and control (CMC) data); all laboratory notebooks relating to products or relating to their biological, physiological, mechanical or

other properties or compositions; all adverse experience reports and files related thereto (including source documentation) and all periodic adverse experience reports and all data contained in electronic databases relating to periodic adverse experience reports; all analytical and quality control data; and all correspondence, minutes or other communications with any Governmental or Regulatory Authority); all advertising materials, training materials, product data, price lists, mailing lists, sales materials, marketing information, promotion and marketing materials, artwork for the production of packaging components, sales order files, distributor files, product files, purchase order files, customer lists, supplier lists, business files. Books and Records shall exclude Regulatory Materials and Authorizations.

“Business” means the business and activities comprising the research, study, development (including non-clinical, preclinical and clinical development), manufacture (including non-GMP and GMP manufacture), distribution, marketing, sale, promotion, and commercialization of Products or the exploitation of assets related thereto conducted by or on behalf of OTI.

“Business Day” means a day, other than a Saturday, Sunday or national holiday, on which commercial banks in the State of New York and Melbourne, Australia are open for the transaction of commercial banking business.

“ceMSC” means any and all culture expanded mesenchymal stem cells.

“Closing” means the consummation of the purchase and sale transaction described in Section 2.1.

“Closing Consideration” means an amount in cash equal to \$16.5 million, which amount reflects the consideration of \$20.0 million which was agreed to be paid upon Closing for the Acquired Assets and other obligations of OTI hereunder less the \$3.5 million already paid prior to the date hereof pursuant that certain Amended and Restated Letter of Intent with respect to a Collaboration and Asset Transfer Agreement between Mesoblast Limited and OTI dated August 5, 2013, as amended (the “LOI”).

“Combination Product” means an Earnout Product that incorporates at least one clinically active or other component with independent value in addition to ceMSCs contained therein. All references to “Earnout Product” in this Agreement shall be deemed to include Combination Products.

“Contract” means any written or oral contract, agreement or instrument, including development agreements, clinical trial agreements, supply agreements, licenses, purchase orders, sale orders, customer agreements, subcontracts, leases of personal property, notes, guarantees, pledges or conditional sales agreements to which the Person referred to is a Party or by which any of its assets may be bound.

“Copyrights” has the meaning set forth in Paragraph (a) of the definition of Intellectual Property.

“Corporations Act” means the Corporations Act 2001 (Cth).

“Damages” means all damages, losses, injuries, penalties, fines, forfeitures, assessments, claims, suits, proceedings, investigations, actions, demands, causes of action, judgments, awards, Taxes, charges, costs and expenses of any nature (including court costs, reasonable legal, accountants’, consultants’ and experts’ fees).

“Dollars” means the legal currency of the United States of America.

“Domain Names” has the meaning set forth in Paragraph (b) of the definition of Intellectual Property.

“Earnout Product” means any Product the Marketing Authorization for which references or incorporates safety, efficacy or manufacturing data included within any Assigned Regulatory Materials and Authorizations transferred to MSB hereunder, other than the mere citation of publicly available data as part of a general literature review of the stem cell field.

“Excluded Assets” means all of OTI’s assets other than the Acquired Assets, including without limitation all of OTI’s right, title and interest in and to the following:

(a) all cash, rights in bank accounts, certificates of deposit, bank deposits, cash equivalents, investment securities and checks or other payments received by OTI (including received in lock boxes) by the Closing Date;

(b) originals of all of OTI’s Tax Returns and records (provided that MSB shall be entitled to copies thereof, excluding Income Tax Returns, for the previous three (3) years to the extent relevant to the Business or Acquired Assets), any rights to tax refunds or credits with respect to Taxes paid by OTI and any tax deposits or prepayments made by OTI, whether or not used or related to the Business;

(c) OTI’s rights under this Agreement and the Related Agreements;

(d) OTI’s rights under any Contract other than the Assigned Contracts;

(e) the Excluded Books and Records;

(f) all receivables resulting from the sale of Product prior to Closing Date;

(g) all interests in real property; and

(h) all of OTI’s insurance policies and insurance contracts and all rights thereunder (including the right to make claims thereunder and to the proceeds thereof).

“Excluded Books and Records” means all Books and Records other than the Assigned Books and Records, including all minute books and all Books and Records that do not relate to the Business, the Acquired Assets or the Assumed Liabilities.

“Excluded Business” means the business and activities of OTI as of the date hereof other than the business.

“Excluded Liabilities” means the following Liabilities of OTI:

(a) all Liabilities arising out of or relating to the Excluded Business;

(b) all Retained Liabilities;

(c) all Liabilities of OTI for borrowed money and guaranties or accounts payable of OTI of indebtedness or obligations of any Person;

(d) all Liabilities of OTI for Taxes, including Income Taxes for any Tax period or portion thereof, and all Taxes relating or attributable to the Business or Acquired Assets for any Tax period or portion thereof ending on or prior to the Closing Date;

(e) all Liabilities arising from any Action with any Governmental or Regulatory Authority involving OTI or the Business, whether arising prior to or pending on the Closing Date, and all Liabilities arising from any Action whether instituted or threatened prior to or after the Closing, arising out of the conduct of the Business prior to and including the Closing Date;

(f) all Liabilities related to real property and leases thereof;

(g) all Liabilities related to any environmental matters including arising from hazardous materials, contaminants or contaminations (including any exposures of any of the foregoing) or violations of environmental Laws;

(h) all Liabilities related to any employees of OTI;

(i) all Liabilities related to the Excluded Assets, including any Liabilities arising under any Contract that is not an Assigned Contract;

(j) all Liabilities for breaches of any Assigned Contracts on or prior to the Closing Date or any Liability for payments or amounts due under any Assigned Contract on or prior to the Closing Date or any Liabilities for breaches of any Contract to which OTI is a Party that is not an Assigned Contract arising at any time;

(k) all Liabilities of OTI arising from accidents, occurrences, misconduct, negligence, non-compliance with applicable law, breach of fiduciary duty or statements made or omitted to be made, whether or not covered by insurance, on or prior to the Closing Date; and

(l) all Liabilities related to the conduct of the Business or use or ownership of the Acquired Assets prior to the Closing Date.

For clarity, Excluded Liabilities shall not include any Assumed Liabilities.

“FTC” means the U.S. Federal Trade Commission.

“GAAP” means general accepted accounting principles in the United States.

“General Assignment” means the General Assignment substantially in the form attached hereto as Exhibit D.

“Governmental or Regulatory Authority” means any U.S. or non-U.S. federal, state, local or other governmental, administrative or regulatory (including self-regulatory) authority, body, agency, court, tribunal or similar entity, including any taxing authority, including any work council or similar labor entity or any instrumentality of any of the foregoing, including the U.S. Food and Drug Administration.

“Income Tax” means any Tax based on, or measured by reference to, income (and franchise taxes in lieu thereof) whether computed on a separate, consolidated, unitary, combined or any other basis; and such term shall also include any interest, penalties or additions to tax in respect to any Income Tax.

“Income Tax Returns” means all Tax Returns relating to Income Taxes.

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world, by whatever name or term known or designated, tangible or intangible, presently or hereafter existing, to the extent that the following are legally recognizable and protectable rights:

(a) works of authorship and other copyrightable works, all copyrights and moral rights, and all applications, registrations and renewals in connection therewith (collectively “Copyrights”);

(b) internet domain names and uniform resource locators (URLs) together with all translations, adaptations, derivations, and combinations thereof as well as all applications, registrations and renewals in connection therewith (collectively “Domain Names”);

(c) patents and patent applications and disclosures relating thereto (and any patents that issue as a result of those patent applications), and any provisionals, continuations, continuations-in-part, divisions, substitutions, renewals, reissues, reexaminations, and extensions relating to any of the patents and patent applications, as well as all related foreign patent and patent applications that are counterparts to such patents and patent applications (collectively, “Patents”);

(d) trademarks, service marks, brand names, logos, trade dress, together with all translations, adaptations, derivations, and combinations thereof as well as all applications, registrations and renewals in connection therewith (collectively “Trademarks”);

(e) trade secrets and other rights in confidential or proprietary information (including ideas, research and development, recipes, know-how, formulae, compositions, manufacturing and production processes and techniques, technical data, designs, drawings,

specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals), technologies, processes, formulae, algorithms, industrial models, architectures, layouts, look-and-feel, designs, specifications, methodologies, software or software applications (including source code, object code, other executable code, scripts, interfaces, data, databases, websites, firmware and related documentation) that (i) derive economic value from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of reasonable effort to maintain its secrecy;

(f) patented and unpatented inventions (including, inventions in patent applications for which claims have been filed, inventions in patent applications for which no claims have been filed, and inventions for which no patent has been filed; whether patentable or unpatentable and whether or not reduced to practice);

(g) technical or business information, know-how, processes, procedures, compositions, devices, methods, formulas, protocols, techniques, software, designs, drawings, data, or other information related to the research, manufacture, preparation, development or commercialization of a product or technology, whether or not embodied in any documentation or other tangible materials (collectively "Know-How") If Know-How is embodied in tangible materials, including biological materials, chemicals or the like, such tangible materials shall be deemed included within the Know-How; and

(h) any improvements to any of the foregoing.

"Intellectual Property Assignment" means the Intellectual Property Assignment substantially in the form attached hereto as Exhibit E.

"Inventory." means all inventory relating to the Business owned by OTI as of the date hereof, including all inventories of raw and pack materials, work-in-process, finished Product, warehoused stock, supplies and packaging materials for any Product as listed on Schedule 1.1-H.

"IP In-License" means all Contracts pursuant to which OTI has obtained from a third Person a license, sublicense or other right (whether royalty-bearing or non-royalty-bearing or perfected or inchoate) as identified in Schedule 1.1-I.

"IP Out-License" means all Contracts pursuant to which OTI has granted to a third Person a license, sublicense or other right (whether royalty-bearing or non-royalty-bearing or perfected or inchoate) as identified in Schedule 1.1-J.

"Know-How" has the meaning set forth in Paragraph (g) of the definition of Intellectual Property.

"Knowledge" means (a) with respect to OTI, all such facts, circumstances or other information, of which Aziz Ahmad, Linda Custer, Alla Danikovitch, Lode Debrabandere, Heather Hill, Doug Jacobstein, Philip R. Jacoby, Jr., C. Randal Mills, Farrell Newman or Michelle LeRoux

Williams (i) is actually aware or (ii) could have known had such Person made reasonable inquiry and investigation; and (b) with respect to MSB, all such facts, circumstances or other information, of which MSB (A) is actually aware or (B) could have known had MSB made reasonable inquiry and investigation.

“Laws” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental or Regulatory Authority.

“Liability” or “Liabilities” means, with respect to any Person, any liability or obligation of any kind (whether known or unknown, contingent, accrued, due or to become due, secured or unsecured, matured or otherwise), including accounts payable, royalties payable, and other reserves, accrued bonuses and commissions, accrued vacation and any other form of leave, termination payment obligations, employee expense obligations and all other liabilities and obligations of such Person or any of its subsidiaries or Affiliates, regardless of whether such liabilities or obligations are required to be reflected on a balance sheet in accordance with GAAP.

“Lien” means any lien, statutory lien, pledge, mortgage, security interest, charge, claim, encumbrance, restriction on use or transfer or easement of any kind or nature.

“Listing Rules” means the official listing rules of the ASX.

“Marketing Authorization” means all approvals from the relevant Governmental or Regulatory Authority necessary to initiate marketing and selling a product (including a Product) in the particular country. For clarity, in any country where necessary to initiate marketing and selling of a product in such country, Marketing Authorization shall include pricing or reimbursement approval.

“Mesoblast Limited” means Mesoblast Limited ACN 109 431 870 a company incorporated under the Corporations Act.

“MSB Ordinary Share” means a fully paid ordinary share in the capital of Mesoblast Limited.

“Net Sales” means the gross amount invoiced for sales of Earnout Products (but for clarity, not other Products) by MSB and sublicensees, less the following items to the extent such items are actually taken or incurred and customary under industry practices:

(a) credits or allowances granted upon returns, rejections or recalls (due to spoilage, damage, expiration of useful life or otherwise), retroactive price reductions, or billing corrections;

(b) invoiced freight, postage, shipping and insurance, handling and other transportation costs actually incurred;

(c) Taxes (including without limitation sales, value-added or excise taxes, but excluding Incomes Taxes and withholding taxes), tariffs, customs duties, surcharges and other governmental charges incurred in connection with the production, sale, transportation, delivery, use, exportation or importation of Product that are incurred at time of commercial sale or are directly related to the commercial sale;

(d) allowances for bad debt; or

(e) quantity discounts, standard and customary cash discounts in the ordinary course of business, or other trade discounts, refunds, rebates, charge backs, fees, credits or allowances, including without limitation amounts incurred in connection with government mandated rebate and discount programs, and distribution fees to third parties, invoiced or incurred and which effectively reduce the selling price.

Each of the foregoing deductions shall be determined as incurred in the ordinary course of business in type and amount consistent with good industry practice and in accordance with GAAP or other applicable accounting principles on a basis consistent with MSB's audited consolidated financial statements.

In the event an Earnout Product is sold as a Combination Product, Net Sales will be calculated as follows:

(i) If the ceMSCs (in the same formulation and dosage) and the other component(s) contained in such Combination Product are sold separately, Net Sales of the Earnout Product will be calculated by multiplying the total Net Sales of the Combination Product by the fraction $A/(A+B)$, wherein A is the average gross selling price in the applicable country of the ceMSCs sold separately in the same formulation and dosage, and B is the sum of the average gross selling prices in the applicable country of all other components in the Combination Product sold separately, during the applicable calendar quarter.

(ii) If the average gross selling price of the other component(s) cannot be determined, Net Sales will be calculated by multiplying the Net Sales of the Combination Product by the fraction A/C wherein A is the average gross selling price of the ceMSCs (in the same formulation and dosage) and C is the average gross selling price of the Combination Product, during the applicable calendar quarter.

(iii) If the average gross selling price of the ceMSCs (in the same formulation and dosage) cannot be determined, Net Sales of the Combination Product will be calculated by multiplying the Net Sales of the Combination Product by: one (1) minus B/C wherein B is the average gross selling price of the other component(s) and C is the average gross selling price of the Combination Product, during the applicable calendar quarter.

(iv) If the average gross selling price of neither the ceMSCs (in the same formulation and dosage) nor the other component(s) can be determined, Net Sales of the Combination Product will be calculated as mutually agreed based on good faith negotiations.

“Order” means and includes any writ, law, rule, regulation, judgment, executive order or decree, injunction, ruling or other order, whether temporary, preliminary or permanent enacted, issued, promulgated, enforced or entered by any Governmental or Regulatory Authority.

“Ordinary Course” means the ordinary course of business consistent with past custom and practice of OTI.

“Organizational Document” means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) operating agreement, limited liability company agreement, or similar document governing a limited liability company; (c) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (d) any amendment to any of the foregoing.

“Patents” has the meaning set forth in Paragraph (c) of the definition of Intellectual Property.

“Permitted Liens” means (a) Liens for Taxes, assessments and other charges of Governmental or Regulatory Authorities not yet due and payable, (b) mechanics’, workmen’s, repairmen’s, warehousemen’s, carriers’ or other like Liens arising or incurred in the Ordinary Course or by operation of law, and (c) Liens set forth on Schedule 1.1-K.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, proprietorship, other business organization, trust, government, Governmental or Regulatory Authority, court or arbitrator, or any other entity whatsoever, including any business unit thereof.

“Product” means any and all bulk and finished preparations (including any and all formulations, forms and dosage strengths) of ceMSCs or a product containing ceMSCs, including those products that OTI is developing or commercializing as Prochymal® (such product that is being developed or commercialized under the Prochymal trademark as of the Closing, the “Prochymal Product”) or Chondrogen™.

“Regulatory Materials and Authorizations” means (a) all material regulatory applications, submissions, notifications, communications, correspondence, registrations, protocols or other filings made or submitted to and all resulting permits, approvals, authorizations or clearances, received from any Governmental or Regulatory Authority (including minutes of meeting with Governmental or Regulatory Authority) that are necessary or used (i) in the conduct of the Business or (ii) to obtain and maintain any material approval for the research, study, development, manufacture, marketing, sale or other commercialization of any Product (including Marketing Authorizations and applicable approvals of labeling, price and reimbursement for such therapeutic product) (collectively, “Regulatory Authorizations”); and (b) all material files related to any Regulatory Authorization, including dossiers, reports, data and other written materials filed as part of or referenced in any Regulatory Authorization.

“Related Agreements” means the Assumption Agreement, the General Assignment, the Intellectual Property Assignment and the Transition Services Agreement.

“Representatives” means, with respect to any Person, the directors, officers, employees, financial advisors, attorneys, accountants, consultants, agents and other authorized representatives of such Person, acting in such capacity.

“Restriction Agreement” means the agreement restricting dealing in MSB Ordinary Shares to be entered into by OTI and Mesoblast Limited in the form of Exhibit F.

“Scheduled Assets” means, collectively, those Books and Records listed on Schedule 1.1-A, Contracts listed on Schedule 1.1-B, Domain Names listed on Schedule 1.1-C, Patents listed on Schedule 1.1-E, Regulatory Materials and Authorizations listed on Schedule 1.1-F, Trademarks listed on Schedule 1.1-G, Inventory listed on Schedule 1.1-H, and Tangible Personal Property listed on Schedule 1.1-L.

“Shared Books and Records” means all Books and Records that relate to the Acquired Assets, Assumed Liabilities or the Business and that also relate to the Excluded Assets, Excluded Liabilities or Excluded Business as of or prior to the Closing Date.

“Tangible Personal Property” means the property listed on Schedule 1.1-L.

“Tax” or, collectively, “Taxes” means (a) any and all federal, state, local and other taxes assessed or payable in any jurisdiction, assessments and other similar charges, withholdings, duties, impositions, installments and Liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, capital and value added, goods and services, ad valorem, transfer (including real estate transfer), franchise, withholding, payroll, recapture, employment, escheat, excise and property taxes as well as public imposts, fees and social security charges (including health, unemployment, workers’ compensation insurance), together with all interest, penalties and additions imposed with respect to such amounts, (b) any Liability for the payment of any amounts of the type described in clause (a) as a result of being (or ceasing to be) a member of an affiliated, consolidated, combined, unitary, or similar group for any Tax period, and (c) any Liability for the payment of any amounts of the type described in clauses (a) or (b) above as a result of any express or implied obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any Liability or taxes of a predecessor or transferor or otherwise by operation of law.

“Tax Return” means all federal, state, local, provincial and other returns, declarations, claims for refunds, forms, statements, reports, schedules, information returns or similar statements or documents and any amendments thereof (including any related or supporting information or schedule attached thereto) filed or required to be filed with any taxing authority in any jurisdiction in connection with the determination, assessment or collection of any Tax.

“Trademarks” has the meaning set forth in Paragraph (d) of the definition of Intellectual Property.

“Transactions” means, individually and collectively, those transactions contemplated by this Agreement or the Related Agreements.

“**Transfer**” means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of (by merger, testamentary disposition, operation of law or otherwise), either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of (by merger, testamentary disposition, operation of law or otherwise), any MSB Ordinary Shares or any interest in any MSB Ordinary Shares.

“**Transfer Taxes**” means all transfer, sales, use, value added, goods and services, excise, gross proceeds, reporting, recording, filing, documentary, stamp, conveyance and other similar fees, Taxes and charges arising out of or in connection with the transfer of the Acquired Assets effected pursuant to this Agreement.

“**Transition Services Agreement**” means the Transition Services Agreement in the form attached as Exhibit G.

1.2 **Certain Additional Definitions.** In addition, each of the following definitions shall have the respective meanings set forth in the Section of or Exhibit to this Agreement indicated below.

	<u>Definition</u>	<u>Section/Exhibit</u>
Accounting Firm		3.2(d)(ii)
Additional Consideration		3.1(c)(iv)
Agreement		Preamble
Agreement Payments		3.3
Announcement PR		6.2
Applicable Issuance		3.1(c)(iv)
cGMPs		5.1(o)(iv)
Cap		7.4(a)
Claim		7.2(a)
Claim Notice		7.2(a)
Closing Date		4.1
Conflict		5.1(c)
Consents		6.4
Contingent Consideration		Exhibit 3.1(b)
Contingent Share Payment Date		3.1(c)(i)
Deductible Amount		7.4(b)
Disclosure Schedules		5.1
Earnout		Exhibit 3.2
Earnout Period		Exhibit 3.2
Excess Damages		7.4(c)
		8.1
Export Approvals		5.1(p)
Fundamental Representations		7.3

<u>Definition</u>	<u>Section/Exhibit</u>
Guarantee	9.5
Holding Period	3.1(c)(iii)
Holding Period Price	3.1(c)(iv)
Indemnified Party	7.2(a)
Indemnifying Party	7.2(a)
In-Licensed IP	5.1(l)(ii)
Initial Holding Period	3.1(c)(iii)
Issue Price	3.1(c)(ii)
Modified Contracts	4.2(a)(viii)
MSB	Preamble
MSB Deliverables	4.2(b)
MSB Indemnified Parties	7.1(a)
Non-Assignable Asset	6.1(b)
Non-Holding Period Shares	3.1(c)(iii)
Objection Deadline	7.5(a)
Objection Notice	7.5(a)
OTI	Preamble
OTI Deliverables	4.2(a)
OTI Indemnified Parties	7.1(b)
Parties	Preamble
Party	Preamble
Property Taxes	2.1(e)(i)
SEC	5.1(q)
Securities Act	3.1(c)(iii)
Settled Claims	7.5(c)
Survival Date	7.3
Third Party Claim	7.2(b)
VWAP	3.1(c)(ii)

1.3 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or the context otherwise clearly requires otherwise:

(a) the captions and headings to this Agreement are for convenience only, and are to be of no force or effect in construing or interpreting any of the provisions of this Agreement;

(b) all references in this Agreement to designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement, and all references to “Exhibits” and “Schedules” are to the Exhibits and Schedules attached to this Agreement;

(c) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms;

(d) the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation;”

(e) the word “or” shall have its inclusive meaning of “and/or;”

(f) the word “notice” shall require notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement;

(g) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

(h) references to “dollars” or “\$” herein shall, unless otherwise provided, mean United States dollars, and references to payments being made in “cash” shall mean such payments are made in United States dollars; and

(i) references to any specific Law, or article, Section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement thereof.

ARTICLE 2

Purchase and Sale

2.1 Purchase and Sale of Acquired Assets.

(a) Acquired Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, OTI will sell, convey, assign, deliver and set over to MSB, and MSB will purchase and accept, all of the right, title, benefit and interest of OTI in, to and under the Acquired Assets, free and clear of all Liens. At the Closing, the sale, conveyance, assignment and delivery of OTI’s right, title, benefit and interest in, to and under the Acquired Assets will be effected pursuant to the General Assignment and Intellectual Property Assignment.

(b) Excluded Assets. Notwithstanding anything to the contrary contained herein, the Acquired Assets do not include, and in no event will MSB acquire any right, title, benefit or interest in, to or under, any of the Excluded Assets.

(c) Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, at the Closing, MSB will assume and agree to pay, perform and discharge or hold OTI harmless from the Assumed Liabilities. The assumption of the Assumed Liabilities by MSB will be effected pursuant to the Assumption Agreement.

(d) Excluded Liabilities. Notwithstanding anything to the contrary contained herein, the Assumed Liabilities will not include, and in no event will MSB assume, be required to pay, perform, discharge or hold OTI or any OTI Indemnified Parties harmless from the Excluded Liabilities.

(e) Reimbursement for Certain Payments.

(i) All ad valorem Taxes on personal property or any similar Taxes with respect to the Acquired Assets, other than Transfer Taxes (“Property Taxes”) shall be prorated between MSB and OTI as of the Closing Date, computed by multiplying the amount of Property Taxes for the Tax period for which the same are levied by a fraction, the numerator of which is the number of days in such Tax period up to and including the Closing Date and the denominator of which is the number of days in such Tax period. In connection with such proration of Property Taxes, in the event that actual Property Tax figures are not available at the Closing Date, proration of Property Taxes shall be based upon the actual Property Taxes for the preceding fiscal year for which actual Property Tax figures are available, and re-prorated when actual Property Tax figures become available. For the avoidance of doubt, Property Taxes allocated to OTI pursuant to this Section 2.1(e)(i) shall constitute Excluded Liabilities. To the extent one Party makes a payment of Property Taxes allocated to the other Party, such other Party shall promptly reimburse the paying Party upon receipt of written notice that such Property Taxes have been paid.

(ii) If OTI makes payment under any of the Assumed Liabilities (which OTI will have no obligation whatsoever to do), then MSB will reimburse the amount of such payment to OTI that made the payment within five (5) Business Days of receipt by MSB of a demand for reimbursement, together with corresponding documentation of such payment. If MSB makes payment under any of the Excluded Liabilities (which MSB will have no obligation whatsoever to do), then OTI will reimburse the amount of such payment to MSB within five (5) Business Days of receipt by OTI of a demand for reimbursement, together with corresponding documentation of such payment.

2.2 Development and Commercialization of Products. Notwithstanding anything herein to the contrary, as between the Parties from and after the Closing, MSB shall have the sole right to control and conduct the development, manufacture and commercialization of the Products as it deems appropriate in its sole discretion and there are no express or implied obligations with respect thereto.

ARTICLE 3

Consideration

3.1 Purchase Price. MSB shall pay the amounts set forth in Exhibit 3.1 and Exhibit 3.2, in accordance with this Section 3.1 and Section 3.2 below.

(a) Closing Consideration. MSB shall pay to OTI the amounts set forth in paragraph (a) of Exhibit 3.1 as set forth therein.

(b) Contingent Consideration. MSB shall pay to OTI the amounts set forth in paragraph (b) of Exhibit 3.1 as set forth therein.

(c) Payment.

(i) The Contingent Consideration shall be due and payable ten (10) Business Days following the satisfaction of the conditions precedent to any payment of Contingent Consideration pursuant to Section 3.1(b) to the account designated in writing by OTI reasonably in advance. If the Contingent Consideration is to be paid, in whole or in part, through the issuance of MSB Ordinary Shares, the MSB Ordinary Shares shall be issued to OTI no later than ten (10) Business Days following the satisfaction of the respective conditions precedent to any payment of Contingent Consideration pursuant to Section 3.1(b) ("Contingent Shares Payment Date").

(ii) The Contingent Consideration, will be payable in cash or, if Mesoblast Limited is admitted to the official list of the ASX at the time the Contingent Consideration is payable, through the issuance to OTI of MSB Ordinary Shares, or a mix thereof, in each case at the sole discretion of MSB, unless and only to the extent that on the date the MSB Ordinary Shares are to be issued under Section 3.1(c)(i), (A) all or a portion of the MSB Ordinary Shares are prohibited from issuance under Listing Rule 7.1 or (B) the issuance of MSB Ordinary Shares to OTI would cause OTI to breach Section 606 of the Corporations Act, in which case such amount of the Contingent Consideration that cannot be paid through the issuance of MSB Ordinary Shares shall be payable to OTI in cash. The MSB Ordinary Shares shall be valued on a per share basis equal to the five (5) consecutive trading day volume weighted average price as calculated by Bloomberg Financial L.P. under the function "VWAP" or other similar manner as notified by MSB to OTI in advance and to which OTI has no reasonable objection ("VWAP"), up to (and including) the trading day immediately prior to the Contingent Shares Payment Date, with respect to the applicable payment of Contingent Consideration, which will be converted to U.S. Dollars using the closing "U.S.-dollar foreign exchange rate" reported by The Wall Street Journal under the Market Data Center tab (U.S. Internet edition, at www.wsj.com) for the Business Day immediately prior to the applicable Contingent Shares Payment Date (the "Issue Price"). To the extent that MSB elects to pay any Contingent Consideration in the form of MSB Ordinary Shares, it shall be a condition to the issuance of such MSB Ordinary Shares that OTI deliver (i) a certificate in form and substance reasonably satisfactory to MSB confirming the accuracy of the representations set forth in Sections 5.1(q) through (s), inclusive, hereof and (ii) the Restriction Agreement (with respect to all of the Contingent Consideration payable in the form of the issue of MSB Ordinary Shares other than any MSB Ordinary Shares which are Non-Holding Period Shares) substantially in the form attached hereto as Exhibit F.

(iii) To the extent that MSB makes any payment hereunder (including pursuant to Section 3.1(c)(iv)) in MSB Ordinary Shares, OTI shall not Transfer such MSB Ordinary Shares prior to the date that is twelve (12) months following the issuance of such MSB Ordinary Shares to OTI (the "Holding Period") and provided that any subsequent Transfer is registered under, exempt from or not subject to the provisions of Section 5 of the Securities Act of 1933, as amended (the "Securities Act"). OTI confirms that as at the date of this Agreement it has no intention of

Transferring any MSB Ordinary Shares during any applicable Holding Period. Any attempted Transfer in violation of the foregoing shall be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer restrictions set forth in this Agreement, and shall not be recorded on the share register of Mesoblast Limited. Notwithstanding the foregoing, to the extent consistent with applicable Law, MSB may in its sole discretion, designate one or more payments of Contingent Consideration in the form of MSB Ordinary Shares as not subject to a Holding Period by written notice to OTI, in which case, the provisions of this Section 3.1(c)(iii) shall not apply to such issuance of MSB Ordinary Shares, provided that such MSB Ordinary Shares are freely tradable without further action of OTI. MSB Ordinary Shares which are not subject to a Holding Period pursuant to the preceding sentence are sometimes referred to herein as “Non-Holding Period Shares”.

(d) Notwithstanding the foregoing, with respect to any issuance of MSB Ordinary Shares as Contingent Consideration other than Non-Holding Period Shares (each such issuance, an “Applicable Issuance”), if the VWAP for the MSB Ordinary Shares for the five consecutive trading day period calculated up to the close of trading on the day immediately prior to the date of the expiration of the Holding Period with respect to such Applicable Issuance (for each Applicable Issuance, the “Holding Period Price”) is below the applicable Issue Price, MSB shall pay to OTI an additional amount equal to (x) the difference between the applicable Issue Price and the Holding Period Price multiplied by (y) the number of MSB Ordinary Shares issued in such Applicable Issuance (the “Additional Consideration”). Such amount of Additional Consideration shall be paid (A) fifty percent (50%) in cash unless agreed otherwise by the Parties in writing and (B) the remaining fifty percent (50%), as determined in MSB’s sole discretion, in either cash or, if Mesoblast Limited is admitted to the official list of the ASX, through the issuance to OTI of additional MSB Ordinary Shares, unless and only to the extent that on the date the MSB Ordinary Shares are to be issued under this Section 3.1(c)(iv) (I) all or a portion of the MSB Ordinary Shares are prohibited from issuance under Listing Rule 7.1 or (II) the issuance of MSB Ordinary Shares to OTI would cause OTI to breach Section 606 of the Corporations Act, in which case such amount of the Additional Consideration that cannot be paid through the issuance of MSB Ordinary Shares shall be paid to OTI in cash. The additional MSB Ordinary Shares shall be valued at the Holding Period Price for such Applicable Issuance or a mix thereof. For the avoidance of doubt, no adjustment pursuant to this Section 3.1(c)(iv) shall be made with respect to MSB Ordinary Shares issued pursuant to this Section 3.1(c)(iv), regardless of the trading price of MSB Ordinary Shares at any time. Cash payments of Additional Consideration shall be made by wire transfer in immediately available funds to an account designated in writing by OTI to MSB at least five (5) Business Days prior to the date when the payment is due and payments of Additional Consideration to be made in MSB Ordinary Shares shall be made no later than ten (10) Business Days following the expiration of the Holding Period with respect to the Applicable Issuance.

(i) In the event that the MSB Ordinary Shares are listed on a recognized securities exchange as a substitute for the ASX, then the Parties shall discuss, in good faith, the terms of this Section 3.1(c) and Section 5.2(e) in connection with such substituted exchange, provided that the Holding Period shall not be extended.

3.2 Earnout.

(a) In addition to the amounts payable under Section 3.1, potential Earnout payments shall be as set forth on Exhibit 3.2.

(b) Offsets. MSB shall have the right to offset from any Earnout or amounts payable under Section 3.1(b) hereunder any customary and reasonable amounts paid (including royalties and other payments) to third Persons for rights owned or controlled by such third Person for the use of any Acquired Assets, provided that MSB provides written notice to OTI regarding the alleged rights of such third Person prior to any such offset. For clarity, any such offset shall be without limitation or prejudice of any breach of warranty by OTI.

(c) Payment. Following the first commercial sale of an Earnout Product and during the Earnout Period, MSB shall provide to OTI a written report for each calendar year showing the Net Sales during such calendar year and the Earnout payable under this Section 3.2 in sufficient detail to allow OTI to verify the amount of Earnout paid by MSB with respect to such calendar year. Such reports shall be due no later than ninety (90) days following the end of each calendar year. The Earnout shown to have accrued by each report provided under this Section 3.2(c) shall be due and payable on the date such report is due. All Earnout payments shall be made in Dollars by electronic wire transfer of immediately available funds to an account designated in writing by OTI to MSB at least five (5) Business Days prior to the date when the payment is due. If any currency conversion is required in connection with the calculation of the Earnout, such conversion shall be made in a manner consistent with MSB's normal practices used to prepare its audited financial statements for external reporting purposes.

(d) Records and Audits.

(i) MSB will keep complete, true and accurate books and records in sufficient detail for OTI to determine payments due to OTI under this Article 3, including Earnouts. MSB will keep such books and records for at least three (3) years following the end of the calendar year to which they pertain.

(ii) OTI shall have the right during such three (3)-year period to appoint at its expense an independent certified public accountant of nationally recognized standing (the "Accounting Firm") acceptable to MSB to inspect or audit the relevant records of MSB to verify such amounts were correctly determined. MSB shall make such records available for audit by the Accounting Firm during regular business hours at such place or places where such records are customarily kept, upon reasonable notice from OTI, solely to verify such payments hereunder were correctly determined. Such audit right shall not be exercised by the Auditing Party more than once in any calendar year and may cover a period ending not more than thirty-six (36) months prior to the date of such request. All records made available for audit shall be deemed to be confidential information of MSB. If the amount of paid hereunder was over-reported, OTI shall promptly (but in any event no later than thirty (30) days after the Accounting Firm's report) make payment to MSB of the over-reported amount, or if the amount paid was under-reported, MSB shall promptly (but in any event no later than thirty (30) days after the Accounting Firm's report) make payment to OTI of the

underreported amount. OTI shall bear the full cost of such audit unless such audit discloses an underreporting of more than the greater of (A) seven percent (7%) of the aggregate amount payable for the term of the audit, and (B) USD \$250,000, in which case MSB shall reimburse OTI for all expenses of third Persons incurred in connection with such audit.

(iii) The Accounting Firm will disclose to OTI only whether the payments are correct or incorrect and the specific details concerning any discrepancies. MSB is entitled to require the Accounting Firm to execute a reasonable confidentiality agreement prior to commencing any audit under this Section 3.2. The Accounting Firm shall provide a copy of its report and findings to OTI and MSB simultaneously.

3.3 Taxes. Each Party shall be responsible for its own Tax liabilities arising under this Agreement. Accordingly, OTI shall be liable for all income and other Taxes (including interest) resulting from any payments made by MSB to OTI under this Agreement ("Agreement Payments"). If applicable Law requires the withholding of Taxes, MSB shall make such withholding payments in a timely manner and shall subtract the amount thereof from the payments hereunder, and such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the person to whom such amounts would otherwise have been paid. MSB shall promptly (as available) submit to OTI appropriate proof of payment of the withheld Taxes as well as the official receipts within a reasonable period of time. MSB shall provide OTI reasonable assistance in order to allow OTI to obtain the benefit of any applicable present or future treaty against double taxation or refund or reduction in Taxes which may apply to the payments hereunder. Notwithstanding the foregoing, if as a result of a Party assigning this Agreement or changing its domicile additional Taxes become due that would not have otherwise been due hereunder with respect to Agreement Payments, such Party shall be responsible for all such additional Taxes. Notwithstanding anything to the contrary, OTI agrees to pay all Transfer

Taxes with respect to the transactions contemplated by this Agreement. The Parties shall use commercially reasonable efforts to minimize the amount of any Transfer Taxes, including by providing appropriate documentation in connection with any available exemption from or reduction in the amount of such Transfer Taxes.

3.4 Allocation of Consideration. The Parties agree to allocate the amounts paid pursuant to this Article 3 among the Acquired Assets for Tax purposes in accordance with applicable Law and as set forth in Exhibit 3.4. The Parties shall not file any Tax Return or otherwise take any position inconsistent with such allocation unless otherwise required by applicable Law.

ARTICLE 4

Closing Matters

4.1 Closing. Upon the terms and subject to the conditions of this Agreement, the Closing will take place immediately following the exchange via email of signature pages by the Parties (the "Closing Date"), which will occur after the close of the New York Stock Exchange,

between 4:00PM and 5:00PM U.S. Eastern Daylight Savings Time on the 10th day of October (7:00AM - 8:00AM Melbourne Time on the 11th day of October). All documents delivered and all Transactions consummated at the Closing will be deemed for all purposes to have been delivered and consummated effective as of the Closing Date.

4.2 Deliveries at Closing.

(a) Deliveries of OTI. At the Closing, OTI will deliver or cause to be delivered to MSB the following (collectively, the "OTI Deliverables"):

(i) a duly executed copy of the General Assignment;

(ii) a duly executed copy of the Intellectual Property Assignment;

(iii) a duly executed counterpart of the Transition Services Agreement;

(iv) the third Person consents listed on Schedule 4.2(a)(iv) hereof;

(v) a certificate of good standing of the Maryland Secretary of State as to OTI, which will be dated not more than ten (10) days prior to the Closing Date;

(vi) a certificate of an officer of OTI certifying that its Organizational Documents, as certified and as delivered at the Closing, have not been amended or rescinded since the date of such certification and remain in full force and effect at the Closing Date; and

(vii) evidence that all Liens set forth on Schedule 4.2(a)(vii) hereof have been terminated;

(viii) a duly executed copy of the Assumption Agreement.

(b) Deliveries by MSB. At the Closing, MSB will deliver or cause to be delivered to OTI the following (collectively, the "MSB Deliverables"):

(i) a duly executed copy of the Assumption Agreement;

(ii) a duly executed counterpart of the Transition Services Agreement;

(iii) a document from the applicable governing jurisdiction of MSB that it exists as a registered legal entity within such jurisdiction, which will be dated not more than ten (10) days prior to the Closing Date; and

(iv) a certificate of an officer of MSB certifying that its Organizational Documents, as certified and as delivered at the Closing, have not been amended or rescinded since the date of such certification and remain in full force and effect at the Closing Date;

(v) a duly executed copy of the Bill of Sale; and

(vi) a duly executed copy of the Intellectual Property Assignment.

ARTICLE 5

Representations and Warranties

5.1 Representations and Warranties of OTI. OTI hereby represents and warrants to MSB as of the Closing Date, subject to the disclosures and exceptions set forth in the Disclosure Schedules delivered by OTI to MSB on the date hereof and attached hereto (the "Disclosure Schedules"); provided, however, that any disclosure made in any Section of the Disclosure Schedules shall only apply to the Section of the Agreement that corresponds to the Section of the Disclosure Schedules, unless it is reasonably apparent on the face of such disclosure that such disclosure is relevant to another Section of this Agreement, as follows:

(a) Organization and Existence; Power and Authority; No Affiliates.

(i) OTI is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland. OTI has the requisite corporate power and authority to own, lease and operate the Acquired Assets and to conduct the Business as currently conducted in each jurisdiction where OTI owns, leases and operates the Acquired Assets and where the Business is currently conducted. OTI has made available a true, complete and correct copy of its Organizational Documents, each as amended and in full force and effect, to MSB, and no amendments to any such Organizational Documents have been approved or proposed.

(ii) Other than a subsidiary of OTI that has prior to the Closing been merged into OTI, no entity that is an Affiliate of OTI exists or has existed.

(b) Authority and Approval. OTI has all requisite power and authority to documents to be executed and delivered in connection herewith and therewith to which OTI is (or becomes) a party. The execution and delivery of this Agreement and the Related Agreements and the consummation of the Transactions have been approved by all necessary corporate action of OTI and no further corporate or stockholder action is required on the part of OTI to authorize the execution and delivery of this Agreement, the Related Agreements or the consummation of the Transactions. This Agreement has been duly executed and delivered by OTI, and (assuming due authorization, execution and delivery by MSB) this Agreement constitutes, and, when so executed and delivered, the Related Agreements and the Restriction Agreement will constitute, a valid and legally binding obligation of OTI, enforceable against it in accordance with its terms, except as enforceability may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

(c) No Conflict; Consents.

(i) The execution and delivery of this Agreement does not, the execution of the Related Agreements or the Restriction Agreement will not, and the consummation of the Transactions will not, conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to, any payment obligation, or a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (any such event, a “Conflict”) (A) any provision of OTI’s Organizational Documents, (B) any Assigned Contract, or (C) any Law applicable to the Business, the Acquired Assets or the Assumed Liabilities.

(ii) Section 5.1(c)(ii) of the Disclosure Schedules sets forth all necessary notices, consents, waivers and approvals of Persons (A) to any Assigned Contracts that are required thereunder in connection with the Transactions (including the assignment thereto to MSB), or for any such Assigned Contract to remain in full force and effect without limitation, modification or alteration after the Closing so as to preserve all rights of, and benefits to, MSB under such Assigned Contracts from and after the Closing or (B) otherwise necessary to consummate the Transactions. Following the Closing, MSB will be permitted to exercise all of its rights under the Assigned Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments that OTI would otherwise be required to pay pursuant to the terms of such Assigned Contracts had the Transactions not occurred.

(d) Governmental Approvals and Filings. Except as disclosed in Section 5.1(d) of the Disclosure Schedules, no consent, waiver, approval, order or authorization of, or registration, declaration or filing with, or any notice to, any Governmental or Regulatory Authority is required by, or with respect to, OTI in connection with the execution and delivery of this Agreement, the Related Agreements or the consummation of the Transactions.

(e) Absence of Changes. Since December 31, 2012, there has not occurred any change or event that has resulted in, or would reasonably be expected to have or result in, a material adverse effect on the Business or the Acquired Assets, taken as a whole. Since December 31, 2012, OTI has carried on the Business in the Ordinary Course and has not made any material changes in the manner of conducting the Business.

(f) Taxes. There are no Liens for unpaid Taxes on the Acquired Assets, except Liens for current Taxes not yet due and payable. OTI has not received any written notice of assessment or proposed assessment in connection with any Tax Return that relates to the Business or the Acquired Assets, and there are no Tax examinations, Tax claims or Tax actions currently pending or asserted in writing that relate to or could affect the Business or the Acquired Assets.

(g) Compliance with Law.

(i) OTI is not in material violation of any Laws or Orders applicable to the Business as currently conducted or the ownership and use of the Acquired Assets.

(ii) To the Knowledge of OTI, OTI is not the subject of any pending or threatened investigation by any Governmental or Regulatory Authority with respect to the Business or the Acquired Assets.

(iii) Since December 31, 2012, OTI has not received written notification from any Governmental or Regulatory Authority (A) asserting that OTI is not in material compliance with any Law with respect to the Business or the Acquired Assets, or (B) threatening to revoke or suspend any material Regulatory Authorization owned or held by OTI with respect to the Business or the Acquired Assets.

(iv) OTI possesses all Regulatory Authorizations necessary to its conduct of the Business as currently conducted. The Regulatory Authorizations set forth in Section 5.1(g)(iv) of the Disclosure Schedules constitute all of the Regulatory Authorizations used in, or held for use in, the Business by OTI, as of the date hereof. Each such Regulatory Authorization is validly and presently in effect (and except as disclosed in Section 5.1(g)(iv) of the Disclosure Schedules, the continuing validity and effectiveness of such Regulatory Authorization will not be affected by the consummation of the Transactions), and OTI is not in default under any such Regulatory Authorization in any material respect. There are no Actions pending, nor to the Knowledge of OTI, threatened, that seek the revocation, cancellation, suspension, failure to renew or adverse modification of any such Regulatory Authorizations.

(h) Assigned Contracts.

(i) The Contracts set forth on Schedule 1.1-B constitute all Contracts to which OTI is a party and which are used or held for use in the Business or by which any Acquired Assets are bound. OTI has made available to MSB true and complete copies of each such Contract, together with all amendments, waivers and supplements thereto.

(ii) All of the Assigned Contracts are valid and binding agreements of OTI, enforceable in accordance with their terms, and will continue to be valid, binding and enforceable in accordance with their terms following the consummation of the Transactions, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity. OTI is not in breach or default of any Assigned Contract. To the Knowledge of OTI, (x) no other Party to a Assigned Contract is in breach or default of such Assigned Contract and (y) no event, condition or circumstance exists or has occurred that would reasonably be expected to result in a violation or breach of any provision of any Assigned Contract by OTI. To the Knowledge of OTI, no Party has repudiated or expressed any intention to repudiate any provision of a Assigned Contract. To the Knowledge of OTI, none of the Assigned Contracts are subject to any claims, charges, set offs or defenses.

(iii) As of the date of this Agreement, there are no outstanding renegotiations of, attempts to renegotiate or outstanding rights to renegotiate, any amounts paid or payable to OTI under any Assigned Contract with any Person having the contractual or statutory right to demand or require such renegotiation.

(iv) Except as set forth on Section 5.1(h)(iv) of the Disclosure Schedule, no amounts are or will be due to any third Person under any Assigned Contract as a result of the conduct of the Business after the Closing.

(i) Legal Proceedings; Orders. Except as set forth on Section 5.1(i) of the Disclosure Schedules, there are no Actions pending against or, to the Knowledge of OTI, threatened against, the Business or any Acquired Assets. There is no claim pending or, to the Knowledge of OTI, threatened, against any Person who has a contractual right or a right pursuant to applicable Law to indemnification from OTI related to facts and circumstances involving the Business or the Acquired Assets. There are no Actions pending against, or to the Knowledge of OTI, threatened against, the Business, the Products or any of the Acquired Assets that would reasonably be expected to prevent or delay the ability of OTI to enter into and perform its obligations under this Agreement or consummate the Transactions. There is no Order to which OTI is subject or that is pending or threatened that relates to the Business, the Acquired Assets or the Assumed Liabilities.

(j) Title; Sufficiency.

(i) OTI has good title to, or valid leasehold or license interests in, all Acquired Assets, free and clear of all Liens, except for Permitted Liens. Upon the consummation of the Transactions, MSB will acquire good, valid title to, or a valid leasehold or license interest in, the Acquired Assets, free and clear of all Liens, except for Permitted Liens. Without limiting the foregoing, neither Genzyme Corporation nor any of its Affiliates has any right, title or interest (including any Lien) with respect to any of the Acquired Assets.

(ii) The Scheduled Assets constitute all of the assets, properties and rights that are necessary and sufficient to conduct the Business in substantially the manner as conducted by OTI.

(iii) The material items of Tangible Personal Property have been maintained in accordance with OTI's normal practice and are in good repair and usable condition for the conduct of the Business as currently conducted, ordinary wear and tear and aging excepted.

(k) Compliance with Law.

(i) OTI has not been in violation of, or is not the subject of any Action with respect to the violation of, any Law or Order, and has not received any FDA Form 483, "warning letters," or "untitled letters," or other similar notice of inspectional observations or deficiencies from any Governmental or Regulatory Authority in connection with the Business. No Action is pending, or to the Knowledge of OTI, threatened, with respect to any violation of any Law or Order by OTI, and OTI is and has been in compliance in all material respects with all Laws and Orders, in each case relating to the conduct of the Business (including, privacy and export laws), or pertaining to the Acquired Assets or Assumed Liabilities. OTI has not received any notice of any such Action or any liability or potential responsibility on the part OTI to undertake or to bear all or any portion of the cost of any remedial action of any nature. OTI has never conducted any internal investigation with respect to any actual, potential or alleged material violation of any Law or Order by any director, officer or employee of OTI in connection with the Business.

(ii) OTI has at all times marketed and distributed the Products in compliance with applicable Laws and Orders, and none of the marketing and promotional materials used in the Business by OTI, including the labels and labeling for the Products, is or has been false or misleading. OTI has timely submitted all required notices and petitions to Governmental or Regulatory Authorities in connection with its marketing and promotional activities for the Business.

(iii) All preclinical animal testing and clinical trials in respect of the Business conducted by or on behalf of OTI, are being, and have been conducted, in accordance with experimental protocols, procedures and controls that are generally accepted in the scientific community and required by peer review journals, as well as pursuant to applicable Laws and Orders, including good clinical practices and good laboratory practices, as applicable.

(iv) To the Knowledge of OTI, OTI is, and at all times has been, in compliance with all adverse event reporting requirements applicable to the Business.

(v) OTI is not the subject of any pending or, to the Knowledge of OTI, threatened investigation by any Governmental or Regulatory Authority in respect of the Business, including by (i) the FDA pursuant to its "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto, (ii) the FTC, or (iii) any other Governmental or Regulatory Authority that has jurisdiction over the Business of OTI under any similar policy. OTI has no Knowledge or reason to believe that the FDA, FTC or any other Governmental or Regulatory Authority is considering such action.

(l) Intellectual Property.

(i) Schedule 1.1-C, Schedule 1.1-E, Schedule 1.1-F and Schedule 1.1-G, together, (A) identify all Assigned Intellectual Property; and (B) list all proceedings or actions before any Governmental or Regulatory Authority relating to any Assigned Intellectual Property.

(ii) Section 5.1(l)(ii) of the Disclosure Schedules identifies all Assigned Intellectual Property that is subject of any IP In-License (the "In-Licensed IP"). Except as set forth in Section 5.1(l)(ii) of the Disclosure Schedules, there is no Intellectual Property owned by any third Person used or held for use in the conduct of the Business other than Intellectual Property that is licensed in connection with shrink wrap or other mass-marketed software or associated with products or components, which in either case is generally available without further consideration for such license.

(iii) Section 5.1(l)(iii) of the Disclosure Schedules further identifies all Assigned Intellectual Property that is subject of any IP Out-License. Except as set forth in Section 5.1(l)(iii) of the Disclosure Schedules, OTI has not transferred ownership of, or granted any license of or right to use, or authorized the retention of any rights to use or joint ownership of, any Intellectual Property that is or was Assigned Intellectual Property to any other Person.

(iv) To its Knowledge, OTI exclusively owns and possesses all right, title and interest in, free and clear of all Liens (other than Permitted Liens), to all of the Assigned Intellectual Property and has an exclusive license or other equivalent right to use, free and clear of all Liens (other than Permitted Liens) to all In-Licensed IP.

(v) All necessary documents and certificates and fees associated with filing, prosecuting, obtaining, maintaining, perfecting or preserving or renewing any Assigned Intellectual Property have been filed with and paid in full to the proper Governmental or Regulatory Authority in a timely manner; except where OTI has, in its reasonable business judgment, decided to abandon or cancel such Assigned Intellectual Property as set forth under Section 5.1(l) (y) of the Disclosure Schedules. There are no actions that must be taken by OTI within one hundred twenty (120) days of the Closing Date, including the payment of any registration, maintenance or renewal fees or the filing of any responses to office actions of any Governmental or Regulatory Authority, documents, applications or certificates for the purposes of obtaining, maintaining, perfecting or preserving or renewing any Assigned Intellectual Property.

(vi) In each case in which OTI has acquired ownership of any Assigned Intellectual Property from any Person, OTI has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights in such Assigned Intellectual Property (including the right to seek past and future damages with respect thereto) to OTI. OTI has recorded each such assignment of Assigned Intellectual Property with the relevant Governmental or Regulatory Authority as the case may require.

(A) To the extent that any Assigned Intellectual Property has been developed or created by a Person for OTI, including any employee, consultant or independent contractor of OTI, OTI has a written Contract with such Person pursuant to which OTI has obtained ownership of, and is the exclusive owner of such Assigned Intellectual Property.

(B) All current and former employees, consultants and independent contractors of OTI have entered into a valid and binding Contract with OTI sufficient to vest title in OTI of all Assigned Intellectual Property created by such employees, consultants and independent contractors in the scope of their employment or engagement with OTI, as applicable.

(C) No Person who has developed or created materials or data for OTI in connection with the Business, has ownership rights or license rights to improvements made by OTI in such Assigned Intellectual Property.

(vii) The Assigned Intellectual Property and In-Licensed IP includes all of the Intellectual Property used or held for use in, and to OTI's Knowledge, necessary for, the conduct of the Business as currently conducted. Immediately after the Closing, MSB will have the right to fully transfer, alienate, exploit use and otherwise practice without restriction, limitation or other Lien and without payment of any kind to any Person all Assigned Intellectual Property. No Assigned

Intellectual Property is subject to any outstanding consent, proceeding or Order or any settlement agreement or stipulation that expressly restricts in any manner the use, transfer or licensing thereof by MSB or that may affect the validity, use or enforceability of such Assigned Intellectual Property.

(viii) No biological or other material that is used (or has been used) in or necessary for the conduct of the Business as currently conducted or otherwise comprising Assigned Intellectual Property is subject to any material transfer agreement or other agreement restricting, limiting or prohibiting the use, transfer, disclosure or commercial exploitation of such biological or other material, or of any progeny, derivatives, modifications or improvements thereof that would prevent the transfer of such material to MSB as contemplated hereunder or prohibit the use of such material by or on behalf of MSB in the conduct of the Business as currently conducted.

(ix) Except as set forth on Section 5.1(l)(ix) of the Disclosure Schedules, there is no claim by any third Person pending against OTI or, to OTI's Knowledge, threatened against OTI, contesting the validity, enforceability, or ownership of any Assigned Intellectual Property or any In-Licensed IP in any jurisdiction. To the Knowledge of OTI, the Assigned Intellectual Property and In-Licensed IP is valid, subsisting, and in full force and effect; has not been cancelled, expired or abandoned except where OTI has, in its reasonable business judgment, decided to abandon or cancel such Assigned Intellectual Property, as set forth under Schedule 5.1(l)(ix). To OTI's Knowledge, no claim is pending or threatened challenging OTI's right to any Assigned Intellectual Property or In-Licensed IP. No claim is pending or, to OTI's Knowledge, threatened to the effect that any Assigned Intellectual Property or any In-Licensed IP is, or upon consummation of the Transactions will be, invalid or unenforceable.

(x) To the Knowledge of OTI, there are no acts or omissions of OTI, and there are no facts or circumstances that would render any Assigned Intellectual Property or In-Licensed IP invalid or unenforceable in whole or in part. Without limiting the generality of the foregoing:

(A) To OTI's Knowledge, OTI has fulfilled all applicable requirements regarding the duty of disclosure, candor and good faith in connection with each patent and patent application filed by OTI. OTI has not claimed a particular status, including, "Small Business Status," in the application or other registration for any Assigned Intellectual Property, which claim of status was at the time made, or which has since become, inaccurate or false.

(B) OTI has taken reasonable steps to police the use of its Trademark Rights and to OTI's Knowledge, no Trademarks within the Assigned Intellectual Property infringe any Trademarks owned, used or applied for by any other Person; and

(C) OTI has not disclosed, furnished to or made accessible any of its trade secrets within the Assigned Intellectual Property to any Person who is not subject to a written agreement to maintain the confidentiality of such trade secrets. OTI has, and reasonably enforces, a policy requiring each employee, consultant and independent contractor to execute a reasonable proprietary information, confidentiality and assignment agreement, and all current and former employees, consultants and independent contractors of OTI that generated, or had access to, trade secrets of OTI in connection with the conduct of the Business have executed such an agreement.

(xi) Except as set forth on Section 5.1(l)(xi) of the Disclosure Schedules, to OTI's Knowledge, OTI has not infringed or misappropriated any Intellectual Property of any Person by its conduct of the Business. To OTI's Knowledge, the conduct of the Business or any part thereof, including the research, development, manufacture, use, marketing, sale and importation of Products, and the possession or use by OTI of the Assigned Intellectual Property has not, does not and will not infringe, misappropriate, or violate any Intellectual Property of any other Person or constitute a violation of the Lanham Act, unfair competition or unfair trade practices under the Law of any jurisdiction where the Business is currently conducted. Except as set forth on Schedule 5.1(l)(xi) of the Disclosure Schedules, OTI has not received any written notice of any claim (including by an offer to license any Intellectual Property) and, to OTI's Knowledge, there is no threatened claim, or any basis for any claim (whether or not pending or threatened), against OTI asserting that OTI's conduct of the Business infringes upon, misappropriates or otherwise violates the Intellectual Property of any Person including the Lanham Act, unfair competition or unfair trade practices under the Laws of any jurisdiction where the Business is currently conducted.

(xii) To OTI's Knowledge, none of the Assigned Intellectual Property or In-Licensed IP is being infringed or is otherwise used or available for use by any Person other than OTI except pursuant to an IP Out-License as set forth on Section 5.1(l)(iii) of the Disclosure Schedules. OTI has not given any notice to any Person asserting infringement or misappropriation by any such Person of any of the Assigned Intellectual Property or In-Licensed IP. OTI is not aware of any actual, or, to OTI's Knowledge, threatened or potential, infringement, misappropriation, dilution, conflict or violation of the Assigned Intellectual Property or In-Licensed IP or unauthorized manufacture, sale, marketing or use of Products by any Person.

(xiii) [Intentionally omitted].

(xiv) Except as set forth on Section 5.1(l)(xiv) of the Disclosure Schedules, OTI has not received any grant, loan, subsidy, investment or other source of funding from any Governmental or Regulatory Authority relating to the Business. No facilities of a university, college, other educational institution or research center or Governmental or Regulatory Authority or funding from any Governmental or Regulatory Authority or other third Person was used in the development of the Assigned Intellectual Property. No current or former employee or independent contractor of OTI who was involved in, or who contributed to, the creation or development of any Assigned Intellectual Property has performed services for any Governmental or Regulatory Authority, university, college or other educational institution or research center during a period of time during which such employee or independent contractor was creating or developing any Assigned Intellectual Property.

(xv) Except as set forth on Section 5.1(l)(xv) of the Disclosure Schedules, there are no royalties, fees, honoraria or other payments payable by MSB to any Person by reason of the ownership, development, use, license, sale or disposition of the Assigned Intellectual Property, other than salaries and sales commissions paid to employees and sales agents in the ordinary course of business.

(m) No Brokers. No broker, finder or investment banker is entitled to any brokerage commission, finder's fee or similar payment in connection with the Transactions based upon arrangements made by or on behalf of OTI.

(n) Suppliers. Section 5.1(n) of the Disclosure Schedules sets forth all material suppliers of the Business for each of 2011, 2012 and year to date 2013. Except as set forth on Section 5.1(n) of the Disclosure Schedules, none of the suppliers listed thereon has cancelled, terminated or otherwise materially and adversely altered its relationship with the Business or notified OTI in writing or by any other formal notice of any intention to cancel, terminate or materially and adversely alter its relationship with OTI with respect to the Business.

(o) Warranties; Product Liability; Product Manufacturing.

(i) The warranty policy(ies) of OTI that are still currently in effect for Products of the Business sold at any time are listed on Section 5.1(o) of the Disclosure Schedules.

(ii) Except as set forth on Section 5.1(o) of the Disclosure Schedules, OTI has not during the last five (5) years been subject to any legal proceedings (including any products' liability Actions) or, to its Knowledge, investigations by Governmental or Regulatory Authorities with respect to Products sold or advertised for sale by the Business.

(iii) There have been no mass recalls or destructions by or on behalf of OTI of Products, or Product returns outside the Ordinary Course.

(iv) All Inventory (A) has been manufactured, stored and transported in accordance with applicable Law including cGMPs and meets the (T) specifications therefor and (TT) the information shown on the certificate of analysis provided for the particular shipment, as applicable, in each case of (T) and (TT) made available to MSB and (B) has been released for human use. For purposes of this Section 5.1(o), "cGMPs" means current good manufacturing practices required by the U.S. Food and Drug Administration, as set forth in the U.S. Federal Food, Drug and Cosmetic Act, as amended, and the regulations promulgated thereunder, for manufacture and testing of products under such jurisdiction, and comparable laws or regulations applicable to the manufacture and testing of products in and under such jurisdictions outside the U.S., as they may be updated from time to time.

(p) Export Controls. OTI has all material export licenses and other material consents, authorizations, waivers, approvals, and orders, and has made or filed any and all necessary notices, registrations, declarations and filings with any Governmental or Regulatory Authority required in connection with the Business as it is currently conducted by OTI ("Export Approvals") OTI is not in material violation of any applicable Export Approvals pertaining to the Business or the Acquired Assets. There are no pending or, to OTI's Knowledge, threatened inquiries, investigations, enforcement actions, voluntary disclosure or other claims against OTI with respect to Export Approvals.

(q) No Registration. OTI understands that any MSB Ordinary Shares to be issued to OTI hereunder may not be registered under the Securities Act and may be issued by reason of a specific exemption from the registration provisions of the Securities Act, the availability which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of OTI's representations as expressed herein or otherwise made pursuant hereto. OTI understands that such MSB Ordinary Shares will be "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, OTI must hold such securities indefinitely unless they are registered with the U.S. Securities and Exchange Commission ("SEC") and qualified by state authorities, or an exemption from such registration and qualification requirements is available. OTI acknowledges that MSB has no obligation to register or qualify such MSB Ordinary Shares for resale. OTI further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the MSB Ordinary Shares, and on requirements relating to MSB which are outside of OTI's control, and which MSB is under no obligation to satisfy. OTI also acknowledges that it is agreeing to certain additional transfer restrictions with respect to any such MSB Ordinary Shares pursuant to the terms hereof.

(r) Investment Intent. OTI is and will be acquiring any MSB Ordinary Shares issued to it pursuant hereto for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof, and OTI has no present intention of selling, granting any participation in, or otherwise distributing the same. OTI further represents that it does not have any Contract with any Person to sell, Transfer or grant participation to such Person or to any third person or entity with respect to the MSB Ordinary Shares.

(s) Accredited Investor. OTI is an "accredited investor" within the meaning of Regulation D, Rule 501(a), promulgated by the SEC under the Securities Act.

(t) Legends. OTI understands and agrees that the certificates evidencing any MSB Ordinary Shares issued pursuant hereto may bear the following legends (in addition to any legend required under applicable state securities laws):

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. Further the holder has entered into a Restriction Agreement with Mesoblast Limited pursuant to which any dealing in the shares is limited for a period of 12 months other than as otherwise permitted under the terms of the Restriction Agreement."

5.2 Representations and Warranties of MSB. MSB hereby represents and warrants to OTI as of the Closing Date that:

(a) Organization and Existence. MSB is a Swiss société à responsabilité limitée duly organized and validly existing under the laws of Switzerland, with full power and authority to own, lease, and operate its business and properties and to carry on its business as and where such properties and assets are now owned or leased and such business is now conducted.

(b) Authority and Approval. MSB has the power to enter into this Agreement and each of the Related Agreements to which it is to be a party and to perform its obligations thereunder. The execution, delivery and performance by MSB of this Agreement and the Related Agreements, and the consummation by MSB of the Transactions, have been duly authorized by all required action on the part of MSB. This Agreement has been duly executed and delivered by MSB and, when executed and delivered by MSB, the Related Agreements will have been duly executed and delivered by MSB. This Agreement is, and each of the Related Agreements will be, the valid and binding obligations of MSB, enforceable against MSB in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, moratorium, or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether considered in a proceeding at Law or in equity).

(c) No Conflict. The execution and delivery by MSB of this Agreement and each of the Related Agreements, and MSB's compliance with the terms and conditions hereof and thereof, and the consummation by MSB of the Transactions, do not and will not (i) conflict with any of, or require any consent of any Person that has not been obtained under, MSB's Organizational Documents, (ii) violate any provision of, or require any consent, authorization, or approval under, any Law or any Order applicable to MSB, (iii) conflict with, result in a breach of, constitute a default under (whether with or without notice or the lapse of time or both), accelerate or permit the acceleration of the performance required by, or require any consent, authorization, or approval under, any material contract to which MSB is a party or by which it is bound or to which any of its assets or property is subject, or (iv) result in the creation of any Lien upon the assets or property of MSB, except in each case as would not reasonably be expected to have a material adverse effect on MSB or materially adversely affect the validity or enforceability of this Agreement against MSB or materially adversely affect the ability of MSB to consummate the Transactions.

(d) Governmental Approvals and Filing. No consent, authorization, approval or action of, filing with, notice to, or exemption from any Governmental or Regulatory Authority on the part of MSB is required in connection with the execution, delivery and performance of this Agreement or any Related Agreements or the consummation of the Transactions, except where the failure to obtain any such consent, approval or action, to make any such filing, to give any such notice or obtain any such exemption would not be reasonably expected to (i) have a material adverse effect on MSB or (ii) materially adversely affect the validity or enforceability against MSB of this Agreement or such Related Agreements or materially adversely affect the ability of MSB to consummate the Transactions.

(e) Access to Consideration. MSB (itself or through Mesoblast Limited) has, and shall at the applicable times have, sufficient cash on hand (or have ready access to cash) and a sufficient capacity under the Listing Rules, including, without limitation, Listing Rule 7.1, to issue that number of MSB Ordinary Shares it elects to issue to enable it to make the payments required under Sections 3.1 and 3.2 of this Agreement and to consummate the Transactions. Such MSB Ordinary Shares shall be issued in compliance with all applicable Laws and the Listing Rules and an application for quotation of those MSB Ordinary Shares is to be made by Mesoblast Limited to the ASX on the date of issue of the MSB Ordinary Shares to OTI (by lodging with the ASX an Appendix 3B and otherwise in compliance with the Listing Rules). From and after the Closing, MSB shall take all actions within its reasonable control which are necessary or appropriate to maintain Mesoblast Limited's admission to the ASX Official List.

(f) Legal Proceedings; Orders. There are no Actions pending against, or to the Knowledge of MSB, threatened, that would reasonably be expected to prevent or delay the ability of MSB to enter into and perform its obligations under this Agreement or consummate the Transactions.

(g) No Brokers. No broker, finder or investment banker is entitled to any brokerage commission, finder's fee or similar payment in connection with the Transactions based upon arrangements made by or on behalf of MSB.

(h) Independent Investigation. Without limiting the representations and warranties of OTI herein (including in Section 5.1), MSB has conducted its own independent investigation, review and analysis of the Business and the Acquired Assets and acknowledges that OTI has provided access to certain personnel, properties, assets, premises, books and records, and other documents and data of OTI in connection therewith. MSB acknowledges and agrees that (i) OTI has not made and is not making any representations or warranties regarding the subject matter of this Agreement, express or implied, except as provided in Section 5.1 hereof and elsewhere in this Agreement and as provided in the Transition Services Agreement, and (ii) in making its decision to enter into this Agreement and to consummate the Transactions, MSB has relied solely upon its own investigation and the express warranties of OTI set forth in Section 5.1 hereof and elsewhere in this Agreement and as provided in the Transition Services Agreement.

ARTICLE 6

Additional Agreements

6.1 Delivery/Non-Assignable Assets.

(a) Delivery. Without limiting Section 6.3(d), OTI shall deliver the Scheduled Assets as set forth in Section 2.2 of the Transition Services Agreement.

(b) Assets Incapable of Transfer. To the extent that any Assigned Contract or Regulatory Materials and Authorizations is not assignable or transferable without the consent of

another Person (“Non-Assignable Asset”), this Agreement will not constitute an assignment or transfer thereof, an attempted assignment or transfer thereof, or an agreement to effect such an assignment or transfer, if such assignment or transfer, attempted assignment or transfer, or agreement would constitute a breach thereof or create a right of termination on behalf of any other party thereto. OTI shall cooperate fully with the relevant Person to obtain the consent of such other Person to the assignment or transfer of any such Non-Assignable Asset to MSB no later than thirty (30) days after the Closing Date, during which such thirty (30) day period OTI shall pass to MSB the beneficial interest in and to such Non-Assignable Asset to the fullest extent reasonably permitted by the relevant Contract or Regulatory Materials and Authorization and applicable Law until the assignment or transfer is completed. MSB will cooperate with OTI, upon OTI’s reasonable request, in its efforts to obtain such consents. OTI will in no event require the payment of any money for the assignment or transfer of, or amendment or modification of any material term or provision of, any Non-Assignable Asset without the prior written consent of MSB. If any such consent will not be (or is not) obtained within such thirty (30) day period, OTI will notify MSB and use commercially reasonable efforts, upon reasonable request by MSB, to provide an alternate reasonable arrangement reasonably satisfactory to MSB and OTI designed to provide to MSB the economic and other benefits intended to be assigned or transferred to MSB under the relevant Non-Assignable Asset. Without limiting the generality of the foregoing, the beneficial interest in and to any Non-Assignable Asset, to the fullest extent permitted by the relevant Contract or Regulatory Materials and Authorization and applicable Law, will pass to MSB. For purposes of clarification, MSB shall not assume any Liabilities associated with any Non-Assignable Asset unless and until such Assigned Contract or Regulatory Materials and Authorizations is assigned or transferred from OTI to MSB in accordance with this Section 6.1(b).

(i) Without limiting the foregoing, but subject to the Transition Services Agreement, if the Manufacturing Services Agreement between Lonza Walkersville, Inc. and OTI dated June 17, 2008 is a Non-Assignable Asset, then at the request of MSB, OTI shall purchase any or all Product (as defined therein) for the benefit of and at the expense of MSB, and shall transfer to MSB (or its designee) all right, title and interest in and to such Product. OTI shall have no obligation to purchase any such Product until MSB provides payment for such Product to OTI.

6.2 Public Disclosures. The Parties agree that the execution of this Agreement and the Related Agreements and the intention of the Parties to consummate the Transactions shall first be announced by means of each Party (or in the case of MSB, Mesoblast Limited) issuing or causing to be issued a press release in form and substance satisfactory to, and previously agreed upon, by the Parties (each, an “Announcement PR”). Thereafter, none of OTI, MSB or their Affiliates will issue any press release or otherwise make any public statement with respect to this Agreement and the transactions contemplated hereby without the prior written consent of the other (which consent will not be unreasonably withheld, conditioned or delayed), except (a) as may be required by applicable Law (including the ASX and NASDAQ listing rules) or (b) which is consistent with the content of any Announcement PR. Notwithstanding anything in this Section 6.2 to the contrary, OTI and MSB will, to the extent practicable, consult with each other before issuing, and provide each other a reasonable prior opportunity to review and comment upon, any such press release or other public statements with respect to this Agreement and the transactions contemplated hereby, whether or not

required by applicable Law and any filing of the Agreement or any Related Agreement pursuant to applicable Law with any Governmental or Regulatory Authority. Further, unless expressly agreed, the Earnout hereunder shall be described as or similar to “up to low double digit royalty on net sales.”

6.3 Further Assurances and Cooperation.

(a) Further Assurances. Subject to the terms and conditions of this Agreement, at any time and from time to time after the Closing, at a Party’s reasonable request, the other Party will execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and assumption, and provide such materials and information and take such other actions as the other Party may reasonably deem necessary or desirable in order to more effectively transfer, convey and assign to MSB all of the Acquired Assets and/or to put MSB in actual possession and operating control of the Acquired Assets and/or in order to more effectively effect the assumption by MSB of the Assumed Liabilities and MSB’s operation of the Business after the Closing Date.

(b) Post-Closing Access to Books and Records. For a period of twelve (12) months following the Closing, MSB and OTI will afford each other, and their respective advisors, during normal business hours, reasonable access to those portions of Shared Books and Records in its possession with respect to periods through the Closing and the right to make copies and extracts from such portions solely to the extent that such access may be reasonably required by the requesting Party in connection with the preparation of any Tax Returns, Tax audit, Tax protest or other Action relating to Taxes. Each Party shall be entitled to recover its out-of-pocket costs and expenses (including copying costs, and legal, and accounting expenses) incurred in providing such Shared Books and Records to the other Party.

(c) Cooperation. If, in order to properly prepare any documents or reports required to be filed with any Governmental or Regulatory Authority, it is necessary that either MSB or OTI be furnished with additional information, documents or records relating to the Business, the Acquired Assets, the Excluded Liabilities or the Assumed Liabilities not referred to in Section 6.3(b), and such information, documents or records are in the possession or control of the other Party, such other Party will use its commercially reasonable efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient’s reasonable request and at recipient’s cost and expense; provided, further, that each Party agrees that it shall, and shall cause its Representatives to, hold in confidence such materials, and shall not use any such information except in connection with performance pursuant to this Section 6.3(c); provided, however, that such obligation shall not apply to information that (i) is or becomes generally available to the public or otherwise part of the public domain other than through any act or omission of the non-disclosing in breach of this Agreement; (ii) becomes known to the non-disclosing party from or through a third Person not under an obligation of non-disclosure to the disclosing party or (iii) in the case of the information described in (c) only, was already known to the non-disclosing party at the time of disclosure, other than under an obligation of confidentiality. The Parties will each provide the other with such assistance as may reasonably be requested in connection with the preparation of

any Tax Return relating to the Business or Acquired Assets, or the audit or other examination by any Tax authority or judicial or administrative proceeding relating to or liability for Taxes arising out of the conduct of the Business or ownership of the Acquired Assets.

(d) Further Transfers/Retransfers. If, at any time and from time to time after the Closing, MSB identifies to OTI in writing any specific asset, property or right that it reasonably determines (i) is within the definition of Acquired Assets but has not been delivered to MSB pursuant to Section 6.1 or otherwise and (ii) in MSB's reasonable judgment, is, or is likely to be, material to the continued conduct of the Business, including the development, manufacture or commercialization of any Product, then OTI shall use commercially reasonable efforts to promptly deliver such asset to MSB (or, if undeliverable, provide MSB with the benefit thereof). Similarly, if, at any time and from time to time after the Closing, OTI identifies to MSB any specific asset, property or right in writing that it reasonably determines that (A) is not within the definition of Acquired Assets but has been inadvertently delivered to MSB pursuant to Section 4.2 or otherwise and (B) in OTI's reasonable judgment, is, or is likely to be, material to the continued conduct of the Excluded Business conducted by OTI as of the date hereof, then MSB shall use commercially reasonable efforts to promptly reconvey such asset, property or right to OTI (or, if the reconveyance is impractical, provide OTI with the benefit thereof).

(e) Notice to Contractual Parties. Without limiting Section 6.4, OTI shall notify (pursuant to a form mutually agreed by the Parties) each counterparty to each Assigned Contract which is indicated on Schedule 1.1-B as an Assigned Contract for which notification is being provided, within five (5) Business Days after the Closing, that the applicable Assigned Contract has been assigned to MSB pursuant to this Agreement.

(f) Notices to Governmental and Regulatory Authorities. Within five (5) Business Days after the Closing, OTI shall send such letters or other correspondence and make such filings as is necessary for the transfer and assignment of all Assigned Regulatory Materials and Authorizations to MSB.

6.4 Consents. OTI shall use commercially reasonable efforts to obtain the consents, waivers and approvals listed in Section 5.1(c)(ii) of the Disclosure Schedules (the "Consents"). The Consents shall be in a form acceptable to MSB.

6.5 License. At the Closing, MSB shall grant, and hereby grants to OTI the licenses and other rights set forth in Exhibit 6.5.

6.6 Insurance. OTI shall maintain insurance policies to cover any claims associated with clinical trials with respect to Products conducted by or on behalf of OTI prior to the Closing. In addition the Parties shall discuss the possibility of OTI purchasing endorsements to its existing policies with respect to such clinical trials at MSB's expense to cover MSB's continuation of such clinical trials.

ARTICLE 7

Indemnification

7.1 Indemnification by OTI and MSB.

(a) Indemnification by OTI. Subject to the terms and conditions of this Agreement, OTI will indemnify and hold harmless MSB, its Affiliates and their respective officers, directors, managers, employees, agents, successors and permitted assigns (collectively, the "MSB Indemnified Parties") against and in respect of any Damages suffered or incurred by any MSB Indemnified Party based upon, arising out of or otherwise in respect of any of the following:

(i) any breach or inaccuracy of any representation or warranty of OTI contained in Section 5.1 of this Agreement, in any Related Agreement or the Restriction Agreement;

(ii) any breach of or failure to perform any covenant, agreement or obligation of OTI in this Agreement, in any Related Agreement or the Restriction Agreement; or

(iii) the Excluded Liabilities, including the conduct of the Business prior and up to the Closing.

(b) Indemnification by MSB. Subject to the terms and conditions of this Agreement, MSB will indemnify and hold harmless OTI and its officers, directors, managers, employees, agents, successors and permitted assigns (collectively, the "OTI Indemnified Parties") against and in respect of any Damages suffered or incurred by any OTI Indemnified Party based upon, arising out of or otherwise in respect of any of the following:

(i) any breach or inaccuracy of any representation or warranty of MSB contained in Section 5.2 of this Agreement;

(ii) any breach of or failure to perform any covenant, agreement or obligation of MSB in this Agreement or in any Related Agreement; or

(iii) the Assumed Liabilities, including the conduct of the Business from and after the Closing.

7.2 Indemnification Procedures.

(a) Claim Notice. If a Person entitled to indemnification under this Article 7 (the "Indemnified Party") intends to make a claim for Damages (any, a "Claim") against the Party obligated to provide such indemnification (the "Indemnifying Party"), then the Indemnified Party will give written notice (a "Claim Notice") to the Indemnifying Party promptly after the Indemnified Party becomes aware and appreciates that any fact, condition or event is likely to give rise to Damages for which indemnification may be sought under this Article 7. Each Claim Notice must

describe in reasonable detail the nature and amount of the Claim, the basis of the Indemnified Party's request for indemnification under this Agreement and all material information in the Indemnified Party's possession relating to such Claim, including any fact, condition or event giving rise to the Damages giving rise to the Claim. The failure to give such prompt written notice shall not relieve the Indemnifying Party of its indemnification obligations hereunder, except to the extent the Indemnifying Party is materially prejudiced thereby. Notwithstanding the foregoing, a Claim Notice that relates to a representation or warranty that is subject to the survival period set forth in Section 7.3 must be made within such survival period, whether or not the Indemnifying Party is prejudiced by any failure to give a Claim Notice relating thereto. Notwithstanding anything to the contrary contained herein, with respect to any Claim that is not a Third-Party Claim, "Damages" shall exclude all indirect, consequential and punitive damages and the Indemnified Party shall have no right to recover any such damages.

(b) Third-Party Claim.

(i) Without limiting the Indemnified Party's obligations under Section 7.2(a), if the Claim for which indemnification is being sought arises from any Action brought by a third Person (a "Third-Party Claim") against the Indemnified Party, then the Claim Notice therefor shall include copies of all material written evidence thereof and all filings that have been made by such third Person in connection therewith and served on the Indemnified Party, and shall indicate the estimated amount, if reasonably practicable, of the Damages that have been or may be incurred by the Indemnified Party.

(ii) Subject to the conditions of this Section 7.2(b)(ii), the Indemnifying Party shall have the right to control the conduct of the defense of any Third Party Claim, at the Indemnifying Party's expense and using counsel selected by the Indemnifying Party to which the Indemnified Party has no reasonable objection. Notwithstanding the foregoing, the Indemnifying Party shall not be permitted to control the conduct of the defense of any Third Party Claim unless (A) within 30 days (or such longer period of time as the Indemnified Party and the Indemnifying Party may mutually agree in writing) after the Indemnified Party's delivery of a written notice of a Third-Party Claim pursuant to Section 7.2(b)(i), the Indemnifying Party gives written notice to the Indemnified Party that it intends to assume and conduct the defense and settlement of such Third-Party Claim; (B) the Indemnifying Party acknowledges in writing to the Indemnified Party (to the extent capable of being acknowledged based on the information provided) that there exists an indemnification obligation by the Indemnifying Party relating to such Third-Party Claim; (C) the amount reasonably claimed in such Third-Party Claim, together with any amounts that are reasonably necessary to satisfy any unsatisfied Claim made by the Indemnified Party is less than or equal to the then applicable limitations of liability for indemnification with respect to such Third-Party Claim as provided herein; (D) such Third-Party Claim does not involve criminal or regulatory enforcement action or seek an injunction or other equitable relief against the Indemnified Party or any of its affiliates; (E) no legal conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of such Third-Party Claim; (F) the conduct of the defense of, settlement of or an adverse resolution with respect to such Third-Party Claim would not reasonably be expected to be adverse in any material respect to the Indemnified Party's or any of its affiliates'

reputation, business or operations; and (G) the Indemnified Party actively and diligently conducts the defense of such Third Party Claim. The Indemnifying Party will lose any previously acquired right to control the defense of any Third-Party Claim if for any reason any of the foregoing conditions set forth in clause (B) through clause (G) of the preceding sentence are no longer satisfied, and the Indemnified Party will have the right to take over the control of such defense.

(iii) If the Indemnifying Party is exercising a right to control the conduct of the defense of a Third-Party Claim, the Indemnified Party shall have the right to participate in the defense of such Third-Party Claim at its own expense and with its own counsel and the Indemnifying Party shall keep the Indemnified Party reasonably informed as to the progress of such Third-Party Claim. The Indemnifying Party may not consent to the entry of any judgment or enter into any compromise or settlement with respect to any Third Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed) unless the Indemnifying Party is exercising a right to control the conduct of the defense of a Third-Party Claim and the terms, conditions and existence of such judgment, compromise or settlement are confidential and such judgment, compromise or settlement (A) provides for the payment by the Indemnifying Party of money as sole relief for the claimant; (B) results in a dismissal with prejudice of such Third-Party Claim, including a full and general release of the Indemnified Party and its Affiliates from all liabilities arising or relating to, or in connection with, the Third-Party Claim; and (C) includes an affirmative statement that there is no finding or admission of any violation of any law or the rights of any person or entity, and has no adverse effect on any other claims that may be made against the Indemnified Party. The Indemnified Parties will have no liability with respect to any compromise or settlement of, or the entry of any judgment arising from, any Third-Party Claim effected without the Indemnified Party's consent.

(iv) If the Indemnifying Party elects not to control or is not entitled to control the conduct of the defense of a Third-Party Claim, then the Indemnified Party shall have the right to control the conduct of the defense of the Third Party Claim, at the Indemnifying Party's expense and using counsel selected by the Indemnified Party to which the Indemnifying Party has no reasonable objection. In such event, the Indemnifying Party shall have the right to participate in the defense of such Third-Party Claim at its own expense and with its own counsel, and the Indemnified Party shall keep the Indemnifying Party reasonably informed as to the progress of such Third-Party Claim. If the Indemnified Party is exercising a right to control the conduct of the defense of a Third-Party Claim, then except with the written consent of the Indemnifying Party (which shall not be unreasonably withheld, conditioned or delayed), the Indemnified Party may not consent to the entry of any judgment or enter into any compromise or settlement with respect to any Third Party Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed).

7.3 Survival. The representations and warranties contained in Sections 5.1(a) ("Organization and Existence"), 5.1(b) ("Authority and Approval"), 5.1(j) (i) ("Title"), 5.1(m) ("No Brokers"), 5.2(a) ("Organization and Existence"), 5.2(b) ("Authority and Approval"), and 5.2(g) ("No Brokers") (with respect to each Party, the "Fundamental Representations") will survive the Closing until sixty (60) calendar days after the expiration of the applicable statute of limitations and

the representations and warranties set forth in Sections 5.1(l) (“Intellectual Property”) and 5.1(o)(iv) will survive until thirty-six (36) months following the Closing Date. All other representations and warranties contained in this Agreement will survive the Closing for a period ending upon the earlier of (a) the completion of MSB’s audit of the first fiscal year that ends following the Closing or (b) the date that is eighteen (18) months following the Closing Date (the “Survival Date”), at which time they shall terminate, be void and of no further force or effect. No indemnification will be payable for any Claim for Damages pursuant to Section 7.1(a)(i) or Section 7.1(b)(i) with respect to any inaccuracy or breach of any representation or warranty after termination of the applicable survival period specified in this Section 7.3, except with respect to Claims made prior to such termination pursuant to Section 7.2 but not then resolved (such representation or warranty surviving with respect to such Claim until resolution of such Claim).

7.4 Limitations. The rights to indemnification under Sections 7.1(a) and 7.1(b) are subject to the following limitations:

(a) Cap. The aggregate amount which all MSB Indemnified Parties will be entitled to receive for all claims under Section 7.1(a) is limited to ten percent (10%) of the value of all consideration (whether cash or MSB Ordinary Shares) actually paid by MSB to OTI pursuant to Sections 3.1 and 3.2 (the “Cap”). For such purposes, the value of any MSB Ordinary Shares shall be deemed the amount against which such MSB Ordinary Shares were issued pursuant to Section 3.1 or 3.2, as applicable.

(b) Deductible. OTI will have no obligation to indemnify any MSB Indemnified Parties for any Claims under Section 7.1(a) until the aggregate amount of all Damages incurred by MSB Indemnified Parties for which a Claim is brought under Section 7.1(a), exceeds \$250,000 (the “Deductible Amount”), and thereafter OTI shall only be liable for Damages in excess of the Deductible Amount, subject to the Cap.

(c) Exclusions from Sections 7.4(a) and 7.4(b) Limitations. The limitations under Sections 7.4(a) and 7.4(b) will not apply with respect to (i) any Claims for indemnification under Section 7.1(a)(i) with respect to any misrepresentation or breach by OTI of any Fundamental Representations, or (ii) any Claims for indemnification under Section 7.1(b)(i) with respect to any misrepresentation or breach by MSB of any Fundamental Representation; provided, however, that (1) the aggregate amount which all MSB Indemnified Parties will be entitled to receive with respect to any misrepresentation or breach of a Fundamental Representation, when taken together with all other Claims under Section 7.1(a)(i) and (ii), shall be limited to the amount actually received by OTI pursuant to Sections 3.1 and 3.2; (2) the aggregate amount which all MSB Indemnified Parties will be entitled to receive with respect to any Claims for indemnification under Section 7.1(a)(iii), shall not be capped; (3) the aggregate amount which all OTI Indemnified Parties will be entitled to receive with respect to any misrepresentation or breach of a Fundamental Representation, when taken together with all other Claims under Section 7.1(b)(i) and (ii), shall be limited to the amount actually received by OTI pursuant to Sections 3.1 and 3.2; (4) the aggregate amount which all of OTI Indemnified Parties will be entitled to receive with respect to any Claims for indemnification under Sections 7.1(b)(iii), shall not be capped; and (5) MSB shall have the right to offset any Claims that

would have been indemnifiable by OTI hereunder but for the Cap (any “Excess Damages”) against ten (10%) of the amounts payable to OTI under Sections 3.1 and 3.2 until such time as such Excess Damages have been fully offset.

(d) Other Limitations. Notwithstanding anything to the contrary contained in this Agreement or otherwise, the Parties expressly intend and agree as follows:

(i) The amount of any Damages incurred by an Indemnified Party shall be reduced by any amount actually recovered by such Indemnified Party with respect thereto under any insurance coverage (net any costs and expenses, including the present value of any insurance premium increases); provided, however, that no Indemnified Party shall be obligated to seek any such proceeds, benefits or recoveries.

(ii) The indemnification provisions provided for in this Article 7 will be the exclusive remedy for any breach of any representation, warranty, covenant, or agreement contained in this Agreement; provided, however, that nothing in this Agreement shall limit the rights or remedies of any Indemnified Party in connection with (A) any fraud in connection with this Agreement, the Related Agreements or the Restriction Agreement (including the negotiation or execution hereof or thereof), (B) any Related Agreement or the Restriction Agreement or (C) seeking any equitable remedies.

(iii) Each Indemnified Party shall use commercially reasonable efforts to mitigate any Damages which are the subject of Claims hereunder.

7.5 Resolution of Indemnification Disputes. If an Indemnifying Party disputes or contests the basis or amount of any Claim set forth in a Claim Notice delivered by an Indemnified Party in accordance with the provisions of Article 7, the dispute will be resolved as set forth in this Section 7.5 below.

(a) An Indemnifying Party may object to a claim for indemnification set forth in a Claim Notice by delivering to the Indemnified Party seeking indemnification a written statement of objection to the claim made in the Claim Notice (an “Objection Notice”); provided, however, that, to be effective, such Objection Notice must (A) be delivered to the Indemnified Party prior to the 60th day following the receipt of the applicable Claim Notice (such deadline, the “Objection Deadline” for such Claim Notice and the Claims for indemnification contained therein) and (B) set forth in reasonable detail the nature of the objections to the Claims in respect of which the objection is made.

(b) If the Indemnifying Party does not object in writing (as provided in Section 7.5(a)) to the Claims contained in such Claim Notice prior to the Objection Deadline for such Claim Notice, the Indemnifying Party shall be deemed to have delivered an Objection Notice on the Objection Deadline.

(c) In case an Indemnifying Party timely delivers, or is deemed to have delivered, an Objection Notice in accordance with Section 7.5(a), the Indemnifying Party and the Indemnified Parties shall attempt in good faith to agree upon the rights of the respective Parties with respect to

each of such Claims. If the Indemnifying Party and the Indemnified Parties reach an agreement, a memorandum setting forth such agreement shall be prepared and signed by all applicable Parties (any claims covered by such an agreement, "Settled Claims") Any amounts required to be paid as a result of a Settled Claim shall be paid by the Indemnifying Party to the Indemnified Parties pursuant to the Settled Claim within 30 days of the applicable claim becoming a Settled Claim, subject to Section 7.4.

(d) If no such agreement can be reached after good faith negotiation prior to 45 days after delivery of an Objection Notice, then upon the expiration of such 45-day period either the Indemnifying Party or the Indemnified Parties may demand arbitration of the matter unless the amount of the Damages that is at issue is the subject of a pending litigation with a third Person, in which event arbitration shall not be commenced until such amount is ascertained or both Parties agree to arbitration, and in either such event the matter shall be settled by arbitration conducted pursuant to Section 9.2.

(e) The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to the validity and amount of any claim in such Claim Notice shall be final, binding, and conclusive upon the Parties to this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s). Within 30 days of a decision of the arbitrator(s) requiring payment by an Indemnifying Party to an Indemnified Party, such Indemnifying Party shall make the payment to such Indemnified Party, subject to Section 7.4.

7.6 Tax Treatment. The Parties agree to treat all indemnification payments made pursuant to this Article 7 as adjustments to the purchase price for all Tax purposes.

ARTICLE 8

Non-Competition

8.1 General. OTI acknowledges that an important part of the benefit that MSB will receive in connection with the Transactions is the ability to conduct the Business free from competition from OTI, either directly or indirectly through a legal entity which OTI controls, is controlled by or is under common control with. In order that MSB may enjoy such benefits, for a period of eight (8) years from the Closing Date (the "Exclusivity Period"), OTI shall not, directly or indirectly through a legal entity which OTI controls, is controlled by or is under common control with, develop, manufacture or commercialize (including seeking Marketing Authorizations for), or authorize, license or otherwise assist any third Person in developing, manufacturing or commercializing (including providing access or right of reference to filings of OTI with any Governmental or Regulatory Authority), or supply to any third Person, any product containing or derived from any ceMSC or any other culture expanded stem cell that can progress to more than one (1) mesenchymal lineage. Additionally, OTI hereby waives any and all of its rights to enforce the terms of any non-competition or similar agreement with any former employee of OTI solely with respect to any such former employee's employment with MSB beginning after the Closing Date.

8.2 Enforceability. If any Governmental or Regulatory Authority determines that the foregoing restrictions are too broad or otherwise unreasonable under applicable Law in a particular country, the Governmental or Regulatory Authority is hereby requested and authorized by the Parties to revise the foregoing restrictions to include the maximum restrictions allowable under applicable Law in such country. Each of the Parties acknowledges, however, that this Article 8 has been negotiated by the Parties and that the restrictions set forth in Section 8.1 including the Exclusivity Period is reasonable in light of the circumstances pertaining to the Parties.

8.3 Equitable Relief. Notwithstanding any other provision of this Agreement, it is understood and agreed that the remedy of indemnification pursuant to Article 7 and other remedies at law would be inadequate in the case of any breach of the covenants contained in this Article 8, and, accordingly, MSB shall be entitled to equitable relief, including the remedy of specific performance, with respect to any breach or attempted breach of such covenants.

ARTICLE 9

Miscellaneous

9.1 Governing Law and Jurisdiction. This Agreement will be governed by and be construed in accordance with the Laws of the State of New York, without regard however to the conflicts of laws principles thereof.

9.2 Resolution of Conflicts; Arbitration. Except as set forth in Section 7.5, any claim or dispute arising out of or related to this Agreement, or the interpretation, making, performance, breach or termination thereof, shall (except as specifically set forth in this Agreement) be finally settled by binding arbitration in New York, New York in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve a dispute.

(a) Selection of Arbitrators. Such arbitration shall be conducted by a single arbitrator chosen by mutual agreement of MSB and OTI. Alternatively, at the request of either Party before the commencement of arbitration, the arbitration shall be conducted by three independent arbitrators, none of whom shall have any competitive interests with MSB or OTI. MSB and OTI shall each select one arbitrator. The two arbitrators so selected shall select a third arbitrator.

(b) Discovery. The arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the Parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing Parties about the subject matter of the dispute. The arbitrator, or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions for discovery abuses, including attorneys' fees and costs, to the same extent as a

competent court of law or equity, should the arbitrators or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification.

(c) Decision. The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to any claim or dispute (including the validity and amount of any indemnification claim set forth in a Claim Notice) shall be final, binding, and conclusive upon the Parties to this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s).

(d) Other Relief. The Parties may apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other interim or conservatory relief, as necessary, without breach of this arbitration provision and without abridgement of the powers of the arbitrator(s).

(e) Costs and Expenses. The Parties agree that each Party shall pay its own costs and expenses (including counsel fees) of any such arbitration, and each Party waives its right to seek an order compelling the other Party to pay its portion of its costs and expenses (including counsel fees) for any arbitration.

9.3 Notices. All notices and other communications hereunder will be in writing and will be deemed to have been duly given when delivered in person, by facsimile, receipt confirmed, or on the next Business Day when sent by overnight courier or on the third Business Day after being sent when sent by registered or certified mail (postage prepaid, return receipt requested) to the respective Party at the following addresses (or at such other address for a Party as will be specified by like notice):

If to OTI, to:

Osiris Therapeutics, Inc.
7015 Albert Einstein Avenue
Columbia, Maryland 21046
Attention: Chief Executive Officer
Telecopy: +(443) 283-4259

and an additional copy (which will not constitute notice to OTI) to:

McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
Attention: Michael Cochran
Telecopy: +(404) 527-4198

If to MSB to:

Mesoblast International Sàrl
Route de Pre-Bois 20
c/o Accounting & Management Service
SA, 1217 Meyrin, Switzerland

and

Mesoblast Limited
Level 39, 55 Collins Street
Melbourne, Victoria 3000
Australia
Attention: General Counsel
Telecopy: + 61396396030

and an additional copy (which will not constitute notice to MSB) to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Attention: Selwyn Goldberg
Telecopy: +(650) 493-6811

9.4 Amendments.

(a) This Agreement may be amended, superseded, canceled, renewed, or extended, and the terms hereof may be waived, only by a written instrument signed by the Parties hereto or, in the case of a waiver, by the Party against whom the waiver is to be effective. Neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law (i) no claim or right arising out of this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party, (ii) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

(b) A failure or omission of any Party to insist, in any instance, upon strict performance by another Party of any term or provision of this Agreement or to exercise any of its rights hereunder will not be deemed a modification of any term or provision hereof or a waiver or relinquishment of the future performance of any such term or provision by such Party, nor will such failure or omission constitute a waiver of the right of such Party to insist upon future performance by another Party of any such term or provision or any other term or provision of this Agreement.

9.5 Entire Agreement. This Agreement, together with the Disclosure Schedules, all Exhibits and Schedules hereto and the documents, agreements, certificates and instruments referred to herein and therein, constitutes the entire agreement between the Parties and with respect to the subject matter hereof and supersedes all prior representations, warranties, agreements, and understandings, oral or written, with respect to such matters (including the LOI and the Confidentiality Agreement dated as of 8 January 2013 between Mesoblast Limited and OTI) and other than any written agreement of the Parties that expressly provides that it is not superseded by this Agreement. The Parties acknowledge that OTI and Mesoblast Limited have entered into and delivered that certain Guarantee simultaneously herewith pursuant to which Mesoblast Limited agrees to guarantee the performance of MSB hereunder, all on the terms and conditions set forth therein (the "Guarantee").

9.6 No Assignment; Binding Effect. This Agreement is not assignable by any Party without the prior written consent of the other Party. Notwithstanding the foregoing, MSB shall be permitted, without the consent of OTI, to assign this Agreement (a) to its Affiliates or to perform this Agreement, in whole or in part, through its Affiliates, provided that MSB shall be primarily liable and responsible for performance by any such Affiliate hereunder, or (b) to any successor or third Person that acquires all or substantially all of the assets to which this Agreement relates by sale, transfer, merger, reorganization, operation of law or otherwise; provided that the assignee agrees in writing to be bound to the terms and conditions of this Agreement. In the event of an assignment permitted under this Section 9.6, the assigning Party shall notify the other Party in writing of such assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns. Any assignment not in accordance with this Section 9.6 shall be null and void.

9.7 Invalidity. In the event that any provision of this Agreement is declared to be void or unenforceable, the remainder of this Agreement will not be affected thereby and will remain in full force and effect to the extent feasible in the absence of the void and unenforceable declaration. The Parties furthermore agree to execute and deliver such amendatory contractual provisions to accomplish lawfully as nearly as possible the goals and purposes of the provision so held to be void or unenforceable.

9.8 Counterparts. This Agreement may be executed in multiple counterparts, each in hardcopy and each of which will be deemed an original but all of which together will constitute one and the same instrument.

9.9 Incorporation by Reference. The Disclosure Schedules and other Schedules and Exhibits and the documents referenced therein constitute integral parts of this Agreement and are hereby incorporated by reference herein.

9.10 Time of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

9.11 Specific Performance. The Parties agree that irreparable damages would occur in the event any provision of this Agreement is not performed in accordance with the terms hereof and each of the Parties will be entitled to specific performance of the terms hereof or injunctive relief, in addition to any other remedy at law or in equity that may be available under applicable Law.

9.12 No Third Party Beneficiaries. Except for Article 7 as provided therein, the terms and provisions of this Agreement are intended solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and it is not the intention of the Parties hereto to confer third Person beneficiary rights upon any other Person.

9.13 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party hereto will pay its own costs and expenses incurred in connection with the negotiation, execution and closing of this Agreement, the Related Agreements, the Restriction Agreement, other agreements and documents contemplated hereby and the Transactions.

[The remainder of this page left blank intentionally; signature pages follows.]

IN WITNESS WHEREOF, each Party, intending legally to be bound, has caused this Purchase Agreement to be duly executed and delivered in accordance with Section 4.1.

OTI

OSIRIS THERAPEUTICS, INC.

By: /s/ Philip R. Jacoby, Jr.

Print Name: Philip R. Jacoby, Jr.

Title: Chief Financial Officer & Secretary

MSB

**Executed by MESOBLAST
INTERNATIONAL SÁRL**

Signature of director

Print name above

Signature of director

Print name above

IN WITNESS WHEREOF, each Party, intending legally to be bound, has caused this Purchase Agreement to be duly executed and delivered in accordance with Section 4.1.

OTI

OSIRIS THERAPEUTICS, INC.

By: /s/ Philip R. Jacoby, Jr.

Print Name: Philip R. Jacoby, Jr.

Title: Chief Financial Officer & Secretary

MSB

**Executed by MESOBLAST
INTERNATIONAL SÁRL**

/s/ Challancin Ralph
Signature of director

Challancin Ralph
Print name above

/s/ Silviu Itescu
Signature of director

Silviu Itescu
Print name above

EXHIBIT 3.1

CLOSING AND CONTINGENT CONSIDERATION

(a) **Closing Consideration.** Upon the second Business Day immediately following the Closing, MSB shall deliver to OTI a cash payment in immediately available funds in the amount of the Closing Consideration, payable to the account designated in writing by OTI no later than two (2) Business Days prior to the Closing Date. On the date that is six (6) months after the Closing Date (or if such date is not a Business Day, the immediately following Business Day), MSB shall deliver to OTI a cash payment in immediately available funds of \$15,000,000, payable to the account designated in writing by OTI no later than two (2) Business Days prior to such date.

(b) **Contingent Consideration.** Following the Closing, as further consideration for OTI's sale and assignment of the Acquired Assets, MSB shall pay to OTI the following one-time amounts in accordance with this paragraph (b) and subject to Section 3.2(b) (collectively, the "**Contingent Consideration**"):

(i) \$15,000,000 payable upon the delivery of the Scheduled Assets in accordance with Section 2.2 of the Transition Services Agreement;

(ii) \$20,000,000 payable upon, and subject to, receipt of the first Marketing Authorization for a Prochymal Product for any indication in the United States;

(iii) \$10,000,000 payable upon, and subject to, receipt of the earlier of (A) the first Marketing Authorization for a Prochymal Product for any indication in any of France, Germany or the United Kingdom or (B) the first Marketing Authorization for a Prochymal Product from the European Medicines Agency (for clarity, any approval of a Marketing Authorization by Swissmedic shall not fulfill the requirements of this paragraph (b)(iii));

(iv) \$10,000,000 payable upon (A) the enrollment of the 330th patient meeting the applicable criteria as set forth in the protocol entitled "A Phase TTT, multicenter, placebo-controlled, randomized, double-blind study to evaluate the safety and efficacy of PROCHYMAL® (ex vivo cultured adult human mesenchymal stem cells) intravenous infusion for the induction of remission in subjects experiencing treatment-refractory moderate-to-severe Crohn's disease" analyzed by the intention-to-treat (TTT) approach in OTI's ongoing Phase 3 clinical trial for Prochymal Product in Crohn's disease (the "Phase 3 Crohn's Trial") or (B) MSB's determination in its sole discretion to discontinue enrollment of subjects into such clinical trial for any reason; and

(v) \$10,000,000 payable upon the earlier of (A) MSB's receipt of the final statistical report from the Phase 3 Crohn's Trial indicating the primary endpoint was achieved in that trial or (B) MSB's filing for Marketing Approval for a Prochymal Product in the United States or any country within the European Union for treatment of Crohn's disease.

For purposes of paragraphs (b)(ii) through (v), MSB shall provide updates (A) within thirty (30) days of the end of each calendar quarter regarding the status of each event referenced in such sections as giving rise to a payment obligation of MSB, and (B) within ten (10) Business Days of the actual occurrence of an event which gives rise to a payment obligation of MSB in such paragraphs.

EXHIBIT 3.2

EARNOUT

In addition to the amounts payable under Section 3.1, until the earlier of (x) ten (10) years after the first commercial sale of an Earnout Product in any country and (y) the first commercial sale of any competing product containing any ceMSC in any country by a Person other than MSB, its Affiliates or a Person authorized by MSB or its Affiliates whether pursuant to a sale, transfer, assignment or license of any Product (the "Earnout Period"), MSB shall pay to OTI the following payments in accordance with Section 3.2 (each such payment, an "Earnout"):

(vi) for the portion of the accrued Annual Net Sales less than or equal to \$250,000,000, MSB shall pay to OTI an amount in cash equal to four percent (4%) of such portion of the accrued Annual Net Sales;

(vii) for the portion of the accrued Annual Net Sales greater than \$250,000,000 and less than or equal to \$500,000,000, MSB shall pay to OTI an amount in cash equal to six percent (6%) of such portion of the accrued Annual Net Sales;

(viii) for the portion of the accrued Annual Net Sales greater than \$500,000,000 and less than or equal to \$750,000,000, MSB shall pay to OTI an amount in cash equal to eight percent (8%) of such portion of the accrued Annual Net Sales; and

(ix) for the portion of the accrued Annual Net Sales greater than \$750,000,000, MSB shall pay to OTI an amount in cash equal to ten percent (10%) of such portion of the accrued Annual Net Sales.

EXHIBIT 3.4

TAX ALLOCATION

EXHIBIT 6.5

LICENSES BACK

(a) Grant. At the Closing, MSB shall grant, and hereby grants, to OTI:

(i) a fully paid-up, royalty-free, irrevocable, and worldwide non-exclusive license (or, as applicable, sub-license) under the patents and patent applications listed on Schedule 6.5(i) (the "Listed Patents"), together with (A) all patents that issue as a result of any of those patent applications, (B) all provisionals, continuations, continuations-in-part, divisions, substitutions, renewals, reissues, reexaminations, and extensions relating to any Listed Patents, and (C) all related foreign patent and patent applications that are counterparts to any Listed Patents (collectively, the "6.5(i) Patents"), solely for purposes of OTI's conduct of the Excluded Business, but in all events such purposes shall exclude all research, development, manufacture, use, sale, offer for sale or importation of any ceMSC or other culture expanded stem cells or products incorporating or made using any ceMSC or other culture expanded stem cells.

(1) OTI shall have the right to grant sublicenses under the 6.5(i) Patents in connection with OTI's conduct of the Excluded Business and solely within the scope of the foregoing license, provided that each sublicensee shall agree to comply with the terms of Section 8.1 of this Agreement.

(2) From and after the Closing, in the event MSB determines in its discretion to abandon or not to maintain any 6.5(i) Patents, then MSB shall notify OTI and the Parties shall discuss in good faith the possibility of OTI taking over the prosecution and maintenance of such Licensed-Back TP consistent with its rights thereunder pursuant to Section (d) below.

(ii) a fully paid-up, royalty-free, irrevocable, perpetual and worldwide exclusive license, including the right to sublicense to Nuvasive and authorize Nuvasive to further sublicense through multiple tiers of sublicensing, under the patents and patent applications listed on Schedule 6.5(ii) (the "6.5(ii) Patents") to research, develop, make, have made, use, offer to sell, sell, import, export and otherwise offer to dispose or dispose of Nuvasive Products in the Nuvasive Exclusive Field, all in accordance with the Nuvasive Agreement; and

(iii) a fully paid-up, royalty-free, irrevocable, perpetual and worldwide non-exclusive license, including the right to sublicense Nuvasive and authorize Nuvasive to sublicense through multiple tiers of sublicensing pursuant to OTI's approval (which approval OTI has granted prior to the date hereof or will grant after the date hereof only upon mutual agreement with MSB) under the 6.5(ii) Patents to research, develop, make, have made, use, offer to sell, sell, import, export and otherwise offer to dispose or dispose of Nuvasive Products in the Nuvasive Non-Exclusive Field, all in accordance with the Nuvasive Agreement.

(b) Nuvasive Agreement. OTI has made available to MSB a true and accurate copy of the Nuvasive Agreement as in effect as of the date hereof. OTI shall not amend the Nuvasive Agreement in a manner that would adversely and materially affect the rights or obligations of MSB under this Agreement.

(c) Certain Definitions. For purposes of this Exhibit 6.5 only the following terms shall have the meanings given thereto:

(i) “Nuvasive” means Nuvasive, Inc., a Delaware corporation, with its primary executive offices at 7475 Lusk Boulevard, San Diego, CA 92121.

(ii) “Nuvasive Agreement” means that certain License Agreement between OTI and Nuvasive dated July 24, 2008, as amended pursuant to that certain Amendment No. 1 dated July 24, 2008 and pursuant to that certain Amendment No. 2 dated December 9, 2010.

(iii) “Nuvasive Exclusive Field” means the Exclusive Field as defined in the Nuvasive Agreement.

(iv) “Nuvasive Field” means the Nuvasive Exclusive Field and the Nuvasive Non-Exclusive Field.

(v) “Nuvasive Non-Exclusive Field” means the Non-Exclusive Field as defined in the Nuvasive Agreement.

(vi) “Nuvasive Product” means a Product as defined in the Nuvasive Agreement.

(d) Prosecution and Maintenance. From and after the Closing, in the event MSB determines in its discretion to abandon or not to maintain any 6.5(i) Patents or 6.5(ii) Patents (collectively, the “Licensed-Back TP”), then MSB shall promptly notify OTI at least sixty (60) days prior to any such abandonment or forfeiture and MSB shall also provide OTI during that same sixty (60) day period with the right, at its discretion, to assume and control the prosecution and maintenance of such Licensed-Back TP at its own expense and in its own name. In the event OTI elects to assume and control such prosecution and maintenance, then MSB shall promptly assign, and hereby assigns, all right, title, and interest in and to such Licensed-Back TP to OTI and MSB further agrees to execute such documents and take such actions as OTI may reasonably request to evidence and perfect the foregoing assignment and OTI’s rights in and to such Licensed-Back TP; provided that MSB shall retain and OTI hereby grants to MSB a fully-paid-up, royalty-free, worldwide non-exclusive license under such Licensed-Back TP (with the right to grant and authorize sublicenses in connection with the research, development, manufacture, use, sale, offer for sale and importation of products by or under authority of MSB and its Affiliates).

(e) Enforcement. From and after the Closing, in the event either Party reasonably believes any Licensed-Back TP is infringed by a third Person in competition with any business of OTI that is not in violation of Section 8.1 of this Agreement, MSB shall have the first right to initiate an action to enforce any Licensed-Back TP against such infringement at its own expense and retain all recoveries therefrom, and OTI shall have the right to be represented by its own counsel in such action at OTI’s expense. In the event MSB elects not to initiate an action to enforce any Licensed-

Back TP against such infringement, within ninety (90) days of a request by OTI to do so (or within such shorter period which may be required to preserve the rights to bring any such action), OTI may initiate such action at its expense and retain all recoveries therefrom, and MSB shall join in such action for the purposes of standing, if necessary at OTI's request and expense.

(f) Nuvasive Agreement. MSB acknowledges and agrees that MSB is not acquiring any of OTI's rights or obligations under the Nuvasive Agreement and the Nuvasive Agreement remains in full force and effect in accordance with its terms, including, but not limited to, Nuvasive's rights with respect to the pursuit of enforcement actions. MSB further acknowledges and agrees that it shall join any action brought by Nuvasive for purposes of standing, if necessary at OTI's request and expense.

EXHIBIT A

[Intentionally Omitted]

EXHIBIT B

ASSUMPTION AGREEMENT

[Attached behind]

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT, made as of October 10, 2013, by and between Osiris Therapeutics, Inc. (the "Assignor") and Mesoblast International Sàrl (the "Assignee"), is being executed pursuant to that Purchase Agreement dated as of October 10, 2013, by and among the Assignor and the Assignee (the "Agreement").

FOR VALUE RECEIVED, Assignor hereby sells, conveys, assigns, transfers and delivers to Assignee all of its right, title and interest in and to the Assumed Liabilities (as defined in the Agreement) and Assignee hereby accepts such assignment and hereby assumes and agrees to pay, perform and discharge when due the Assumed Liabilities.

1. Assignee covenants and agrees with Assignor, its successors and permitted assigns, that Assignee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered any and all such further acts, instruments, papers and documents, and will give such further assurances, as may be necessary, proper or convenient to carry out and effectuate the intent and purposes of this Assumption Agreement.

2. This Assumption Agreement will inure to the benefit of the Assignor, its successors and assigns, and will bind Assignee and its successors and assigns.

3. This Assumption Agreement will be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of New York applicable to contracts made and to be performed within that state.

4. If any term or provision of this Assumption Agreement will, to any extent or for any reason, be held to be invalid or unenforceable, the remainder of this Assumption Agreement will not be affected thereby and will be construed as if such invalid or unenforceable provision had never been contained herein or been applicable in such circumstances.

5. This Assumption Agreement incorporates by reference all terms, conditions and limitations contained in the Agreement.

[The remainder of this page left blank intentionally; signature page follows.]

IN WITNESS WHEREOF, each Party, intending legally to be bound, have caused this Assumption Agreement to be duly executed as of the day and year first herein above written.

ASSIGNOR:

OSIRIS THERAPEUTICS, INC.

By: /s/ Philip R. Jacoby, Jr.

Print Name: Philip R. Jacoby, Jr.

Title: Chief Financial Officer & Secretary

ASSIGNEE:

**Executed by MESOBLAST
INTERNATIONAL SÁRL**

Signature of director

Print name above

Signature of director

Print name above

IN WITNESS WHEREOF, each Party, intending legally to be bound, have caused this Assumption Agreement to be duly executed as of the day and year first herein above written.

ASSIGNOR:

OSIRIS THERAPEUTICS, INC.

By: _____

Print Name: _____

Title: _____

ASSIGNEE:

**Executed by MESOBLAST
INTERNATIONAL SÁRL**

/s/ Challancin Ralph
Signature of director

Challancin Ralph
Print name above

/s/ Silviu Itescu
Signature of director

Silviu Itescu
Print name above

EXHIBIT C

BILL OF SALE

[Attached behind]

BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Osiris Therapeutics, Inc. ("Seller"), a Maryland corporation, hereby sells, to Mesoblast International Sàrl, a Swiss société à responsabilité limitée, having an address at Route de Pre-Bois 20, c/o Accounting & Management Service SA, 1217 Meyrin, Switzerland ("Buyer") all right, title and interest in and to the Acquired Assets as such term is defined in the Purchase Agreement of even date herewith by and between Seller and Buyer (the "Agreement"), free and clear of all Liens other than Permitted Liens (as such terms are defined in the Agreement). Buyer hereby acknowledges that Seller makes no representations or warranties hereby with respect to the Acquired Assets except as specifically set forth in the Agreement. Seller, and its respective successors and assigns shall from time to time upon the written request of Buyer, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, each and all of such further assignments, transfers, conveyances, and assurances as may reasonably be required by Buyer in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the Acquired Assets sold by this Bill of Sale.

Executed this 10th day of October, 2013.

SELLER:

OSIRIS THERAPEUTICS, INC.

By: /s/ Philip R. Jacoby, Jr.

Print Name: Philip R. Jacoby, Jr.

Title: Chief Financial Officer & Secretary

BUYER:

Executed by MESOBLAST)
INTERNATIONAL SÁRL)
)

Signature of director

Signature of director

Print name above

Print name above

EXHIBIT D

GENERAL ASSIGNMENT

[Attached behind]

GENERAL ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, Osiris Therapeutics, Inc. ("OTI"), and Mesoblast International Sàrl ("MSB"), have entered into a Purchase Agreement dated as of October 10, 2013 (the "Agreement"), whereby OTI has agreed to sell, assign and transfer to MSB certain Acquired Assets owned by it in accordance with the terms and provisions of the Agreement (capitalized terms not otherwise defined herein will have the meanings ascribed thereto in the Agreement).

NOW THEREFORE, in consideration of the mutual premises contained herein and in the Agreement, the receipt and adequacy of which are hereby acknowledged, OTI hereby agrees as follows:

1. OTI, pursuant to the terms and conditions of the Agreement, hereby perpetually, irrevocably and unconditionally sells, assigns, transfers, conveys, sets over, and delivers to MSB and its successors and assigns to have and to hold forever, all of OTI's right, title, and interest in the Acquired Assets, as, at, and from the Closing Date.

2. OTI covenants and agrees with MSB and its successors and assigns that OTI will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered any and all such further acts, instruments, papers and documents, and will give such further assurances, as may be necessary, proper or convenient to carry out and effectuate the intent and purposes of this General Assignment.

3. This General Assignment will inure to the benefit of MSB, its successors and assigns, and will bind OTI and its successors and assigns except that OTI may not assign this General Assignment without the consent of MSB.

4. This General Assignment will be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the New York without reference to its conflicts of law provisions.

5. If any term or provision of this General Assignment will, to any extent or for any reason, be held to be invalid or unenforceable, the remainder of this General Assignment will not be affected thereby and will be construed as if such invalid or unenforceable provision had never been contained herein or been applicable in such circumstances. This General Assignment may not be amended unless mutually agreed upon in writing by both OTI and MSB, and no waiver will be effective unless signed by MSB.

[The remainder of this page left blank intentionally; signature page follows.]

IN WITNESS WHEREOF, intending legally to be bound, OTI has caused this General Assignment to be duly executed as of the day and year first herein above written.

OSIRIS THERAPEUTICS, INC.

By: /s/ Philip R. Jacoby, Jr.
Print Name: Philip R. Jacoby, Jr.
Title: Chief Financial Officer & Secretary

EXHIBIT E

INTELLECTUAL PROPERTY ASSIGNMENT

[Attached behind]

INTELLECTUAL PROPERTY ASSIGNMENT

This Intellectual Property Assignment (this "Assignment") is dated as of October 10, 2013 (the "Effective Date"), and is entered into between Osiris Therapeutics, Inc., whose address is 7015 Albert Einstein Avenue, Columbia, Maryland 21046 ("Assignor") and Mesoblast International Sàrl, whose address is Route de Pre-Bois 20, 1217 Meyrin, Switzerland ("Assignee").

WHEREAS, Assignor is the record owner of the Assigned IPR (as defined below); and

WHEREAS, Assignor has agreed to sell, assign and transfer to Assignee the Assigned IPR.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Assignor hereby sells, assigns, transfers and sets over to Assignee and its successors, assigns and other legal representatives all of Assignor's right, title and interest in and to the those patent rights listed on Attachment 1 hereto and trademark rights listed on Attachment 2, together in each case with all registrations, applications therefor, patents or trademarks (as applicable) issuing from any applications therefor, and renewals and extensions of the foregoing in the United States and for all foreign countries that are or may be secured under the laws of the United States and all foreign countries, now or hereafter in effect (collectively, the "Assigned IPR"), for Assignee's own use and enjoyment, and for the use and enjoyment of Assignee's successors, assigns or other legal representatives, together with all income, royalties or payments due or payable as of the Effective Date or thereafter, including all claims for damages by reason of past, present or future infringement, misappropriation or other unauthorized use of any of the Assigned IPR, with the right to sue for and collect the same for Assignee's own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives. Assignor hereby waives and agrees not to enforce any rights of attribution and integrity and other moral rights Assignor may have in the Assigned IPR.

Assignor authorizes and requests the United States Commissioner of Patents and Trademarks and any other applicable government authority to record Assignee as the assignee and owner of the Assigned IPR, and issue any and all registrations thereon to Assignee, as assignee of Assignor's right, title and interest in, to and under the same, for the sole use and enjoyment of Assignee and its successors, assigns or other legal representatives.

This Assignment will inure to the benefit of Assignee, its successors and assigns, and will bind Assignor and its successors and permitted assigns.

[The remainder of this page left blank intentionally; signature page follows.]

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed as of the Effective Date.

OSIRIS THERAPEUTICS, INC.

By: /s/ Philip R. Jacoby, Jr.

Print Name: Philip R. Jacoby, Jr.

Title: Chief Financial Officer & Secretary

State of MD)
) SS:
County of Howard)

On this the 10th day of October, 2013, Philip R. Jacoby Jr personally appeared before me, to me known to be the person named in and who executed the above Assignment individually, and acknowledged to me that he executed the same for the uses and the purposes therein mentioned.

SEAL

/s/
NOTARY PUBLIC

Acknowledged:

MESOBLAST INTERNATIONAL SARL

By: /s/ Silviv Itescu

Print Name: Silviv Itescu

Title: Director

State of New York)
) SS:
County of New York)

On this the 10th day of October, 2013, Silvio Itescu personally appeared before me, to me known to be the person named in and who executed the above Assignment individually, and acknowledged to me that he executed the same for the uses and the purposes therein mentioned.

SEAL

/s/
NOTARY PUBLIC

ATTACHMENT 1 TO INTELLECTUAL PROPERTY ASSIGNMENT
Assigned Patents

Assigned Trademarks

EXHIBIT F

RESTRICTION AGREEMENT

[Attached behind]

K & L GATES

Restriction Deed

MESOBLAST LIMITED

ACN 109 431 870

and

OSIRIS THERAPEUTICS INC.

K&L Gates

Melbourne office

Ref: AXG

Restriction Deed

DATE:

PARTIES:

We, the persons in:

- Item 1 of the schedule (“Entity”);
- Item 2 of the schedule (“Holder”),

agree as follows.

BACKGROUND:

- A. The Entity intends to issue the Restricted Securities to the Holder. The Holder has agreed that it will hold the Restricted Securities as set out in this deed.
- B. It is a condition of the Restricted Securities that the Holder will comply with this deed.

Definitions and interpretation

In this deed:

ASX means ASX Limited.

Escrow Period means the period set out in item 3 of the schedule.

Listing Rules means the ASX Listing Rules as amended from time to time.

Restricted Securities means the securities set out in item 4 of the schedule and any securities attaching to or arising out of those securities that are “restricted securities” (as defined in the Listing Rules) due to a decision by the ASX that those securities are securities that in ASX’s opinion should be treated as ‘restricted securities’.

The singular includes the plural and vice versa.

A reference to a party includes its successors, personal representatives and transferees.

Words and expressions defined in the Listing Rules, and not in this deed, have the meanings given to them in the Listing Rules.

Every warranty, deed or agreement (expressed or implied) in which more than one person joins, binds them individually and any combination of them as a group.

Escrow Restrictions

1. The Holder will not do any of the following during the Escrow Period.
 - (a) Dispose of, or agree or offer to dispose of, the Restricted Securities.
 - (b) Create, or agree or offer to create, any security interest in the Restricted Securities.
 - (c) Do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Restricted Securities.
 - (d) Participate in a return of capital made by the Entity.
2. To enable the Holder of Restricted Securities to accept an offer under a takeover bid during the Escrow Period or to enable Restricted Securities to be transferred or cancelled during the Escrow Period as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the Entity may consent to the removal of a holding lock on the Restricted Securities.
 - (b) The Entity will not consent under clause 2(a) unless, to the extent to which they are applicable, all of the following conditions are met:
 - (i) In the case of a takeover bid, the offers are for all of the ordinary securities;
 - (ii) In the case of a takeover bid, holders of at least half of the securities in the bid class that are not Restricted Securities to which the offer relates have accepted;
 - (iii) In the case of an off-market bid, if the offer is conditional, the bidder and the Holder agree in writing that a holding lock will be applied for each restricted security that is not bought by the bidder under the off-market bid;
 - (iv) In the case of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the Holder and the Entity in which the Restricted Securities are held agree in writing that a holding lock will be applied if the merger does not take effect.
3. If the ASX decides that any of the Restricted Securities are “restricted securities” as defined in the Listing Rules:
 - (i) We will comply with chapter 9 of the Listing Rules,
 - (ii) If any of us is not a listed entity, we will comply as if we were a listed entity, and
 - (iii) Each of us will take any steps we are able to take that are necessary to enable any of the others to comply.

4. For the Escrow Period, the Restricted Securities will be kept on the issuer sponsored subregister. The Holder hereby agrees in writing to the application of a holding lock to the Restricted Securities for the Escrow Period.
5. If item 5 of the schedule is completed, the full particulars of security interests which have been created, or are agreed or offered to be created, in the Restricted Securities are set out. A release of the security interests is attached. Apart from this, before the Escrow Period begins, the Holder has not done, or omitted to do, any act which would breach clause 1 if done or omitted during the Escrow Period. The Holder gives this warranty.
6. A breach of any of these warranties is a breach of this deed.
7. If it appears to the Entity that the Holder may breach this deed, the Entity must take the steps necessary to prevent the breach, or to enforce the deed.
8. If the Holder breaches this deed, each of the following applies.
 - (a) The Entity must take the steps necessary to enforce the deed, or to rectify the breach.
 - (b) The Entity must refuse to acknowledge, deal with, accept or register any sale, assignment, transfer or conversion of any of the Restricted Securities. This is in addition to other rights and remedies of the Entity.
 - (c) The Holder of the Restricted Securities ceases to be entitled to any dividends, distributions or voting rights while the breach continues.
9. The laws of the State of Victoria, Australia apply to this deed. The Holder submits to the jurisdiction of the courts of that State.

Schedule

- | | | |
|----|--|--|
| 1. | Entity's name and address: | Mesoblast Limited ACN 109 431 870 of Level 39, 55 Collins Street, Melbourne, Victoria |
| 2. | Holder's name and address: | Osiris Therapeutics Inc. , a Maryland corporation |
| 3. | Escrow period (the period for which the initial Restricted Securities are escrowed): | 12 months from the date of allotment |
| 4. | Particulars of Restricted Securities: | [insert number]. |
| 5. | Particulars of security interests over Restricted Securities: | Not Applicable |

EXECUTED as a deed.

Executed by Mesoblast Limited CAN)
109 431 870 in accordance with section)
127(1) of the Corporations Act 2001 (Cth):)
)
)

Signature of director

Name (please print)

Executed by)

Executed by Osiris Therapeutics Inc. by)
its authorized representative:)
)
)

Name (please print)

Signature of director or company secretary*
*delete whichever does not apply

Name (please print)

EXHIBIT G

TRANSITION SERVICES AGREEMENT

[Attached behind]

EXHIBIT G

TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this “**Agreement**”) is made this 10th day of October, 2013 (the “**Effective Date**”), by and between Mesoblast International Sàrl, a Swiss société a responsabilité limitée, having an address at Route de Pre-Bois 20, c/o Accounting & Management Service SA, 1217 Meyrin, Switzerland (“**MSB**”) and Osiris Therapeutics, Inc., a Maryland corporation (“**OTI**”). MSB and OTI are each referred to individually as a “**Party**” and together as the “**Parties**”.

RECITALS

- A. OTI and MSB are entering into a purchase agreement of even date herewith, to which this Agreement is attached as Exhibit G and pursuant to which MSB is acquiring from OTI certain assets (the “**Purchase Agreement**”); and
- B. In order to facilitate the orderly transfer and maintain the value of the Acquired Assets under the Purchase Agreement in an effective manner, OTI has agreed to provide to MSB certain services for the periods and on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree:

1. DEFINITIONS. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Purchase Agreement.

2. SERVICES.

2.1 Scope of Services.

(a) During the Term, OTI shall provide to MSB (i) the services set forth on Attachment 1 hereto and requested by MSB (the “**Core Services**”) and (ii) any additional services that (A) are reasonably necessary for the conduct of the Business or maintain the value of any Acquired Assets, (B) are requested in writing by MSB, (C) have been performed by OTI on its own behalf in connection with its conduct of the Business during the twelve (12) month period immediately prior to the Effective Date, and (D) are approved in writing by OTI, such approval not to be unreasonably withheld (the “**Additional Services**”, and collectively with the Core Services, the “**Services**”), with all such Services performed by OTI in a manner consistent with its past practice. OTI and MSB recognize that in order to provide the Services, that OTI will need to retain, at OTI’s facility in Columbia, MD, originals and/or copies of certain Assigned Books and Records and will need to retain at such facility certain tangible assets included in the Scheduled Assets (the “**Transition Assets**”). OTI agrees to provide MSB a list of all such Transition Assets by

November 1, 2013 (“**Transition Assets Notice**”). Notwithstanding anything to the contrary herein, Transition Assets shall include, but not exclusively, any and all Inventory and Tangible Personal Property necessary to continue to store, process and ship finished product Inventory from the OTI facility, including any and all quality and other product related assay work described in this Agreement.

(b) Upon MSB providing reasonable notice to OTI and, with respect to each of the Services, during the Term, OTI shall provide MSB with on-site access at OTI’s facility in Columbia, MD solely for the purpose of OTI providing reasonable information and consultation with respect to the Services. Such access shall be granted (i) during normal business hours for the first month of the term (ii) for up to twelve (12) days per month during the second and third months of the Term and (iii) for up to eight (8) days per month thereafter during the Term (in each case, during normal business hours), and on such days, MSB’s Primary Contact (as defined below) shall have access to office space within OTI’s facility during normal business hours. Any additional on-site access to OTI’s facility (“**Additional Visits**”) shall be subject to OTI’s agreement, not to be unreasonably withheld or conditioned. At all times, including during Additional Visits, MSB shall have access to the Overall Program Manager or the Manufacturing Program Manager, as applicable, subject only to the limitations in Sections 2.4 and 2.5, and if MSB desires to have access to other OTI personnel, such access shall be coordinated through the Overall Program Manager or the Manufacturing Program Manager (each as defined below).

2.2 Delivery of Scheduled Assets. OTI agrees to deliver, without cost to MSB (except as otherwise specifically provided for herein), the Scheduled Assets and duplicate copies of Shared Books and Records as described in this Section 2.2. Without limiting the foregoing and in connection with such delivery, OTI shall provide to MSB all indexes, directories and other similar materials in its possession or control for organizing, arranging or managing the use of Scheduled Assets and duplicate copies of Shared Books and Records, and shall use reasonable efforts to deliver such assets and records in an organized manner. In addition, OTI shall make available, at OTI’s cost, OTI personnel to provide reasonable assistance to MSB regarding gaining an understanding as to how such Scheduled Assets are so organized and to assist in the successful delivery of the Scheduled Assets. Upon the provision by OTI of the Transition Assets Notice, any and all Scheduled Assets included therein shall be considered “delivered” by OTI.

(a) **Tangible Assets.** With respect to the Scheduled Assets and each tangible item within the Scheduled Assets, but not including the Transition Assets, on or before November 10, 2013 (the “**Notice Date**”), MSB shall specify by notice to OTI in writing a location for delivery of each of such items, which may include (y) any facilities of a third Person currently possessing such item or (z) such other location as MSB may determine (each (y) and (z), the “**Delivery Location**”).

(i) Other than with respect to any Transition Assets, with respect to those tangible items within the Scheduled Assets for which no transfer location is designated by MSB as of the Notice Date, OTI shall have been deemed to have “delivered” such items (each, a “**Held Item**”) when MSB has confirmed in writing that such Held Item is available for access by MSB

pursuant to this Agreement; provided that MSB shall provide such confirmation or identify any Held Items as unavailable no later than the Notice Date; provided further that if MSB fails to confirm availability of any Held Item or identify any Held Item as unavailable by the Notice Date, then availability of such Held Item shall be deemed to have been confirmed. Any subsequent transfer of each Held Item to a location specified by MSB will be the sole responsibility of MSB. Notwithstanding the foregoing, OTI shall have no obligation to store any Held Item beyond the three (3) month anniversary of the Effective Date unless alternative storage arrangements have been made and agreed to by the Parties or an agreement has been reached by the Parties for OTI to hold the Held Items for purposes of performing the Services. If no other arrangements for storage have been agreed to, then from and after the three (3) month anniversary of the Effective Date, OTI shall be free to dispose of any Held Item (other than files and records) remaining at OTI, and shall be free to ship any files or other records to a storage facility of OTI's selection, at MSB's sole cost and expense and shall notify MSB of the same. If MSB elects to remove any Held Item from OTI's facility, OTI shall make such Held Item available during normal business hours, upon reasonable advance written notice. For so long the Held Items are held at OTI's facilities, OTI shall (x) use such Held Items only for purposes of conducting activities in connection with this Agreement in a manner consistent with applicable Law, (y) keep such Held Items free of all Liens and (z) maintain such Held Items in substantially the same condition they are in at Closing, and will exercise due and proper care in the use and maintenance thereof, and will be responsible for any damage to such Held Items, excepting reasonable wear and tear, and will insure such Scheduled Assets against, loss, theft and damage under a policy naming MSB as an additional insured.

(ii) With respect to those tangible items within the Scheduled Assets for which MSB designates the Delivery Location as the facilities of the third Person holding such item as of the Closing pursuant to clause (y) (each, a "**Bailed Item**"), OTI shall promptly notify such third Person that such Bailed Item is owned by MSB and such Bailed Item shall be deemed to be "delivered" when OTI provides MSB reasonable documentation that such third Party has been notified that MSB is the owner of such Bailed Item (such notice by OTI to such third party not to occur before MSB designates such Delivery Location). OTI shall not take, or fail to take, any action which would prevent MSB from having the right to obtain possession of such Bailed Item in the same manner and on the terms and conditions as OTI prior to the Closing (unless otherwise agreed between MSB and such third Person). OTI shall cause there to be no outstanding obligations of OTI to such third Person with respect to such Bailed Item for any period prior to the Closing.

(iii) With respect to those tangible items within the Scheduled Assets for which MSB designates the Delivery Location as any other location pursuant to clause (z) (each, a "**Shipped Item**"), OTI shall promptly ship such item to the location designated by MSB (DDU, Incoterms 2010). OTI shall have been deemed to have "delivered" each such Shipped Item when OTI confirms in writing that such Shipped Item has been delivered to the carrier. In the event that MSB believes it does not receive a Shipped Item, OTI shall work with MSB, in good faith, to resolve such issue.

(b) **Intangible Assets.** With respect to intangible items within the Scheduled Assets (including all electronic files and records) and duplicate copies of Shared Books and Records

(each, a “**Other Item**”) MSB shall establish, no later than the Notice Date, a secure mechanism to transfer all such Other Items to MSB or its designee, provided that if MSB does not establish such secure mechanism by the Notice Date, then OTI shall be deemed to have “delivered” each Other Item effective as of the Notice Date. OTI shall notify MSB, in writing, once each such Other Item should have been received. OTI shall have been deemed to have “delivered” each such Other Items when MSB has confirmed in writing that such Other Item has been received; provided that MSB shall provide such confirmation or identify any Other Items as having not been received within ten (10) days of the date that OTI notifies MSB that such Other Item should have been received; provided further that if MSB fails to confirm receipt of any Other Item or identify any Other Item as not received within such ten day-period, then receipt of such Other Item shall deemed to have been confirmed. Upon confirmation of receipt of any Other Item (with the exception of copies of Shared Books and Records), OTI shall use reasonable efforts to destroy all other copies of such Other Item except to the extent OTI is required to retain the same pursuant to applicable Law (both during and after the Term). Without limiting the foregoing, OTI shall prepare appropriate Intellectual Property assignments necessary to assign all of the Assigned Intellectual Property.

(c) Scheduled Contracts.

(i) Notwithstanding anything to the contrary, if OTI includes any contract within the Scheduled Assets that MSB identifies prior to the Notice Date as one that it does not desire to be assigned, then OTI shall (i) promptly terminate (to the extent terminable) such Contract at its own expense or (ii) if non-terminable retain such Contract; provided that (A) MSB shall reimburse OTI for the first \$250,000 USD incurred by OTI in terminating any such Contracts and (B) MSB shall be responsible for costs incurred under such Contract in the ordinary course from the Effective Date until the date MSB notifies OTI that it does not want such Contracts assigned. MSB shall not have the right not to accept assignment of that certain Collaboration Agreement between Osiris Acquisition II, Inc. and JCR Pharmaceuticals, Ltd. dated as of August 26, 2003 (as amended as of June 27, 2005). Without limiting the foregoing, at MSB’s request and expense, OTI shall use commercially reasonable efforts to assist MSB to amend any Assigned Contracts during the period prior to the expiration of the Notice Date.

(ii) Notwithstanding anything herein to the contrary, OTI shall retain and maintain: (i) that certain Marketing, Collaboration and License Agreement by and between OTI and BioWhittaker, Inc. (together with its successors in interest, “**BioWhittaker**”) effective August 11, 1999 (the “**BioWhittaker License Agreement**”); and (ii) that Development and Supply Agreement by and between OTI and BioWhittaker, effective August 11, 1999 (the “**BioWhittaker Development Agreement**”, and collectively, the “**BioWhittaker Agreements**”), until the earlier of ninety (90) days after the Effective Date and MSB’s notice that it desires to obtain assignment of one or both thereof. At the time of such notice by MSB, OTI shall assign and does hereby assign all of its right, title and interest in and to either or both of the BioWhittaker Agreements. For so long as OTI retains either one or both of the BioWhittaker Agreements, OTI shall (A) not amend or terminate either of the BioWhittaker Agreements, and (B) provide MSB copies of all correspondences, notices, demands, reports and the like provided by BioWhittaker to OTI under either of the BioWhittaker Agreements. If OTI receives any amounts from BioWhittaker under

either of the BioWhittaker Agreements during such ninety (90) day period, then OTI shall retain such amounts, unless MSB has notified OTI that it desires to obtain assignment of one or both agreements, in which case any amounts received by OTI under such assigned agreement, less any amounts incurred by OTI with respect thereto, shall be remitted to MSB.

(iii) Notwithstanding anything herein to the contrary, OTI shall retain and maintain that certain Manufacturing Services Agreement between OTI and Lonza Walkersville, Inc. (together with its successors in interest, "**Lonza**") dated June 17, 2008 (the "**Lonza MSA**"), until the earlier of the three (3) month anniversary of the Effective Date and MSB's notice that it desires to obtain assignment thereof. At the time of such notice by MSB, OTI shall assign and does hereby assign all of its right, title and interest in and to the Lonza MSA. For so long as OTI retains the Lonza MSA, OTI shall (A) not amend or terminate the Lonza MSA, (B) provide MSB copies of all correspondences, notices, demands, reports and the like provided by Lonza to OTI under the Lonza MSA, and (C) not incur any cost, expense, obligation (other than the obligation to retain and maintain, as provided herein) or other liability arising out of the Lonza MSA.

Notwithstanding anything herein to the contrary, OTI's retention of the BioWhittaker Agreements and the Lonza MSA shall have no bearing on OTI's satisfaction of its delivery obligations hereunder.

2.3 Primary Contact. OTI and MSB will each assign one (1) employee, respectively, to be the primary contact with respect to the Services and matters under this Agreement including coordinating interactions of the Parties and the transfer of the MSB Materials (as defined below) and the Acquired Assets (each, a "**Primary Contact**"). Each Party's initial appointee for Primary Contact is set forth on Attachment 3. The Primary Contact shall have no obligation to provide Services outside of normal business hours. Subject to the terms of this Section 2.3, either Party may change its Primary Contact upon written notice to the other Party with an individual with similar background, experience and capabilities. OTI's Primary Contact shall be the "Overall Program Manager" during the Initial Term, and shall thereafter be appointed by OTI in its sole reasonable discretion.

2.4 Overall Program Manager. OTI will assign one (1) employee to serve as the Overall Program Manager (the "**Overall Program Manager**"). OTI's initial appointee for the Overall Program Manager is set forth on Attachment 3. The Overall Program Manager shall be responsible to provide and oversee transition services by OTI to MSB in the areas of Clinical (including Safety), Regulatory, and Corporate (including Legal and Finance) and shall provide general coordination of efforts during the Initial Term. The Overall Program Manager shall have no obligation to provide Services outside of normal business hours during the Initial Term, and shall have no obligation to provide Services beyond the Initial Term. OTI may change its Overall Program Manager upon written notice to MSB with an individual with similar background, experience and capabilities.

2.5 Manufacturing Program Manager. OTI will assign one (1) employee to serve as the Manufacturing Program Manager (the "**Manufacturing Program Manager**"). OTI's initial appointee for Manufacturing Program Manager is set forth on Attachment 3. The Manufacturing Program Manager's responsibilities shall be to provide and oversee transition services and

coordinate delivery of transition services by OTI to MSB in the areas of Manufacturing, Logistics, QA and QC. MSB shall contact the Manufacturing Program Manager, and no other OTI personnel, with respect to transition services in the areas of Manufacturing, Logistics, QA and QC. The Manufacturing Program Manager shall have no obligation to provide Services outside of normal business hours during the Term. OTI may change its Manufacturing Program Manager upon written notice to MSB with an individual with similar background, experience and capabilities.

2.6 Performance. OTI shall perform the Services in accordance with the terms and conditions of this Agreement using the same degree of care and skill it exercises in performing similar services for itself or other third parties, consistent with past practices during the twelve (12) month period immediately prior to the Effective Date and in accordance with the instructions of MSB (provided that such instructions are not inconsistent with OTI's past practice), but in no event less than in a timely and professional manner, in accordance with industry standards. If there is a conflict between the immediate needs of MSB and those of OTI as to the use of or access to a particular Service, which conflict cannot reasonably be avoided, OTI shall have the right to establish reasonable priorities, at particular times and under particular circumstances, as between OTI and MSB. In any such situation, OTI shall provide written notice to MSB of any changes at the earliest practical opportunity to the extent such changes would have an adverse impact on the Business, but in no event less than five (5) Business Days before such changes. OTI will maintain all insurance (at commercially reasonable levels), staff and licenses necessary for OTI to perform the Services. All Services will be performed in accordance with all applicable Laws. Unless the Parties otherwise agree in advance thereof, OTI shall not contract any third Person to perform Services on its behalf.

2.7 Reporting. OTI shall keep MSB reasonably informed on the progress of its performance of the Services.

2.8 Regulatory Matters. No more than once each calendar quarter, MSB and its authorized representative may inspect OTI's facility and records relating to its performance of the Services during normal business hours on not less than five (5) Business Days' notice. In the event OTI becomes aware that it is to be the subject of an inspection by, or otherwise receives any correspondence or inquiry from, the FDA or other regulatory agency in connection with the Services, OTI shall: (i) immediately notify MSB thereof; (ii) provide MSB the opportunity to be present during such inspection; (iii) send MSB a copy of any inspection reports or other correspondence resulting therefrom; and (iv) obtain MSB's prior written consent before referring to MSB in any regulatory correspondence. With respect to each Party's performance under this Agreement, OTI and MSB shall each comply with all applicable Laws, regulations and standards.

2.9 Relationship. In performing the Services hereunder, OTI and MSB acknowledge and agree that OTI and its representatives shall be considered independent contractors with respect to MSB and shall under no circumstances be deemed to be an employee or agent or fiduciary of MSB.

2.10 MSB Materials. OTI is authorized to have access to and make use of all data, information, reports, documents, materials provided by MSB in connection with, or made, conceived, reduced to practice, or learned by an employee or agent of OTI in, the performance of the Services ("**MSB Materials**") solely as necessary and appropriate for its performance of the Services hereunder. Without limiting Section 5.2, MSB shall retain all rights in the MSB Materials.

3. COMPENSATION.

3.1 **Fees.** All fees charged by OTI to MSB for Services shall be in accordance with Attachment 2.

(a) Manufacturing Program Manager. Any Services provided by the Manufacturing Program Manager during the Initial Term in excess of the MPM Commitment will be billed at the hourly rates set forth in Attachment 2. If MSB elects to extend this Agreement beyond the Initial Term, as provided for in Section 4.1, then all Services provided by the Manufacturing Program Manager shall be provided at the hourly rate set forth in Attachment 2. The Manufacturing Program Manager shall get written (email) permission by MSB before working in excess of the MPM Commitment. Time spent by the Manufacturing Program Manager both (i) during the Initial Term in excess of the MPM Commitment and (ii) during the Extended Term, will be recorded on monthly timesheets and the monthly fees for such Services shall be determined in accordance with such timesheets, provided that in no case will time spent by OTI exceed amounts determined by MSB in requesting such Services without MSB's prior written consent.

(b) Other OTI Personnel. During the Initial Term, time spent providing Services by OTI personnel, other than the Overall Program Manager and Manufacturing Program Manager (as provided for in Section 3.1(a)), will be billed at the hourly rates set forth on Attachment 2, will be recorded on monthly timesheets, and the monthly fees for such Services shall be determined in accordance with such timesheets; provided that when practical the Services will be performed by the Overall Program Manager or Manufacturing Program Manager. If MSB elects to extend this Agreement beyond the Initial Term, as provided for in Section 4.1, then all Services requested by MSB and provided by any OTI personnel shall be provided at the hourly rates set forth in Attachment 2.

3.2 Expenses.

(a) MSB shall reimburse OTI for any third party out-of-pocket costs or expenses actually incurred by OTI as a result of performing the Services, and for any direct out-of-pocket costs or expenses incurred by OTI at the request of MSB. OTI shall have no obligation to incur any such cost or expense unless MSB provides its prior written consent to such cost or expense, and MSB shall have no obligation to reimburse OTI for any such cost or expenses for which MSB did not provide its prior written consent.

(b) Assigned Contracts. For any third party out-of-pocket expenses incurred under any Assigned Contracts, MSB shall be responsible for such expenses incurred after the Closing Date, and OTI shall be responsible for such expenses incurred prior to the Closing Date. If OTI incurs any expenses under any Assigned Contract accrued after the Closing Date, OTI shall provide notice of any such expenses, and MSB shall reimburse such amounts. If MSB incurs any expenses under any Assigned Contract accrued prior to the Closing Date, MSB shall provide notice of such expenses, and OTI shall reimburse or credit any such expenses incurred by MSB.

3.3 **Payment.** All payments shall be made in U.S. dollars. OTI shall invoice MSB for Services rendered under this Agreement, and MSB shall pay invoiced amounts within thirty (30) days of the invoice date therefor.

4. TERM AND TERMINATION.

4.1 **Term.** The term of this Agreement (the “**Term**”) shall commence on the Effective Date and terminate on the nine (9) month anniversary of the Effective Date (the “**Initial Term**”). MSB may elect to extend the Term for one (1) additional three (3) month period by providing written notice of such extension to OTI not later than sixty (60) days prior to the end of the Initial Term (the “**Extended Term**”). Upon the later of expiration of the Initial Term or the Extended Term, this Agreement shall automatically terminate.

4.2 **Termination by MSB.** MSB may terminate this Agreement in its entirety or with respect to those Services overseen by the Overall Program Manager or the Manufacturing Program Manager upon thirty (30) days’ notice to OTI.

4.3 **Survival.** Section 4.3, Articles 1, 5, 6 and 7 shall survive termination or expiration of this Agreement. Termination or expiration of this Agreement shall not affect any other rights or obligations, including payment obligations, of either Party which may have accrued up to the effective date of such termination or expiration.

5. CONFIDENTIALITY: INTELLECTUAL PROPERTY.

5.1 **Confidentiality.** OTI shall and shall cause its Representatives to, hold in confidence all information (a) within the Acquired Assets that prior to the Closing OTI treated as confidential, (b) generated by OTI in the performance of the Services, or (c) provided by or on behalf of MSB to OTI or its Representative pursuant to Article 3 of the Purchase Agreement, and shall not use any such information except in connection with the performance of the Services hereunder and in exercise of its rights under or otherwise expressly provided in the Purchase Agreement; provided, however, that such obligation shall not apply to information that (i) is or becomes generally available to the public or otherwise part of the public domain other than through any act or omission of OTI in breach of this Agreement; (ii) becomes known to OTI from or through a third Person not under an obligation of non-disclosure to MSB or (iii) in the case of the information described in (c) only, was already known to OTI at the time of disclosure, other than under an obligation of confidentiality.

5.2 **IP Assignment.** Notwithstanding any provision to the contrary, OTI agrees to assign, and hereby assigns, to MSB, without royalty or further consideration to OTI, all right, title, and interest OTI may have, or may acquire, in and to all Inventions and all Intellectual Property rights associated with such Inventions including, but not limited to, patents and copyrights. For purposes of this Article 5, “**Invention(s)**” means any and all inventions, discoveries, original works of authorship, developments, improvements, formulas, techniques, concepts, ideas and MSB Materials

(whether or not patentable or registrable under copyright or similar statute) made, conceived, reduced to practice, or learned by an employee or agent of OTI in the performance of the Services. Upon MSB's request from time to time, OTI shall provide any embodiments of the Inventions in its possession. OTI represents and warrants to MSB that each employee or agent of OTI that will perform the Services has executed and delivered an agreement with OTI relating to invention assignment and confidentiality that bind such employee or agent to obligations of assignment and confidentiality consistent with the terms and conditions of this Agreement, including the obligation to assign to OTI all right, title, and interest such employee or agent may have, or may acquire, in and to all Inventions and all intellectual property rights therein and thereto during the secondment of such employee or agent under this Agreement.

5.3 **Further Assurances.** OTI agrees to execute any documents as reasonably necessary or reasonably desirable for MSB to perfect its rights in the Inventions, to evidence more fully such transfer of ownership or the original ownership of all the Inventions, or to otherwise protect, defend or prosecute the intellectual property rights within such Inventions. If at any time MSB is unable, because of OTI's dissolution or other unavailability, to secure OTI's signature to apply for or to pursue any United States or foreign patent, copyright or trademark applications or registrations covering Inventions, or other documents or filings pertaining to any or all of the Inventions, OTI hereby irrevocably designates and appoints MSB and its duly authorized officers and agents as its agents and attorneys-in-fact, to act for and on its behalf and stead to execute and file any and all such applications, registrations, and other documents and to do all other lawfully permitted acts to further the prosecution and issuance thereon with the same legal force and effect as if executed by OTI.

6. DISCLAIMER; LIMITATION OF LIABILITY.

6.1 **Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR VALIDITY OF ANY PATENTS ISSUED OR PENDING.

6.2 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST SAVINGS, OR ANY OTHER INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

7. MISCELLANEOUS.

7.1 **Governing Law.** This Agreement will be governed by and be construed in accordance with the Laws of the State of New York, without regard however to the conflicts of laws principles thereof.

7.2 **Assignment.** This Agreement, or any rights or obligations hereunder, may not be assigned by either Party without the prior written consent of the other Party, except that either Party

may assign this Agreement in connection with its assignment of the Purchase Agreement in accordance with the provisions of Section 9.6 thereof. Any attempted assignment of this Agreement not in compliance with this Section 7.2 shall be null and void. This Agreement shall inure to the benefit of and be binding upon each Party signatory hereto, its successors and permitted assigns.

7.3 Resolution of Conflicts; Arbitration.

(a) General. Any claim or dispute arising out of or related to this Agreement (including any arising out of or related to Section 2.2), or the interpretation, making, performance, breach or termination thereof, shall (except as specifically set forth in this Agreement) be finally settled by binding arbitration in New York, New York in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve a dispute.

(b) Selection of Arbitrators. Such arbitration shall be conducted by a single arbitrator chosen by mutual agreement of MSB and OTI. Alternatively, at the request of either Party before the commencement of arbitration, the arbitration shall be conducted by three independent arbitrators, none of whom shall have any competitive interests with MSB or OTI. MSB and OTI shall each select one arbitrator. The two arbitrators so selected shall select a third arbitrator.

(c) Discovery. The arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the Parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing Parties about the subject matter of the dispute. The arbitrator, or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions for discovery abuses, including attorneys' fees and costs, to the same extent as a competent court of law or equity, should the arbitrators or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification.

(d) Decision. The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to any claim or dispute (including the validity and amount of any indemnification claim set forth in a Claim Notice) shall be final, binding, and conclusive upon the Parties to this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s).

(e) Other Relief. The Parties may apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other interim or conservatory relief, as necessary, without breach of this arbitration provision and without abridgement of the powers of the arbitrator(s).

(f) Costs and Expenses. The Parties agree that each Party shall pay its own costs and expenses (including counsel fees) of any such arbitration, and each Party waives its right to seek an order compelling the other Party to pay its portion of its costs and expenses (including counsel fees) for any arbitration.

7.4 **Notices.** All notices and other communications hereunder will be in writing and will be deemed to have been duly given when delivered in person, by facsimile, receipt confirmed, or on the next Business Day when sent by overnight courier or on the third Business Day after being sent when sent by registered or certified mail (postage prepaid, return receipt requested) to the respective Party at the following addresses (or at such other address for a Party as will be specified by like notice):

If to OTI, to:

Osiris Therapeutics, Inc.
7015 Albert Einstein Avenue
Columbia, Maryland 21046
Attention: Chief Executive Officer
Telecopy: +(443) 283-4259

and an additional copy (which will not constitute notice to OTI) to:

McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
Attention: Michael Cochran
Telecopy: +(404) 527-4198

If to MSB to:

Mesoblast International Sàrl
Route de Pre-Bois 20
c/o Accounting & Management Service SA,
1217 Meyrin, Switzerland

and

Mesoblast Limited
Level 39, 55 Collins Street
Melbourne, Australia 3000
Attention: General Counsel
Telecopy: +61 3 9639 6030

and an additional copy (which will not constitute notice to MSB) to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Attention: Selwyn Goldberg
Telecopy: (650) 493-6811

7.5 Amendments.

(a) This Agreement may be amended, superseded, canceled, renewed, or extended, and the terms hereof may be waived, only by a written instrument signed by the Parties hereto or, in the case of a waiver, by the Party against whom the waiver is to be effective. Neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law (i) no claim or right arising out of this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party, (ii) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

(b) A failure or omission of any Party to insist, in any instance, upon strict performance by another Party of any term or provision of this Agreement or to exercise any of its rights hereunder will not be deemed a modification of any term or provision hereof or a waiver or relinquishment of the future performance of any such term or provision by such Party, nor will such failure or omission constitute a waiver of the right of such Party to insist upon future performance by another Party of any such term or provision or any other term or provision of this Agreement.

7.6 Entire Agreement. This Agreement, together with all Attachments hereto or as referenced in the Purchase Agreement to which this Agreement is an Exhibit, and the documents, agreements, certificates and instruments referred to herein and therein, constitutes the entire agreement between the Parties and with respect to the subject matter hereof and supersedes all prior representations, warranties, agreements, and understandings, oral or written, with respect to such matters and other than any written agreement of the Parties that expressly provides that it is not superseded by this Agreement.

7.7 Invalidity. In the event that any provision of this Agreement is declared to be void or unenforceable, the remainder of this Agreement will not be affected thereby and will remain in full force and effect to the extent feasible in the absence of the void and unenforceable declaration. The Parties furthermore agree to execute and deliver such amendatory contractual provisions to accomplish lawfully as nearly as possible the goals and purposes of the provision so held to be void or unenforceable.

7.8 **Counterparts.** This Agreement may be executed in multiple counterparts, each in hardcopy and each of which will be deemed an original but all of which together will constitute one and the same instrument.

7.9 **Incorporation by Reference.** The attachments attached hereto constitute integral parts of this Agreement and are hereby incorporated by reference herein.

7.10 **Time of the Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

7.11 **No Third Party Beneficiaries.** The terms and provisions of this Agreement are intended solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and it is not the intention of the Parties hereto to confer third Person beneficiary rights upon any other Person.

7.12 **Normal Business Hours.** As used in this Agreement, “normal business hours” means normal business hours, local time.

7.13 **Expenses.** Except as otherwise expressly provided in this Agreement, each Party hereto will pay its own costs and expenses incurred in connection with the negotiation, execution and closing of this Agreement, the Purchase Agreement and any Related Agreement (as defined in the Purchase Agreement).

[The remainder of this page left blank intentionally; signature page follows behind.]

Transition Services Agreement Signature Page

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the Effective Date.

OTI:

OSIRIS THERAPEUTICS, INC.

By: _____
Print Name: _____
Title: _____

MSB:

Executed by MESOBLAST
INTERNATIONAL SARL

Signature of director

Name (please print)

Signature of director

Name (please print)

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the Effective Date.

OTI:

OSIRIS THERAPEUTICS, INC.

By: _____
Print Name: _____
Title: _____

MSB:

Executed by MESOBLAST
INTERNATIONAL SARL

Attachment 2 - Fee Schedule

Attachment 3 - Initial Appointees

Primary Contact

OTI: Farrell Newman
MSB: Sue MacLeman

Overall Program Manager: Farrell Newman
Manufacturing Program Manager: Sherry Elchin

Collaboration Between

Osiris Acquisition II, Inc.

and

JCR Pharmaceuticals Co., Ltd.

Collaboration Between
Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., Ltd.
Index of Transaction and Closing Documents

Tab

Documents

I. Primary Transaction Documents

License Agreement between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., Ltd. dated August 26, 2003	1
Stock Purchase Agreement between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., Ltd. dated August 26, 2003	2
Investor Rights Agreement between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., Ltd. dated August 26, 2003	3

II. Closing Deliverables

Osiris Acquisition II, Inc. Secretary's Certificate dated August 26, 2003	4
Delaware Secretary of State Good Standing Certificate Issued to Osiris Acquisition II, Inc. on August 11, 2003	5
Osiris Acquisition II, Inc. Share Certificate Number B-1 for 545,454 Series B Preferred Shares issued to JCR Pharmaceuticals Co., Ltd.	6

LICENSE AGREEMENT

This Agreement, dated August 26, 2003 (the "Effective Date"), is by and between OSIRIS Acquisition II, Inc. ("OSIRIS"), a company duly incorporated under the laws of the State of Delaware, having offices at 2001 Aliceanna Street, Baltimore, Maryland 21231 USA, and JCR Pharmaceuticals Co., Ltd. ("JCR"), a company duly incorporated under the laws of Japan, with its corporate domicile at 3-19 Kasuga-cho, Ashiya, 659-0021, Japan.

WHEREAS, OSIRIS is the owner of certain technology, including, but not limited to patents and know-how, relating to mesenchymal stem cells; and

WHEREAS, JCR desires to obtain, and OSIRIS desires to grant to JCR., an exclusive right and license in Japan in and to such technology for use in conjunction with the treatment of hematological malignancies with hematopoietic stem cells on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the parties agree as follows:

1. Definitions.

The terms used in this Agreement have the following meaning:

1.1 "Affiliate", with respect to any Party, shall mean any Person whether de jure or de facto, controlling, controlled by, or under common control with, such Party. For these purposes, "control" shall refer to (a) the possession, directly or indirectly, of the power to direct the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise or (b) the ownership, directly or indirectly, of more than 50% (or such lesser percentage without breaching the terms of an Agreement with a Third Party which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction of the voting securities or other ownership interest of a Person).

1.2 "Combination Product" means Product that is sold in combination with another product (such as in a kit) or that is included as part of a service.

1.3 "Confidential Information" shall have the meaning assigned to such term in Section 9.1.

1.4 "Controlled" shall mean owned by OSIRIS or JCR, as the case may be with the right to grant a license thereunder without breaching the terms of an agreement with a Third Party.

1.5 "Development Plan" means the plan attached as Appendix A for development of Product in the Field in the Territory.

1.6 "Field" shall mean the use of MSC in or in conjunction with the treatment of hematological malignancies by the use of hematopoietic stem cells derived from peripheral blood, cord blood or bone marrow.

1.7 "First Commercial Sale" shall mean, with respect to any Product in the Territory, the first sale by JCR, its Affiliates or Sublicensees to a Third Party of such Product, in the Territory after all required marketing and pricing approvals (if required) have been granted, or otherwise permitted, by the governing health care authority of the Territory. "First Commercial Sale" shall not include the sale of any Product for use in clinical trials or for compassionate use prior to the grant of regulatory approval.

1.8 "IND" shall mean an application that is filed in the Territory by JCR or its Affiliate or Sublicensee to initiate a clinical trial of Product in the Field in humans.

1.9 "JCR Patents" shall mean any patent or patent application anywhere in the world, including but not limited to any division, continuation, or continuation-in-part, reissue, re-examination, patent extension, Controlled by JCR or its Affiliates at any time during the term of this Agreement insofar as it contains one or more claims to JCR Special Technology.

1.10 "JCR Special Technology" shall mean information, data and materials, Controlled by JCR that is useful for the recovery, maintenance, expansion, formulation or use of MSC and that results from the research and/or development of Product under this Agreement.

1.11 "MSC" shall mean human cells that are capable of differentiation into more than one mesenchymal lineage.

1.12 "Net Sales" shall mean, with respect to Product in the Territory, the gross amount invoiced by JCR, its Affiliates, Sublicensees or co-marketers for such Product less deductions for: (i) trade, quantity and/or cash discounts, allowances and rebates actually allowed or given; (ii) freight, shipping, insurance and other transportation expenses (if separately identified in such invoice); (iii) credits or refunds actually allowed for rejections, or defects of such Product, outdated or returned Product, or because of rebates or retroactive price reductions; (iv) sales, value-added, excise taxes, tariffs and duties, and other taxes directly related to the sale, to the extent that such items are separately identified in such invoice and are paid by the purchaser of Product. In the event of Combination Product, Net Sales shall be calculated on the usual individual amount invoiced for the Product as if it were a stand-alone product.

1.13 "Orphan Designation" means any treatment of a disease which afflicts less than 50,000 patients per year in the Territory and /or the use in such patients and that meets the criteria for orphan designation application established by the governing health care authority in the Territory other than the Field.

1.14 "OSIRIS Patents" shall mean any and all patents and/or patent applications in the Territory, and any division, continuation, continuation-in-part or reissue, re-examination, patent extension, thereof in each case that is Controlled by OSIRIS as of the Effective Date or at any time during the term of this Agreement and only to the extent that it claims the manufacture, use or sale of

a Product. OSIRIS Patents as of the Effective Date are listed in Appendix B which shall be updated periodically. In the event that OSIRIS has a license to any patent or patent application that is sublicensable to JCR, such patent or patent application shall be included in OSIRIS Patents if JCR agrees to make payments due thereunder as a result of JCR obtaining a sublicense and practicing thereunder.

1.15 “OSIRIS Technology” shall mean information, know-how, data and materials, including technical and non-technical data and information (i) Controlled by OSIRIS on the Effective Date and/or at any time during the term of this Agreement and (ii) which relates to Product, and in each case which is necessary or useful for the development, manufacture, composition, use or sale of Product in the Field in the Territory.

1.16 “Party” shall mean OSIRIS or JCR and, when used in the plural, shall mean OSIRIS and JCR.

1.17 “Patent” shall mean individually and collectively JCR Patents and OSIRIS Patents.

1.18 “Person” shall mean any natural person, corporation, firm, business trust, joint venture, association., organization, company, partnership or other business entity, or any government or any agency or political subdivision thereof.

1.19 “Pivotal Trial” shall mean a clinical trial to establish that Product is safe and effective for use in the Field in order to support Product Registration.

1.20 “Product” means any product or composition that contains MSC and/or any process or service performed with respect to recovery, expansion, maintenance, purification, storage, production, formulation or use of MSC.

1.21 “Product Registration(s)” shall mean the approvals or registrations of Product in the Field for sale in the Territory that is received by JCR or its Affiliates, co-marketers or Sublicensees during the term of this Agreement from the governing health care authority in the Territory.

1.22 “Royalty Term” shall mean, with respect to each Product in the Territory on a Product-by-Product basis, the period of time commencing on the Effective Date and ending on the later of: (i) fifteen (15) years from the date of the First Commercial Sale of such Product in the Territory, or (ii) the date on which the last OSIRIS Patent in the Territory covering such Product expires.

1.23 “Sublicensee” shall mean a Third Party to which JCR hs granted sublicense and/or sub-sublicense rights under the licenses and/or sublicenses granted to JCR hereunder.

1.24 “Territory” shall mean Japan.

1.25 “Third Party” shall mean any Person who or which is neither a Party nor, with respect to a Party, an Affiliate of that Party.

1.26 "Third Party Agreement(s)" shall have the meaning of Section 2.3.

1.27 "Interpretative Rules" For the purpose of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires : (a) defined terms include the plural as well as the singular and the use of any gender shall be deemed to include the other gender. (b) references to "Articles", "Sections" and other subdivisions and to "Schedules" and "Exhibits" without reference to a document, are to designated Articles, Sections and other subdivisions of and to Schedules and Exhibits to this Agreement; (c) the use of the term 'including' means 'including but not limited to'; and (d) the words 'herein', 'hereof', 'hereunder' and other words of similar import refer to this Agreement in whole and not to any particular provision. All dollars are United States dollars.

2. GRANT OF LICENSES

2.1 License.

(a) OSIRIS hereby grants to JCR and its Affiliates an exclusive, royalty-bearing license in the Territory, with the right to grant sublicenses in accordance with the terms of this Agreement as provided in Section 2.2, under the OSIRIS Patents and OSIRIS Technology to develop, register and to obtain Product Registrations, use, make, have made, import, export, offer to sell, sell and have sold Products for use in the Field in the Territory.

(b) JCR agrees that it will use OSIRIS Technology and OSIRIS Patents only as licensed under this Agreement, only as long as licensed under this Agreement and in each case in accordance with the terms and conditions of this Agreement.

(c) Unless otherwise mutually agreed to in writing by both Parties, JCR agrees that it will not manufacture or sell or assist any other Person to manufacture or sell Product anywhere in the world except for Product for use in the Field in the Territory.

2.2 Sublicensing by JCR.

(a) JCR shall have the right to grant sublicenses to a Third Party under the license granted pursuant to Section 2.1 with the prior written consent of OSIRIS which shall not be withheld unreasonably provided that: (i) JCR shall guarantee and be responsible for the making of all payments due, and the making of reports under this Agreement, by reason of milestones achieved with respect to any Product and/or sales of any Product by its Sublicensees and their compliance with all applicable licensing terms of this Agreement to the extent that they are applicable to a Sublicensee; and (ii) each Sublicensee agrees in writing to comply with Sections 2.1(b), 2.1(c), 4.4, 6.1, 6.3, 6.4 and articles 8 and 9 of this Agreement, with OSIRIS being made a third party beneficiary thereof with the right of enforcement.

(b) Any sublicense granted by JCR to a Third Party shall include a provision prohibiting further sublicenses and a provision terminating the sublicense when the license to JCR terminates.

2.3 Third Party Agreements.

In the event that OSIRIS obtains Control of new OSIRIS Technology and/or OSIRIS Patents from a Third Party, OSIRIS shall offer to add such new OSIRIS Technology and/or OSIRIS Patents to this Agreement. If JCR agrees to add new OSIRIS Technology and/or OSIRIS Patents, then the rights licensed to JCR by OSIRIS are subject to the terms, limitations, restrictions and obligations of this Agreement, and no increase in royalty percentages set forth in Section 4.3 shall result from the addition of such new OSIRIS Technology and/or OSIRIS Patents to this Agreement.

2.4 Orphan Designation.

OSIRIS grants to JCR, during the term of this Agreement, a right of first negotiation to obtain from OSIRIS the exclusive right, in the Territory, to develop, register, use, make, have made, import, export, offer to sell, sell and have sold Products for a use that has an Orphan Designation in the Territory. With respect to any such use, JCR shall notify OSIRIS in writing thereof. If OSIRIS has the right to grant such a license at such time, for a period of ninety (90) days, the Parties shall enter good faith negotiation as to the terms and conditions of an agreement provided, however that neither Party shall have an obligation to enter into such agreement.

2.5 No license is granted to JCR hereunder except as expressly granted under this Agreement.

2.6 License to OSIRIS JCR grants to OSIRIS a non-exclusive, worldwide license under JCR Patents and JCR Special Technology to make, have made, use, sell, offer to sell and import Product for any and all uses, which license shall exclude Product for use in the Field in the Territory for the period that the license granted under Section 2.1 to JCR remains in effect. The license shall be royalty free, provided, however, that if the license to JCR under this Agreement is terminated, the Parties shall negotiate a reasonable royalty. The license granted under this Section 2.6 includes the right to sublicense with a reasonable royalty payment.

3. TECHNOLOGY TRANSFER, DEVELOPMENT AND COMMERCIALIZATION.

3.1 Technology Transfer by OSIRIS. (a) OSIRIS shall provide technology transfer including technical assistance with regard to the OSIRIS Technology provided under Section 3.1(b) upon the reasonable request of JCR without charge to JCR other than travel expenses, including air travel, hotels, meals, etc. (b) In addition, within seven (7) days of the Effective Date, OSIRIS shall provide JCR with material OSIRIS Technology that is currently available in any media containing information in text, data or graphic form. An outline of such technology transfer is provided in Appendix C. (c) OSIRIS will provide JCR with periodic updates of OSIRIS Technology.

3.2 Development Efforts by JCR. JCR shall use reasonable best efforts (including, but not limited to, the conduct of clinical trials, filing for Product Registrations and for other regulatory approvals, diligently pursuing such approvals and, upon the grant of regulator) approval, marketing the Products) to develop and commercialize Products for use in the Field in the Territory. (For avoidance of doubt, the Parties recognize that the Product is a novel product or

service and there are no definitive regulatory guidelines established or applied by the governing health care authority in the Territory for registering the Product in the Territory as at the Effective Date.)

3.3 Failure to Develop and Market.

In the event that JCR fails to satisfy its development and/or marketing obligations under Section 3.2 with respect to Product in the Field in the Territory or fails to file an IND prior to the end of calendar year 2007 or fails to file a Product Registration for the Product in the Territory within two (2) years from the OSIRIS' U.S. FDA product approval for the Field, OSIRIS shall have the right and option to terminate this Agreement in its entirety in accordance with Section 10.2(a). For avoidance of doubt, a Product Registration in the Territory for the Product is contingent on OSIRIS' FDA product approval. Furthermore, if JCR's failure to file an IND or a Product Registration within such timeframe is due to any, circumstance beyond its control, including but not limited to regulatory issues, it shall not be considered as JCR's failure.

3.4 Reporting.

(a) Within sixty (60) days after the end of each calendar half year, JCR shall provide to OSIRIS a project status report (including the status of regulatory approvals) of the development, and registration of Product in the Field in the Territory. All such reports by JCR shall be treated as Confidential Information of JCR and shall be subject to the restrictions imposed under Section 9.1. In the event that JCR is not interested in pursuing development and/or commercialization of Product in the Field in the Territory, JCR shall promptly notify OSIRIS.

(b) Within sixty (60) days after the end of each calendar half year, OSIRIS shall provide to JCR a project status report (including the status of regulatory approvals) of the development, and registration of Product in the Field in the U.S.A. All such reports by OSIRIS shall be treated as Confidential Information of OSIRIS and shall be subject to the restrictions imposed under Section 9.1.

(c) Notwithstanding the above, at any time each Party shall immediately report to the other Party any material event in connection with but not limited to clinical, regulatory and registration issues related to the Product.

4. FEE MILESTONE PAYMENTS AND ROYALTIES.

4.1 Fee by JCR.

JCR shall pay to OSIRIS three million dollars (\$3,000,000.00) within fourteen (14) days after receipt of the OSIRIS Technology as provided in Section 3.1.(b)., which amount is non-creditable and non-refundable.

4.2 Milestone Payments by JCR. JCR shall pay OSIRIS the following milestone payments upon the first occurrence of each event set forth below with respect to Product in the Field in the Territory, whether achieved by JCR or its Affiliates or its Sublicensee or distributor, which milestones are non-refundable and non-creditable and are due and payable within thirty (30) days after the applicable event:

- Section 3.1(a).
- (a) Five Hundred Thousand Dollars (\$500,000.00) upon OSIRIS' completing the technology transfer, including technical assistance, of
 - (b) Five Hundred Thousand Dollars (\$500,000.00) upon the filing of an IND for Product in the Territory;
 - (c) One Million Dollars (\$1,000,000.00) upon commencement of a Pivotal Trial for Product in the Territory.
 - (d) Two Million Dollars (\$2,000,000) upon filing a Product Registration for the Product in the Territory;
 - (e) Three Million Five Hundred Thousand Dollars (\$3,500,000.00) upon receipt of a Product Registration;
 - (f) Five Hundred Thousand Dollars (\$500,000.00) for each Five Million Dollars (\$5,000,000.00) of cumulative Net Sales up to Thirty Million Dollars (\$30,000,000.00) of Net Sales.

4.3 Royalties. (a) In partial consideration of the rights and licenses granted by OSIRIS to JCR under this Agreement, during the Royalty Term, JCR shall pay to OSIRIS a royalty on Net Sales of Products in an amount equal to the following percentages of the specified portions of the cumulative Net Sales of all Products for use in the Field sold by JCR, its Affiliates, co-marketers and its Sublicensees in the Territory:

- (i) [***];
- (ii) [***];
- (iii) [***];
- (iv) [***];

(b) Notwithstanding the above, in the event that a Third Party sells Product for use in the Field in the Territory that does not infringe an OSIRIS Patent in the Territory and such sales are at least fifteen percent (15%) of the sales of JCR for Product for use in the Field in the Territory, the Parties shall negotiate to reduce the percentage amount of royalties payable to OSIRIS.

4.4 Obligation to Pay Royalties. The obligation to pay royalties to OSIRIS under this Section 4 is imposed only once with respect to the same unit of Product regardless of the number of Patents pertaining thereto. In the case where the Product is to be resold, there shall be no obligation to pay royalties to OSIRIS under this Section 4 on sales of Product between JCR and its Affiliates or between any of them and its co-marketer or Sublicensee, but in such instances the obligation to pay royalties shall arise upon resale based on Net Sales of the reseller.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that, as of the Effective Date of this Agreement:

(a) Such Party is duly organized and validly existing and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

(b) OSIRIS has not granted a license under OSIRIS Technology and/or OSIRIS Patents with respect to Products in the Field in the Territory to any Third Party which is in conflict with the license granted to JCR pursuant to this Agreement.

5.2 OSIRIS MAKES NO OTHER REPRESENTATION OR WARRANTY HEREUNDER AND DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR WITH RESPECT TO THE VALIDITY, ENFORCEABILITY, OR PATENTABILITY OF OSIRIS PATENTS OR WITH RESPECT TO NON-INFRINGEMENT OF THIRD-PARTY PATENTS.

6. PAYMENTS AND REPORTS.

6.1 Royalty Payments. All royalty payments due hereunder shall be paid quarterly within sixty (60) days of the end of each calendar quarter. Each such payment shall be accompanied by a statement of the amount of gross sales of Product, the calculation of Net Sales and the units of Product during such quarter, the amount of royalties due on such Net Sales, the conversion rates used in converting to United States Dollars and any other information reasonably requested by OSIRIS to enable OSIRIS to determine amounts it is owed hereunder.

6.2 Mode of Payment. JCR shall make all payments required under this Agreement as directed by OSIRIS from time to time in United States Dollars. Whenever for the purpose of calculating royalties conversion from any foreign currency shall be required, such conversion shall be at the rate of exchange for the last business day of the applicable calendar quarter as published in the Wall Street Journal, New York edition.

6.3 Records Retention. JCR and its Affiliates and its Sublicensees and co-marketers shall keep complete and accurate records pertaining to the sale of Products in the Territory and covering all transactions from which Net Sales are derived for a period of three calendar years after the year in which such sales occurred, and in sufficient detail to permit OSIRIS to confirm the accuracy of royalty payments due hereunder.

6.4 Audit Request. At the request and expense (except as provided below) of OSIRIS, JCR and its Affiliates and its Sublicensees and co-marketers shall permit an independent, certified public accountant appointed by OSIRIS and reasonably acceptable to JCR, at reasonable times and upon reasonable notice, to examine those records and all other material documents relating to or relevant to Net Sales in the possession or control of JCR and/or its Affiliates or its Sublicensees and co-marketers, for a period of three years after such royalties have accrued. Said accountant shall not disclose to OSIRIS any information other than information relating to said reports, royalties, and payments. Results of any such examination shall be made available to both Parties. If, as a result of any inspection of the books and records of JCR or its Affiliates or its Sublicensees and co-marketers it is shown that JCR's royalty payments under this Agreement were less than the amount which should have been paid, then JCR shall make all payments required to be made to eliminate any discrepancy revealed by said inspection within forty-five (45) days after OSIRIS' demand therefore. Furthermore, if the royalty payments were less than the amount which should have been paid by an amount in excess of five percent (5%) of the royalty payments actually made during the period in question, JCR shall also reimburse OSIRIS for the cost of such inspection.

6.5 Taxes. In the event that JCR is required to withhold any tax to the tax or revenue authorities in the Territory regarding any payment to OSIRIS due to the laws of the Territory, JCR shall withhold such tax from the payment due to OSIRIS and pay such tax directly to such tax or revenue authorities in the Territory on OSIRIS' behalf. JCR shall provide OSIRIS with a copy of the official receipt of such tax payment.

7. PATENT PROSECUTION; ENFORCEMENT; INFRINGEMENT.

7.1 Patent Filing, Maintenance and Prosecution.

(a) OSIRIS or OSIRIS licensors, in the case of OSIRIS Patents licensed to OSIRIS, shall have the right to file, prosecute and maintain OSIRIS Patents in the Territory through patent counsel selected by OSIRIS or its licensors, and OSIRIS shall consult with and keep JCR advised with respect thereto. OSIRIS shall disclose to JCR the complete texts of all such patents and patent applications filed by OSIRIS or its licensor, as well as all information received concerning the institution or possible institution of any opposition, re-examination, reissue, revocation, nullification or any official proceeding involving any patent licensed herein in the Territory. JCR shall have the right to review such pending applications and other proceedings and make recommendations to OSIRIS concerning them and their conduct.

(b) Upon issue of any OSIRIS Patent in the Territory covering the Product for the Field, JCR may register and OSIRIS shall assist JCR in such registration with the Japan Patent Office that names JCR as an exclusive licensee for such OSIRIS Patent under the rights granted to JCR in this Agreement.

(c) In the event OSIRIS intends to finally abandon any OSIRIS Patents licensed to JCR under this Agreement, it shall notify JCR. JCR shall have the right and option, but not the obligation, to prosecute and/or maintain such OSIRIS Patent which OSIRIS had intended to abandon. In event JCR decides to execute such option, the application of such OSIRIS Patent shall be assigned to JCR.

7.2 Patent Enforcement.

(a) Each Party shall notify the other promptly after such Party becomes aware of any alleged infringement of any OSIRIS Patent in the Territory with respect to a Product for use in the Field. If any of the OSIRIS Patents under which JCR holds a license hereunder is infringed by a Third Party with respect to a Product for use in the Field in the Territory, JCR shall have the right and option, but not the obligation, to bring an action for infringement, at its sole expense, against such Third Party in the name of OSIRIS and/or in the name of JCR, and to join OSIRIS as a party plaintiff if required. JCR shall promptly notify OSIRIS of any such infringement and shall keep OSIRIS informed as to the prosecution of any action for such infringement. JCR shall have the full control over the conduct of the litigation including settlement thereof provided, however, that JCR shall make no decision, including, but not limited to, settlement which adversely affects the validity or enforceability of the OSIRIS Patents without the written consent of OSIRIS. It is understood that in the case of OSIRIS Patents sublicensed to JCR, the rights of this Section 7.2(a) are subject to the terms and restrictions of the Third Party Agreement(s).

(b) In the event that JCR does not institute an infringement proceeding against an offending Third Party within ninety (90) days after becoming aware or receiving notice of any alleged infringement, then OSIRIS shall have the right and option, but not the obligation, to institute such an action and to retain any recovered damages.

(c) In any infringement suit either Party may institute to enforce any OSIRIS Patents pursuant to this Agreement, the other Party hereto shall, at the request of the Party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like. All reasonable out-of-pocket costs incurred in connection with rendering cooperation requested hereunder shall be paid by the Party requesting cooperation.

(d) The costs and expenses of any action instituted pursuant to this Section 7.2 (including reasonable fees of attorneys and other professionals) shall be borne by the Party instituting the action, or, if the Parties elect to cooperate in instituting and maintaining such action, such costs and expenses shall be borne by the Parties in such proportions as they may agree in writing. Each Party shall execute all necessary and proper documents and take such actions as shall be appropriate to allow the other Party to institute and prosecute such infringement actions (if such other Party has the right to institute and prosecute such infringement actions pursuant to this Section 7.2).

(e) In the event that either Party shall undertake the enforcement of any OSIRIS Patent, any award or compensation (including the fair market value of non-monetary compensation) paid by Third Parties as a result of such an infringement action (whether by way of settlement or otherwise) shall be applied as follows: (i) first, to reimbursement of each Party for all expenses incurred by each in connection with such action, on a pro rata basis, and (ii) second, any remaining balance shall be allocated to the Party undertaking the action, except that any such amount received by JCR shall be deemed to be Net Sales hereunder, for which OSIRIS shall be entitled to receive a royalty as provided in this Agreement.

7.3 Infringement Actions by Third Parties. In the event of the institution of any suit by a Third Party against JCR, its Affiliates or its Sublicensees for patent infringement involving the use, sale, distribution or marketing of any Product in the Territory, JCR shall promptly notify OSIRIS in writing of such suit. In the event of all such actions, JCR shall defend such action at its own expense, and OSIRIS hereby agrees to assist and cooperate with JCR, to the extent necessary in the defense of such suit and to reimburse JCR for twenty nine percent (29%) of the out-of-pocket expenses (including reasonable attorney's fees and other professional fees) incurred by JCR in such defense. JCR shall have the right to settle the suit or consent to an adverse judgment thereto, in its sole discretion. During the pendency of such action, all royalties due hereunder shall continue to be paid by JCR. JCR shall pay seventy one percent (71%) and OSIRIS twenty nine percent (29%) of any award for damages, or any amount due pursuant to any settlement entered into by JCR with such Third Party. Twenty nine percent (29%) of any and all damages and awards received by JCR as a result thereof (i.e., as a result of a counterclaim) shall be paid to OSIRIS.

8. INDEMNIFICATION.

8.1 By JCR. JCR shall indemnify and hold OSIRIS and licensors of OSIRIS to the extent that JCR is sublicensed hereunder and its directors, officers, employees, shareholders and agents, harmless from and against any and all Third Party claims, suits or demands for liabilities, damages, losses, costs and expenses (including the reasonable fees of attorneys and other professionals) arising out of or resulting from the development, manufacture, use, distribution or sale of any MSC or Product by JCR, its Affiliates, co-marketers or Sublicensees or any person or entity that prepares or manufactures MSC or Product for or on behalf of any of the foregoing or any person or entity who receives or obtains (directly or indirectly) MSC or Product from any of the foregoing, except those losses which arise out of intentional misconduct or gross negligence of OSIRIS.

8.2 Costs of Enforcement. As the parties intend complete indemnification, all costs and expenses of enforcing any provision of this Section 8 shall also be reimbursed by the indemnifying Party.

8.3 Conditions to Indemnification. A person or entity that intends to claim indemnification under this Section (the "Indemnitee") shall promptly notify JCR (the "Indemnitor") of any loss, claim, damage, liability or action in respect of which the Indemnitee intends to claim such indemnification, and the Indemnitor shall assume the defense thereof with counsel mutually satisfactory to the Indemnitee whether or not such claim is rightfully brought; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor if Indemnitor does not assume the defense, or if representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between such Indemnitee and any other person represented by such counsel in such proceedings. The indemnity agreement in this Section 8 - shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld or delayed unreasonably. The failure to deliver notice to the Indemnitor within a reasonable time after the commencement of any such action, only if prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnitee under this Section, but the omission so to deliver notice to the Indemnitor will not relieve it of any liability that it may have to any Indemnitee otherwise than under

this Section. The Indemnitee under this Section, its employees and agents, shall cooperate fully with the Indemnitor and its legal representatives in the investigations of any action, claim or liability covered by this indemnification. The Indemnitor shall not settle or compromise any loss, liability, claim, damage or action without the consent of the Indemnitee which consent will not be withheld unreasonably.

8.4 Any and all Sublicensees of JCR shall agree to the same indemnity as in Section 8.1 of this Agreement and OSIRIS shall be made a Third Party beneficiary thereof with the right of enforcement.

9. CONFIDENTIALITY.

9.1 Subject to Section 9.5, during the term of this Agreement, it is contemplated that each Party will disclose to the other Party confidential information and materials which is owned or Controlled by the Party providing such information and materials or which that Party is obligated to maintain in confidence and which is designated by the Party providing such information and materials as confidential (such material and information is individually and collectively "Confidential Information"). Each Party shall have the right to refuse to accept the other Party's Confidential Information. Subject to Section 9.5, each Party agrees to retain the other Party's Confidential Information in confidence, and to limit disclosure of any such Confidential Information to its officers, directors, employees and permitted assigns on a need to know basis and only if the recipient of the Confidential Information has agreed in writing to maintain confidentiality. Each Party agrees to use the other Party's Confidential Information only as permitted by this Agreement, and subject to Section 9.5, not to disclose or provide any such Confidential Information to any other person or entity without the prior written consent of the Party providing such Confidential Information.

9.2 The obligations of confidentiality and non-use of Section 9.1 will not apply to:

(a) portions of the Confidential Information rightfully known to the receiving Party, without obligation of confidentiality or non-use, prior to disclosure thereof by the disclosing Party, as demonstrated by written records of the receiving Party;

(b) portions of the Confidential Information that become generally available to the public, without restriction and without breach of this Agreement by the receiving Party; or

(c) portions of the Confidential Information that become rightfully available, without obligation of confidentiality or non-use, to the receiving Party from others having no obligation to hold such Confidential Information in confidence; or

(d) disclosures required by an order of a court of competent jurisdiction provided that the owner of the Confidential Information is given notice of such order in sufficient time to oppose and appeal such order.

(e) is preclinical or clinical data or other information concerning Product that Party is reasonably required to disclose to consultants (such as advertising agencies,

reimbursement experts and marketing research companies), customers, healthcare professionals, consumers or regulatory agencies as part of its routine advertising or promotional activities or medical education, professional services, adverse event investigation and reporting, or Product quality or complaint investigation and reporting functions, or which is disclosed by a Party to Affiliates and Sublicensees in order to allow them to market and sell PRODUCT in the TERRITORY (provided that such Affiliates agree to be bound by the confidentiality obligations set forth in this Section).

9.3 (a) Except as provided in Section 9.3(b), 9.3(c), 9.4 or 12.6, neither Party shall disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other Party.

(b) A Party may disclose the terms or conditions of this Agreement, (i) on a need-to-know basis to its legal and financial advisors to the extent such disclosure is reasonably necessary in connection with such Party's activities expressly permitted by this Agreement and ordinary and customary business operations, and (ii) to a Third Party in connection with (w) an equity investment in such Party, (x) a merger, consolidation, change in control or similar transaction by such Party, (y) the transfer or sale of all or substantially all of the assets of such Party, or (z) in connection with the granting of a sublicense under this Agreement.

(c) Prior to execution of this Agreement the Parties have agreed upon the substance of information that may be used to describe the terms and conditions of this transaction, which is attached in Appendix D and each Party may disclose the information of Appendix D without the consent of the other Party.

9.4 The obligations of this Section 9 shall not apply to the extent that a Party is required to disclose information and/or the terms or conditions of this Agreement by applicable law, rule regulation or bona fide legal process, provided that the Party required to make the disclosure takes reasonable steps to restrict and maintain confidentiality of such disclosure and provides reasonable prior notice to the other Party.

9.5 A Party may provide or disclose Confidential Information of the other Party for use in a manner that is consistent with the license granted to a Party, provided that the Third Party agrees to confidentiality provisions similar to those of this Agreement.

9.6 Injunctive Relief. The Parties acknowledge that money damages alone would not adequately compensate the disclosing Party in the event of a breach by the receiving Party of this Section 9, and that, in addition to all other remedies available to the disclosing Party at law or in equity, it shall be entitled to seek injunctive relief for the enforcement of its rights under this Section 9.

9.7 Confidentiality Term. The obligations of this Article 9 shall terminate ten (10) years after disclosure of Confidential Information or five (5) years after the termination of this Agreement whichever occurs later.

10. TERM; TERMINATION.

10.1 Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated as provided hereunder, shall expire in the Territory upon the expiration of the full Royalty Term with respect to Product in the Territory.

10.2 Breach.

(a) In the event of breach under this Agreement, either Party shall have the right to terminate this Agreement only through a written notice of termination of the Agreement to the breaching party specifying the breach ("Notice of Termination"). If the breach has not been cured, within one-hundred and twenty (120) days of the Notice of Termination (thirty (30) days for a payment breach), the Party serving the Notice of Termination shall have the right to terminate this Agreement by written notice.

(b) An election of remedy by a Party for a material breach of this Agreement under this Section 10.2 on one occasion shall not constitute a waiver as to any other remedy that may be available to such Party under this Section 10.2 as to any material breach on another occasion.

10.3 Effect of Expiration or Termination.

(a) Following expiration of the term of this Agreement under Section 10.1 with respect to a Product in the Field in the Territory JCR shall have the royalty-free, perpetual right to manufacture, have manufactured, use and sell such Product in the Field in the Territory.

(b) Upon termination of this Agreement under Section 10.2, 10.4 or 10.7 (other than as a result of a breach of this Agreement by OSIRIS), JCR shall promptly: (i) transfer free of charge, to OSIRIS or such other Person as OSIRIS shall designate, any and all rights that it may have under any government registrations or authorizations, including Product Registrations, with respect to Product in the Field, and shall immediately cancel any such registrations or authorizations, including Product Registrations, with respect thereto as may not be transferable; (ii) provide to OSIRIS all data and other information in JCR's, or its Affiliates' or Sublicensees' possession or control relating to such Product Registrations; and (iii) discontinue all distribution of Product and the use of the OSIRIS Patents and OSIRIS Technology and JCR Special Technology in connection therewith. All rights of JCR under the licenses for such Product granted hereunder shall revert to OSIRIS. The rights and licenses granted to JCR shall terminate with respect to Product; (iv) grant OSIRIS a non-exclusive, royalty-bearing license at a reasonable royalty under and to JCR Special Technology and JCR Patents to make, have made, use, sell, offer to sell and import Products in the Field for use in the Territory, including a right to sublicense a Third Party(ies) in conjunction with a license to OSIRIS Technology and provide to OSIRIS such technology that is licensed to OSIRIS under this Section 10.3(b) to the extent that it has not been previously provided to OSIRIS.

10.4 Either Party may terminate this Agreement, if, at any time, the other Party becomes insolvent or the other Party shall file in any court or agency pursuant to any statute or regulation of a country in the Territory a petition of bankruptcy or insolvency or for reorganization

or for an arrangement or for the appointment of a receiver of trustee of the other Party or of its assets or if the other Party proposes a written agreement of composition or extension of its debts or if the other Party shall be served with an involuntary petition against it, filed in any insolvency, proceeding, and such petition shall not be dismissed within sixty (60) days after filing thereof, or if the other party shall make an assignment for the benefit of its creditors. Notwithstanding the bankruptcy of OSIRIS or the impairment of performance of OSIRIS of its obligations under this section, JCR shall be entitled to retain the licenses granted herein, provided it continues to comply with its obligations to OSIRIS hereunder.

10.5 Right to Sell Stock on Hand. Upon the termination of any rights granted hereunder, in whole or in part as to Product for use in the Field in the Territory, for any reason other than a failure to cure a material breach of this Agreement by JCR, JCR shall have the right to dispose of all Product then on hand for use in the Field in the Territory, and the royalties shall be paid to OSIRIS with respect to such Product as though such rights had not terminated.

10.6 Accrued Rights, Surviving, Obligations.

(a) Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve either Party from obligations which are expressly indicated to survive termination or expiration of this Agreement.

(b) Termination, relinquishment or expiration of this Agreement shall not terminate JCR's obligation to pay all royalties and other payments that shall have accrued prior to such termination. All of the Parties' rights and obligations under Sections 2.1(b), 2.1(c), 6.3, 6.4, 10.5 and 10.6 and Articles 8 and 9 shall survive termination, relinquishment or expiration hereof.

10.7 This Agreement may be unilaterally terminated by JCR by one-hundred and eighty (180) days' prior written notice to OSIRIS or by mutual agreement of the Parties.

11. FORCE MAJEURE.

11.1 Events of Force Majeure. Except for payments due under this Agreement, neither Party shall be held liable or responsible to the other Party nor be deemed to be in default under or in breach of any provision of this Agreement for failure or delay in fulfilling or performing any obligation of this Agreement when such failure or delay is due to force majeure, and without the fault or negligence of the Party so failing or delaying. For purposes of this Agreement, force majeure is defined as causes beyond the control of the Party, including, without limitation, acts of God; acts, regulations, or laws of any government; war; civil commotion; destruction of production facilities or materials by fire, flood, earthquake, explosion or storm; labor disturbances; epidemic; and failure of public utilities or common carriers. In such event JCR or OSIRIS, as the case may be, shall immediately notify the other Party of such inability and of the period for which such inability is expected to continue. The Party giving such notice shall thereupon be excused from such of its obligations under this Agreement as it is thereby disabled from performing for so long as it is so disabled, provided, however, if the force majeure does not terminate within six (6) months, the other

Party shall have the right to terminate this Agreement by written notice to the Party providing notice of the force majeure. To the extent possible, each Party shall use reasonable efforts to minimize the duration of any force majeure.

12. MISCELLANEOUS.

12.1 Relationship of Parties. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee or joint venture relationship between the Parties. No Party shall incur any debts or make any commitments for the other, except to the extent, if at all, specifically provided herein.

12.2 Assignment. Neither Party shall be entitled to assign its rights hereunder without the express written consent of the other Party hereto, except that both JCR and OSIRIS may otherwise assign their respective rights and transfer their respective duties hereunder to its Affiliate or to any assignee of all or substantially all of their respective businesses (or that portion thereof to which this Agreement relates) or in the event of their respective merger or consolidation or similar transaction. No assignment shall relieve JCR of its obligations hereunder. No assignment and transfer shall be valid or effective unless and until the assignee/transferee shall agree in writing to be bound by the provisions of this Agreement in which case the Agreement will inure to the benefit of such successors and assigns.

12.3 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

12.4 Notice. Any notice or request required or permitted to be given under or in connection with this Agreement shall be deemed to have been sufficiently given if in writing and personally delivered or sent by certified mail (return receipt requested), facsimile transmission (receipt verified), or overnight international express courier service (signature required), prepaid, to the Party for which such notice is intended, at the address set forth for such Party below:

(a) In the case of JCR, to:

JCR Pharmaceuticals Co., Ltd.
3-19 Kasuga-cho
Ashiya, 659-0021, Japan
Facsimile No. +81-797-38-1752
Attn: President and Chief Executive Officer

(b) In the case of OSIRIS, to:

Osiris Acquisition H, Inc.
2001 Aliceanna Street
Baltimore, Maryland 21231
USA
Facsimile No.: 410-563-0794
Attn: President and Chief Executive Officer

or to such other address for such Party as it shall have specified by like notice to the other Party, provided that notices of a change of address shall be effective only upon receipt thereof. If delivered personally or by facsimile transmission, the date of delivery shall be deemed to be the date on which such notice or request was given. If sent by overnight express courier service, the date of delivery shall be deemed to be the next business day after such notice or request was deposited with such service. If sent by certified mail, the date of delivery shall be deemed to be the third business day after such notice or request was deposited with the U.S. Postal Service.

12.5 Use of Name. Except as otherwise provided herein, neither Party shall have any right, express or implied, to use in any manner the name or other designation of the other Party or any other trade name or trademark of the other Party for any purpose in connection with the performance of this Agreement.

12.6 Public Announcements. Except as required by law, rule or regulation (including, without limitation, disclosure requirements of the U.S. - Securities and Exchange Commission, NASDAQ or any other stock exchange on which securities issued by OSIRIS are traded), neither Party shall make any public announcement concerning this Agreement or the subject matter hereof without the prior written consent of the other, which shall not be unreasonably withheld. It shall not be unreasonable for a Party to withhold consent with respect to any public announcement containing any of such Party's Confidential Information. In the event of a required public announcement, to the extent practicable under the circumstances, the Party making such announcement shall provide the other Party with a copy of the proposed text prior to such announcement sufficiently in advance of the scheduled release of such announcement to afford such other Party a reasonable opportunity to review and comment upon the proposed text. Once text is approved, the substance of that which is disclosed in such text may be disclosed to the public by a Party without the permission of the other Party.

12.7 Waiver. A waiver by either Party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach hereof. All rights, remedies, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either Party.

12.8 Compliance with Law. JCR agrees to comply with all applicable laws, rules and regulations with respect to Product for use in the Field in the Territory.

12.9 Severability. When possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement and the parties shall negotiate, in good faith, a new provision which will, as closely as possible, carry out the intentions of the parties provided for in the invalidated provision. If such agreement is not reached in sixty (60) days, the affected Party(ies) may terminate this Agreement.

12.10 Amendment. No amendment, modification or supplement of any provisions of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

12.11 Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Maryland, USA without regard to its choice of law principles.

12.12 Arbitration. All disputes, controversies or differences which may arise between the Parties, out of or in relation to this Agreement, or the breach thereof, which cannot be promptly resolved on an amicable basis, shall be finally settled by arbitration pursuant to the Japan-American Trade Arbitration Agreement of September, 1952, by which each Party hereto is bound.

12.13 Entire Agreement. This Agreement, together with the Exhibits hereto, sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges all prior discussions and negotiations between them, and neither of the Parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized officer or representative of the Party to be bound thereby.

12.14 Parties in Interest. All the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective permitted successors and assigns.

12.15 Descriptive Headings. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

12.16 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, any one of which need not contain the signature of more than one Party but all such counterparts taken together shall constitute one and the same agreement.

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [* * *] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officer as of the day and year first above written.

OSIRIS ACQUISITION II, INC.

By: /s/ William Pursley

Name: William Pursley

Title: President and Chief Executive Officer

JCR PHARMACEUTICALS CO., LTD.

By: /s/ Shin Ashida

Name: Shin Ashida

Title: President and Chief Executive Officer

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [* * *] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**Appendix A
Development Plan**

[***]

APPENDIX B

Japanese Application Number	Filing Date
5501124	16-Jun-1992
Title: MONOCLONAL ANTIBODIES SPECIFIC FOR MARROW-DERIVED MESENCHYMAL CELLS	
2000535733	12-Mar-1999
Title: USES FOR NON-AUTOLOGUS MESENCHYMAL STEM CELLS	
10532103	22-Jan-1998
Title: OSTEOPOROSIS BOND REGENERATION	
2000536402	12-Mar-1999
Title: MESENCHYMAL STEM CELLS FOR PREVENTION AND TREATMENT OF IMMUNE RESPONSES IN TRANSPLANTATION	
2001534394	26-Oct-2000
Title: MESENCHYMAL STEM CELLS FOR PREVENTION AND TREATMENT OF IMMUNE RESPONSES IN TRANSPLANTATION	
2000542045	12-Mar-1999
Title: MESENCHYMAL STEM CELLS AS IMMUNOSUPPRESSANTS	
2000553555	08-Jun-1999
Title: REGULATION OF HEMATOPOIETIC STEM CELL DIFFERENTIATION BY THE USE OF HUMAN MESENCHYMAL STEM CELLS	
2000582047	04-Nov-1999
Title: USES OF FIBROBLASTS OR SUPERNATANTS FROM FIBROBLASTS FOR THE SUPPRESSION OF IMMUNE RESPONSES IN TRANSPLANTATION	

APPENDIX C

The clinical documents that will be provided are:

- Investigator's Brochure: This provides a summary of all preclinical investigations and the Phase I studies in humans that support the Phase 2 development program.
- Protocol No. 240: This provides complete detail for the Phase 2 study of the universal hMSCs in patients with hematologic malignancies undergoing HLA-identical sibling PBSC transplants. The primary efficacy outcome is the incidence of acute GVHD at Day 84. Two doses of hMSCs will be examined (5 and 10 X 10⁶/kg) versus placebo.
- Protocol No. 290: This provides complete detail for the 5-year follow up of patients who complete Protocol No. 240. The primary goal in this study is to provide long-term safety data and to look at overall survival and the incidence of chronic GVHD.

The manufacturing and development documents that will be provided are:

Type 5 Biological Drug Master File.

Document Transfer Implementation Plan.

Master Production Records for Donor Cell Bank and Product Dose Manufacturing.

Pertinent Standard Operating Procedures supportive of Manufacturing, Quality Control and Facility Maintenance.

APPENDIX D

Osiris Therapeutics, Inc. (Osiris) and JCR Pharmaceuticals Co., Ltd. (JCR) entered into a License Agreement (Agreement) whereby Osiris has granted to JCR an exclusive right in Japan to its universal, adult mesenchymal stem cell (MSC) technology for use in conjunction with the treatment of hematological malignancies with hematopoietic stem cells. Although financial terms of the Agreement have not been disclosed, Osiris received an upfront license fee and will receive additional fees as specific milestones are met. In addition, Osiris will receive royalties upon the successful launch of the proposed product. Pursuant to a related Stock Purchase Agreement, JCR will also purchase preferred shares of Osiris.

AMENDMENT 1 TO LICENSE AGREEMENT

This Amendment (“Amendment”) to the License Agreement is made and entered into as of the date of the last signature on the signature page below (the “Effective Date of Amendment”), by and between JCR Pharmaceuticals Co. Ltd., a Japanese corporation (“JCR”), and Osiris Acquisition II, Inc., doing business as Osiris Therapeutics, Inc., a Delaware corporation (“OSIRIS”), with reference to the following background:

BACKGROUND

WHEREAS, JCR and OSIRIS are Parties to a License Agreement, dated August 26, 2003 (the “License Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the License Agreement); and

WHEREAS, JCR and OSIRIS have determined that it is desirable to amend and restate certain provisions of the License Agreement as set forth herein, and incorporate additional provisions to the License Agreement, more particularly for the purpose of expanding the Field as set forth herein, to reflect further agreements between them.

NOW, THEREFORE, the Parties hereto, intending to be legally bound, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. **Amended Definitions:** The following Definitions shall be amended:

Amended Section 1.6. Section 1.6 of the License Agreement is hereby amended and restated in its entirety to read as follows: “Field” shall mean the use of (a) MSC in or in conjunction with the treatment of hematological malignancies by the use of hematopoietic stem cells derived from peripheral blood, cord blood or bone marrow (“Field 1”) and (b) MSC to derive hepatocytes for use in non-clinical drug screening and evaluation (“Field 2”).

2. **Amendment to Section 2.1(a):** Section 2.1(a) shall be amended and restated as follows:

2.1(a) OSIRIS hereby grants to JCR and its Affiliates an exclusive royalty-bearing license in the Territory, with the right to grant sublicenses in accordance with the terms of this Agreement as provided in Section 2.2, under the OSIRIS Patents and OSIRIS Technology to develop, register and to obtain Product Registrations, use, make, have made, import, export, offer to sell, sell and have sold Products for use in the Field 1 in the Territory. OSIRIS hereby further grants to JCR and its Affiliates a non-exclusive license in the Territory, with the right to grant sublicenses in accordance with the terms of this Agreement as provided in Section 2.2, under the OSIRIS Patents and OSIRIS Technology to develop, register and to obtain product registrations, use, make, have made, import, export, offer to sell, sell and have sold MSCs for use in Field 2 in the Territory.

Notwithstanding the foregoing, the right to make and have made MSCs for use in the Field 2 is restricted to JCR.

3. **Certain Provisions of License Agreement.** Sections 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, and 4.4 shall only apply to Products in Field 1.

4. **New Section.** The following new Section shall be added to Article 4:

4.5 **Profit Share for Products in Field 2.** Osiris and JCR will share Net Profits of MSC sold by JCR or its Sublicensees for use in Field 2 as follows: [***] to OSIRIS and [***] to JCR; notwithstanding the foregoing, in the event that Osiris' [***] profit share is equal to less than [***] of Net Sales, then JCR shall remit the difference to Osiris. The Net Profit shall be equal to: (i) Net Sales of MSC for use in Field 2 less (ii) Cost of Goods for MSC for use in Field 2. "**Cost of Goods**" shall mean the actual cost of producing, processing and packaging MSC for use in Field 2, including related quality assurance and quality control activities required by applicable law, which actual cost is comprised of cost of goods as determined in accordance with Japanese GAAP employed by JCR, and shall include direct labor, direct material, the allocable portion of the manufacturing overhead directly attributable to such MSC and administrative cost.

4.6 **Diligence by JCR's Sublicensees.** For the sale of MSCs for use in Field 2, JCR shall cause its Sublicensees to exercise reasonable diligence to use MSC only for applications within Field 2.

5. **Amendment of Article 6.** The following Sections shall be amended and restated as follows:

6.1 **Payments.** All royalty payments and Net Profit share due hereunder shall be paid quarterly within sixty (60) days of the end of each calendar quarter. Each such payment shall be accompanied by a statement detailing the Cost of Goods of Product or MSC in Field 2, the amount of gross sales of Product or MSC, the calculation of Net Sales, the calculation of Net Profits, the number units of Product or MSC sold during such quarter, the amount of royalties due on such Net Sales of Product or MSC for Field 1, the amount of Net Profit due for such quarter, the conversion rates used in converting to United States Dollars and any other information reasonably requested by OSIRIS to enable OSIRIS to determine amounts owed hereunder.

6.2 **Mode of Payment.** JCR shall make all payments required under this Agreement as directed by OSIRIS from time to time in United States Dollars. Whenever for the purpose of calculating royalties or Net Profit share conversion from foreign currency shall be required, such conversion shall be at the rate of exchange of the last business day of the applicable calendar quarter as published in the Wall Street Journal, New York edition.

6.3 **Records Retention.** JCR and its Affiliates and its Sublicensees and co-marketers shall keep complete and accurate records pertaining to the manufacture and sale of Products or MSCs in the Territory and covering all transactions from which Net Sales and Net Profits are derived for a period of three calendar years after the year in which such sales occurred, and in sufficient detail to permit OSIRIS to confirm the accuracy of royalty payments or Net Profit share due hereunder.

6.4 **Audit Request.** At the request and expense (except as provided below) of OSIRIS, JCR and its Affiliates and its Sublicensees and co-marketers shall permit an independent certified public accountant appointed by OSIRIS and reasonably acceptable to JCR, at reasonable times and upon reasonable notice, to examine those records and all other material documents relating to or relevant to Net Sales or Net Profits in the possession or control of JCR and/or its Affiliates or its Sublicensees and co-marketers, for a period of three years after such royalties or Net Profit share have accrued. Said accountant shall not disclose to OSIRIS any information other than information relating to said reports, royalties, and payments. If, as a result of any inspection of the books and records of JCR or its Affiliates or its Sublicensees and co-marketers it is shown that JCR's royalty payments or Net Profit share under this Agreement were less than the amount which should have been paid, then JCR shall make all payments required to be made to eliminate any discrepancy revealed by said inspection within forty-five (45) days after OSIRIS' demand therefore. Furthermore if the royalty payments or Net Profit share was less than the amount which should have been paid by an amount in excess of five percent (5%) of the royalty payments or Net Profit share actually made during the period in question, JCR shall also reimburse OSIRIS for the cost of such inspection.

6. **Continuing Effect.** Except as specifically modified by this Amendment, all of the provisions of the License Agreement are hereby ratified and confirmed to be in full force and effect, and shall remain in full force and effect.
7. **Entire Agreement; Successors and Assigns.** The License Agreement, this Amendment, and any written agreements executed by both Parties pertaining to the subject matter therein, constitute the entire agreement between the Parties hereto with respect to subject matter hereof and thereof. Said documents supersede all other agreements and understandings between the Parties with respect to the subject matter hereof and thereof, whether written or oral. If there is a conflict between the provisions of the License Agreement and this Amendment, this Amendment shall govern. This Amendment may be amended only by a written instrument executed by each of the Parties. This Amendment shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, administrators, executors, affiliates, successors and permitted assigns.
8. **Headings.** The section headings contained in this Amendment are for reference purposes only and shall not affect in any way the meaning or interpretation of the Amendment.
9. **Counterparts.** This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each Party and delivered to the other Party.
10. **Governing Law.** This Amendment shall be governed by the laws of the State of Maryland, USA, without regard to its choice of law principles.
11. **Arbitration.** All disputes, controversies, or differences which may arise between the Parties, out of or in relation to or in connection with this Amendment, or the breach thereof, shall be

finally settled by arbitration pursuant to the Japan-American Trade Arbitration Agreement, of September 16, 1952, by which each Party hereto is bound. The place of arbitration shall be the country of the proposed defendant. Where the defendant in such arbitration is JCR, arbitration shall be held in Osaka, Japan, and shall be conducted in accordance with the arbitration rules of the Japan Commercial Arbitration Association. Where the defendant in such arbitration is OSIRIS, arbitration shall be held in Maryland, United States of America, and shall be conducted under the arbitration rules of the American Arbitration Association. This Amendment shall be interpreted and governed by, and all differences of opinion which may rise in the signing, implementation or termination of this Amendment shall be adjudicated according to the laws of the State of Maryland, United States of America, if JCR is the plaintiff and OSIRIS is the defendant, and by the laws of Japan, if OSIRIS is the plaintiff and JCR is the defendant.

[Signatures appear on following page]

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [* * *] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, each of the Parties has caused this Amendment to be executed as of the date hereof by a duly authorized corporate officer.

[OSIRIS]

By: /s/ Cary J. Claiborne

Name: Cary J. Claiborne

Title: CFO

Date: 6/20/05

JCR PHARMACEUTICALS, CO., LTD.

By: /s/ Shin Ashida

Name: Shin Ashida

Title: President and Chief Executive Officer

Date: 6/27/05

OSIR001 3/24/93

(002)

TECHNOLOGY TRANSFER, AND LICENSE AGREEMENT**Between****CASE WESTERN RESERVE UNIVERSITY****and****OSIRIS THERAPEUTICS, INC.**

This agreement, effective as of the 1st day of January, 1993 ("Effective Date"), is between OSIRIS THERAPEUTICS, Inc., corporation domiciled in the State of Ohio having an address at 11000 Cedar Avenue, Cleveland, OH 44106 ("OSIRIS"), and Case Western Reserve University, an Ohio non-profit corporation having its principal office at 2040 Adelbert Road, Cleveland, Ohio ("CWRU").

BACKGROUND

CWRU, with principal activities in teaching and scholarship, makes its capabilities available to commercial entities for research to the extent that it complements and does not conflict with CWRU's principal activities. In this spirit, CWRU is prepared to continue its development relationship with OSIRIS (a company created to commercialize the mesenchymal stem cell technology) and to license the Technology, as that item is defined in Article X below, including that established by Dr. Arnold I. Caplan while working as a full-time professor at CWRU. This license transfers the state-of-the-art of the mesenchymal stem cell technology to OSIRIS, according to the terms and conditions set forth below. This state-of-the-art includes patents and know-how. Future patents based on this know-how will be made in the name of CWRU and will be covered by the royalty agreement stated herein if substantially invented at CWRU in the future.

AGREEMENT**ARTICLE I: LICENSE**

1.1 Grant and Subject Matter. CWRU grants OSIRIS a sole and exclusive worldwide License, under Technology, Existing Patent Rights (to the extent not owned by OSIRIS) and Developed Patent Rights ("License") to make, have made, use and sell Product and Process (terms defined in Section 10), including the right to grant sublicenses.

1.2 Term of Agreement. This Agreement shall be in full force and effect from the date first set forth above and shall remain in effect for twenty-five (25) years or until all patents issued in all countries in accordance with this License hereunder have expired or until otherwise terminated by operation of law, whichever is last to occur, or by the acts of the parties in accordance with the terms of this Agreement.

1.3 Retained Rights. CWRU will retain a royalty-free right to use the Technology and patent rights of the License for any nonclinical research, testing or educational purpose of CWRU. In no event shall CWRU have any right to use the Technology or the patent rights of the License for any commercial purpose whatsoever. In addition, the License will be subject to such rights as are required to be accorded to any governmental agency as a consequence of prior or contemporaneous funding for research or development of the subject matter of the License.

1.4 Sublicenses. OSIRIS agrees to forward to CWRU a copy of any and all fully executed sublicense agreements, and further agrees to forward annually a copy of such reports received by OSIRIS from its sublicensees during the preceding twelve (12) month period under the sublicenses as shall be pertinent to a royalty accounting to CWRU under said sublicense agreement.

1.5 The license granted under Existing Patent Rights is royalty-free.

1.6 The license granted under Developed Patent Rights is royalty-bearing as provided in Paragraph 6.2.

ARTICLE II: TITLE

Except as provided in Section 3.1, CWRU shall retain title to the subject matter of the License.

ARTICLE III: PATENTS

3.1 To the extent permitted by existing obligations, CWRU hereby assigns all right, title and interest in and to Existing Patent Rights to OSIRIS. OSIRIS shall bear all responsibility for, and shall take all actions in connection with, the prosecution of the Existing Patent Rights. CWRU shall cooperate with OSIRIS with respect to such prosecutions.

3.2 New Applications. CWRU shall own all Developed Patent Rights. In the event either party hereto believes a patent application should be filed with respect to the Technology, such party shall notify the other party hereto. If OSIRIS fails to file such application within sixty (60) days after the date of such notice, CWRU shall have the right to file the application in its own name, at its own expense; provided, however, that CWRU's application must be filed within six (6) months after the expiration of OSIRIS' sixty (60) day filing period.

If CWRU does not file within such six-month period, CWRU must give a new notice to OSIRIS, and the process described above must be repeated in its entirety, before CWRU shall have the right to file such application.

3.3 OSIRIS shall own any patent application which is directed to an invention made by an employee of OSIRIS or by an Investigator when the Investigator is working on the premises of OSIRIS.

3.4 Cost. OSIRIS will pay the cost of all patent applications filed by it pursuant to Section 3.2.

3.5 Reports. The party filing the patent application pursuant to Section 3.2 above shall keep the other informed in a timely manner of the status of the application.

3.6 Infringement. Each party shall promptly notify the other party if it becomes aware of any infringement of any patents licensed as part of this Agreement. Neither OSIRIS nor CWRU shall have any obligation to initiate litigation to protect any patent or proprietary right granted under this Agreement. However, each party will have the unqualified right to initiate legal action, or to fully participate in any legal action initiated by the other party, to protect its interests. In any litigation, each party and their respective attorneys will cooperate with the other party. If OSIRIS elects to institute suit against any third party to protect any patent or proprietary rights granted under this Agreement, fifty percent (50%) of associated costs (including reasonable attorneys' fees) which have been paid by OSIRIS may be offset against royalties owed to CWRU pursuant to Article VI, but such offsetting shall not exceed fifty percent (50%) of the total royalties owed to CWRU. All damages awarded in any suit will belong exclusively to the party initiating the suit, except that the amounts offset pursuant to this Section 3.6 will be reimbursed to CWRU from damages awarded to OSIRIS after OSIRIS's own legal costs have been reimbursed.

3.7 In the event that litigation against OSIRIS is initiated by a third-party charging OSIRIS with infringement of a patent of the third party as a result of the manufacture, use or sale by OSIRIS of Product or Process for which royalties are due to CWRU hereunder, OSIRIS shall promptly notify CWRU in writing thereof. OSIRIS's costs as to any such defense shall be creditable against any and all payments due and payable to CWRU under Article VI of this Agreement but no royalty payment after taking into consideration any such credit shall be reduced by more than 50%.

ARTICLE IV: CONFIDENTIALITY

4.1 Confidentiality. CWRU and OSIRIS agree to advise their respective employees that it is necessary to hold in confidence all information received from the other party in connection with the License ("Information") for a period of two years following disclosure. The receiving party will use reasonable efforts to prevent disclosure of such Information during such period. This Section 4.1 shall not apply, however, to Information which:

(i) is now in or shall enter the public domain as the result of its disclosure in a publication, the issuance of a patent or otherwise without the legal fault of the receiving party;

(ii) the receiving party can prove was in its possession in written form at the time of disclosure by the other party; or

(iii) comes into the hands of the receiving party by means of a third party who is entitled to make such disclosure and who has no obligation of confidentiality toward the disclosing party.

(iv) where disclosure is required under any applicable ruling, regulation or law, including but not limited to regulatory filings.

(v) where disclosure is made through the filing of a patent application.

Notwithstanding the foregoing, OSIRIS can disclose information to a third party under an obligation of confidentiality similar to the obligation of confidentiality under this agreement.

4.2 Remedies. Each party shall be entitled to injunctive relief if there is a threat that Information that is the subject matter of the License will be disclosed by the other party contrary to the terms of this agreement. Each party shall notify the other party in writing of any proposed release of Information thirty (30) days prior to release of such Information. The party receiving such notice will have thirty (30) days to review the materials and shall not unreasonably withhold permission for the Information to be released.

4.3 (a) During the period in which OSIRIS holds a license, CWRU and Investigators (as defined in Paragraph 10.9) shall not, without OSIRIS' prior written approval, distribute or allow Material (as defined in Paragraph 10.8) to be distributed to for-profit entities or persons known to be employed thereby or consulting or performing research therefor.

(b) CWRU and Principal Investigator (as defined in Paragraph 10.7) shall have the right to transfer Material to not-for-profit entities or persons known to be affiliated therewith provided that such entities or persons sign a material transfer agreement mutually agreed to by the parties to this Agreement.

(c) Prior to any such distribution of any such Material, CWRU and OSIRIS shall use best efforts to consider the patentability of such Material and cooperate to file, where appropriate, a patent application for such Material prior to its distribution, in accordance with Article III of this Agreement.

ARTICLE V: PUBLICATION

CWRU will provide OSIRIS with a copy of any proposed publication relating to the Technology thirty (30) days prior to their submission for publication. OSIRIS will have thirty (30) days from the date of receipt of each such proposed publication to review the materials. Upon receipt within the thirty-day (30) period of a written notice from OSIRIS identifying those portions of the proposed publication for which it wishes publication delayed, CWRU will use its best efforts either to cause the materials identified to be deleted or to cause publication to be delayed for ninety (90) days .

ARTICLE VI: ROYALTIES, CONSIDERATION AND PAYMENTS

6.1 Payment. OSIRIS agrees to pay to CWRU an amount equal to \$83,061 for the licenses and rights granted under this Agreement and for the filing and prosecution of Existing Patent Rights. Such amount shall be paid within thirty (30) days of the initial financing of OSIRIS, which financing shall be in an amount of at least \$2,000,000, ("Initial Capitalization").

6.2 Royalties. As consideration for the License, OSIRIS will pay CWRU a royalty on all Product or Process providing that such Product or Process where sold is covered by a claim of a granted patent which is a Developed Patent Right licensed under this Agreement ("Royalty Bearing Product") as follows.

(i) Three percent (3%) of the Net Sales of Royalty Bearing Products sold by OSIRIS; and

(ii) Twenty-five percent (25%) of the royalties received by OSIRIS from its SUBLICENSEES' sales of a Royalty Bearing Product.

Provided, however, that with respect to each Royalty Bearing Product covered under either (I) or (ii) above, no royalty shall be payable for the first three years in which such Royalty Bearing Product is sold. Net Sales shall be defined as the amount received from sales of all Royalty Bearing Products less discounts, returns, transportation costs, insurance costs and taxes of any kind whatsoever.

6.3 Royalty Payments. (a) Royalties due will be paid to CWRU every year for the term of this Agreement on the 31st of March, and shall be calculated according to the Net Sales of all Royalty Bearing Products during the calendar year immediately preceding the year in which such royalty payments are due. Each royalty payment shall be accompanied by an accounting showing the calculation of net sales for the calendar year in question.

6.4 In the event that royalties are to be paid by OSIRIS to a party who is not an Affiliate of OSIRIS for Royalty Bearing Product ("Other Royalties"), for which royalties are also due to CWRU pursuant to Paragraph 6.2 then the royalties to be paid to CWRU by OSIRIS pursuant to Paragraph 6.2 shall be reduced by 50% of the amount of such Other Royalties, but in no event shall any royalties under Paragraph 6.2 be reduced by more than fifty percent (50%) .

6.5 Equity Interest to CWRU. CWRU will be sold 1,200 shares of OSIRIS' Common Stock based on the Founders' capitalization in Appendix A. The Initial Capitalization shall mean the first capitalization of the company in which the total capital contribution is at least two million dollars. The selling price shall be \$0.10 per share. The shares will be sold in accordance with a Restricted Stock Purchase Agreement which contains terms among others that prior to an initial public offering OSIRIS or its designee will have a right of first refusal with respect to a any transfer of the shares; and that the shares will be subject to underwriter "lock-up" restrictions in any underwritten offering.

6.6 Foreign currency conversions. When royalties accrue for currencies other than United States dollars, payment to CWRU shall be in United States dollars converted from that foreign currency at the average of the rates established by BankAmerica for that foreign currency on the last business day of each month of the calendar year which ended immediately preceding the day on which OSIRIS pays such royalties to CWRU.

6.7 Audit Rights. CWRU has the right to inspect any books or records of OSIRIS containing information which may be reasonably necessary for the purpose of verifying the royalties payable to CWRU This inspection is to be made by an independent certified public accountant of CWRU's choice to whom OSIRIS has no reasonable objection. The inspection is to be done at the expense of CWRU, upon reasonable notice, during normal business hours and no more than once per year.

6.8 Initial Capitalization. If, by December 31, 1993, OSIRIS has not received funding of at least \$2 million (\$2,000,000), this Agreement shall terminate, unless extended by mutual agreement and OSIRIS shall, at its sole expense, transfer to CWRU all right, title and interest in the Existing Patent Rights.

6.9 Minimum Performance. If, after the sixth anniversary of the initial capitalization of OSIRIS, payments due to CWRU under Article VI fall below fifty thousand dollars (\$50,000) per year, the License granted by this Agreement shall be terminated unless OSIRIS pays CWRU the difference between the amount due and fifty thousand dollars (\$50,000), unless extended by mutual agreement.

ARTICLE VII: BREACH AND TERMINATION

7.1 Breach. If either party at any time commits any material breach of the Agreement and fails to remedy it within thirty (30) days after receiving written notice of the breach or such additional time as may be reasonably required to effect the cure so long as the curing party is continuing to diligently pursue its efforts to cure, the aggrieved party may, at its option, cancel this Agreement by notifying the other in writing. This remedy is in addition to any other remedies to which it may be entitled. Any failure to cancel this Agreement for any breach will not constitute a waiver by the aggrieved party of its right to cancel this Agreement for any other breach whether similar or dissimilar in nature.

7.2 Bankruptcy. CWRU may terminate this Agreement if OSIRIS files or has filed against it a petition in bankruptcy which is not dismissed within thirty (30) days, or files an assignment for benefit of creditors, or if a receiver is appointed for all or part of its assets, or if it petitions for or consents to any relief under any applicable insolvency, moratorium or similar statute. All rights and licenses granted to OSIRIS under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101(60) of the Bankruptcy Code. The parties hereto agree that so long as OSIRIS, as a licensee of such rights under this Agreement, shall continue to perform all obligations under this Agreement, including but not limited to the making of timely royalty payments, OSIRIS shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, and pursuant to Section 365(n), OSIRIS shall have the right to receive all current embodiments of the licensed intellectual property. The parties hereto further agree that, in the event that CWRU files or has filed against it a petition in bankruptcy which is not dismissed within thirty (30) days, or files an assignment for benefit of creditors, or if a receiver is appointed for all or part of its assets, or if it petitions for or consents to any relief under any applicable insolvency, moratorium or similar statute, OSIRIS shall have the right to retain and enforce its rights under this Agreement with respect to the Technology, Existing Patent Rights and Developed Patent Rights.

7.3 Force Majeure. Each of the parties will be excused from performance of this Agreement only to the extent that performance is prevented by conditions beyond the reasonable control of the party affected. The parties will, however, use their best efforts to avoid or cure such conditions. The party claiming such conditions as an excuse for delaying performance will give prompt written notice of the conditions, and its intent to delay performance, to the other party and will resume its performance as soon as performance is possible.

7.4 Effect of Termination. OSIRIS' License shall terminate simultaneously with any termination of this Agreement. Except as provided in Section 6.8 above, expiration, cancellation or termination of this Agreement will not affect any previously vested or accrued rights of either party under this Agreement. Upon termination of this Agreement by either party, in whole or as to any specified patent or any claim of such patent, OSIRIS shall provide CWRU with a written inventory of all products affected by such termination in process of manufacture, in use or in stock and shall request each sublicensee to provide such written inventory. OSIRIS and its sublicensees shall have the right to sell off such inventory unless OSIRIS is the subject of a pending or threatened product liability claim.

7.5 Effect of termination of this Agreement on sublicenses. Any sublicense granted by OSIRIS under this Agreement shall provide for automatic assignment to CWRU of OSIRIS interest therein upon termination of this Agreement. CWRU agrees to accept such assignment and the sublicense shall remain in full force and effect as a direct license from CWRU in accordance with the terms and conditions thereof. CWRU agrees to confirm in writing its obligations under this Paragraph to a sublicensee at the request of OSIRIS.

7.6 Termination. OSIRIS shall have the right to terminate this Agreement or any of the licenses granted hereunder in any country upon providing CWRU with sixty (60) days prior written notice.

ARTICLE VIII: REPRESENTATIONS AND WARRANTIES

8.1 Agreements. Each party represents that, to the best of its knowledge, this Agreement does not violate any of its prior commitments or agreements.

8.2 Claims. Each party represents that, to the best of its knowledge, there are no legal actions, pending or threatened, which would question this Agreement or the right of either party to perform its obligations under this Agreement.

8.3 Authorization by CWRU. CWRU warrants that execution and performance of this Agreement have been duly authorized by all necessary corporate actions.

8.4 Authorization by OSIRIS. OSIRIS warrants that execution and performance of this Agreement have been duly authorized by all necessary corporate actions.

8.5 Patentability, Infringement. CWRU makes no representation or warranties of any kind other than those of this Article VIII including but not limited to warranties of patentability, merchantability or fitness for a particular purpose.

8.6 CWRU represents that to the best of its knowledge, CWRU owns all right, title and interest in and to Existing Patent Rights and that all Investigators will be obligated to assign all right, title and interest in and to Technology and Developed Patent Rights to CWRU.

ARTICLE IX: MISCELLANEOUS

9.1 Indemnification.

(a) OSIRIS will defend, indemnify and hold CWRU harmless from any loss, cost, damage, liability or expense imposed, on CWRU as a result of any third party claim arising from OSIRIS' use, application or marketing of any Product or Process arising from this Agreement.

(b) CWRU will defend, indemnify and hold OSIRIS harmless from any loss, cost, damage, liability or expense imposed on OSIRIS as a result of any claim arising from CWRU's breach of any term or provision of this Agreement.

(c) The party to be indemnified shall promptly notify the indemnifying party of any claim to be indemnified. The indemnifying party shall have the right to control the defense, settlement or compromise of any claim.

9.2 Insurance. OSIRIS shall not commence selling on a commercial basis of any Products in connection with this License until it has obtained for itself or for CWRU at its own cost or special arrangements and expense, comprehensive general liability and products liability insurance with limits of at least \$3,000,000 per occurrence/\$3,000,000 aggregate, and naming CWRU as additional insured. Upon the start of human clinical trials of any Product OSIRIS shall obtain comprehensive general liability insurance in accordance with the foregoing. Such insurance shall be provided by insurers of recognized responsibility and well-rated by national organizations, and each policy shall state that the insurer will not terminate it or significantly reduce coverage without giving CWRU at least forty-five (45) days prior written notice. The product liability insurance shall provide worldwide coverage and shall be on an "occurrence" basis. If such insurance is not available when OSIRIS is ready to commence human clinical trials or selling Products, CWRU agrees to waive the insurance requirement until such insurance becomes available if and only if OSIRIS has and maintains a net worth of at least \$3,000,000 as determined by a review of OSIRIS' books conducted at OSIRIS' expense by an independent firm of certified public accountants mutually satisfactory to CWRU and OSIRIS. After the initial review, CWRU may have further reviews conducted from time to time, but not more than once each year.

9.3 Sublicense. OSIRIS shall require all of its sublicensees hereunder to indemnify and hold harmless CWRU under the same terms as stated in Section 9.1(a) and to carry comprehensive general liability insurance and product liability insurance with limits of at least \$3,000,000 per occurrence/\$3,000,000 aggregate naming CWRU as an additional insured under the same terms as Section 9.2.

9.4 Independent Contractors. OSIRIS and CWRU are independent contractors, and neither shall have any responsibility for the work performed by or on behalf of the other except to the extent expressly set forth in this Agreement.

9.5 Use of Name. OSIRIS will not use the name of CWRU, related schools or departments in any publication or marketing materials without the written consent of CWRU. CWRU will not use the name of OSIRIS in any publication or marketing materials without the written consent of OSIRIS.

9.6 Assignment. This Agreement is not assignable or transferable except with the written consent of both parties; consent will not be withheld unreasonably, except that OSIRIS without the consent of CWRU may assign this Agreement to an Affiliate or to a transferee of all or substantially all of the portion of the business to which this Agreement relates. Any such assignee or transferee of OSIRIS' interest shall expressly assume in writing the performance of all of the terms and conditions of this Agreement to be performed by OSIRIS and such assignment shall not relieve OSIRIS of any of its obligations under this Agreement. Any assignment or transfer without such consent or covered by such exception shall be void.

9.7 Registration. OSIRIS agrees to register this Agreement when required by local or federal law and to pay all costs and legal fees connected with such registration.

9.8 Successors and Assigns. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors, permitted assigns and legal representatives of the parties hereto.

9.9 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding that body of law applicable to choice of law.

9.10 Headings. The headings and captions used in this Agreement do not form part of this Agreement, but are included solely for convenience.

9.11 Notices. All notices required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified or five (5) days after deposit with the United States Postal Service, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address indicated for such party below, or at such other address as such party may designate by ten (10) days prior notice to the other party hereto:

If to OSIRIS: Copy to:

OSIRIS Therapeutics, Inc.
11000 Cedar Avenue
Cleveland, Ohio 44106
Attn: President

Copy to:

Elliot M. Olstein, Esq.
Carella, Byrne, Bain, Gilfillan,
Cecchi & Stewart
6 Becker Farm Road
Roseland, New Jersey 07068

If to CWRU:

Dean of Graduate Studies and Research
Case Western Reserve University
2040 Adelbert Road
Cleveland, Ohio 44106

9.12 Amendments and Waivers. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by both parties.

9.13 Illegality. If any term or condition of this Agreement is contrary to applicable law, that term or condition will not apply and will not invalidate any other part of this Agreement. However, if its deletion materially and adversely changes the position of either of the parties, the affected party may terminate the Agreement by giving thirty (30) days written notice.

9.14 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior discussions, understandings and agreements with respect thereto.

ARTICLE X: DEFINITIONS

10.1 Technology. The term "Technology" shall mean any and all existing or future information, technical data, inventions, discoveries or know-how, and materials whether or not patented or patentable, related to or useful for the identification, isolation, purification, propagation or use of mesenchymal stem cells and/or cells or products derived from or produced by mesenchymal stem cells, which are conceived, developed or reduced to practice by an Investigator during the term of this Agreement while performing research at CWRU.

10.2 Product(s). The term "Product(s)" shall mean any article, composition, apparatus, substance, chemical, material, method or service which is, incorporates or utilizes Technology or the use, manufacture, import or sale of which is covered by a claim of any patent licensed hereunder.

10.3 Process(es). The term "Process(es)" shall mean any process or method for the production, manufacture or use of any Product or which is covered by any patent licensed hereunder.

10.4 The term "Affiliate" as applied to OSIRIS shall mean any company or other legal entity other than OSIRIS in whatever country organized, controlling, or controlled by or under common control with OSIRIS. The term "control" means possession, direct or indirect, of the powers to direct or cause the direction of the management and policies whether through the ownership of voting securities, by contract or otherwise.

10.5 Principal Investigator. The term "Principal Investigator" shall mean either or both of Drs. Arnold I. Caplan and Stephen E. Haynesworth

10.6 Material. The term "Material(s)" shall mean any material, biologic, or substance, which is Technology, including but not limited to, cells, cell lines, vectors, antibodies, DNA (RNA) sequences, libraries, plasmids, cytokines, peptides, and proteins, which is discovered, produced or derived by an Investigator during the term of this Agreement.

10.7 Investigator. The term "Investigator" shall mean Principal Investigators, any other member of CWRU staff, graduate student, undergraduate student or employee of CWRU who works with or under the direction of a Principal Investigator.

10.8 “Existing Patent Rights” shall mean (i) A Method for Isolating, Purifying and Culturally Expanding Marrow-Derived Mesenchymal Cells (U.S. Patent Application No. 615,430) ; (ii) Monoclonal Antibodies Specific for Marrow-Derived Mesenchymal Cells (U.S. Patent Application No. 716,917); (iii) A Method and Device for Enhancing the Implantation and Differentiation of Marrow-Derived Mesenchymal Cells (U.S. Patent Application No. 614,915); and (iv) A Method and Device for Treating Connective Tissue Disorders (U.S. Patent Application No. 614,912); any division, continuation, or continuation-in-part thereof and any foreign patent application or equivalent corresponding thereto and any Letters Patent or the equivalent thereof in any country of the world issuing thereon or reissue or reexamination or extension thereof.

10.9 “Developed Patent Rights” shall mean any and all patents and patent applications anywhere in the world which contains one or more claims directed to Technology, which is not an Existing Patent Right.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below:

CWRU:
FOR CASE WESTERN RESERVE
UNIVERSITY:

OSIRIS:
FOR OSIRIS THERAPEUTICS, INC.

/s/ R. James Henderson

/s/ James S. Burns

Name: R. James Henderson
Title: VP Finance & Administration
Date: March 25, 1993

Name: James S. Burns
Title: President
Date: March 30, 1993

Appendix A

OSIRIS THERAPEUTICS, INC.

Founders & Case Western Reserve University Capitalization

Shareholder	FOUNDING SCIENTISTS*			Shareholder	FOUNDERS		
	Shares	%			Shares	%	
Arnold I. Caplan	15,600	65.0		Arnold I. Caplan	15,600	55.7	
Victor M. Goldberg	6,720	28.0		Victor M. Goldberg	6,720	24.0	
S. E. Haynesworth	1,68	7.0		S. E. Haynesworth	1,680	6.0	
				Case Western R.U.	1,200	4.3	
				James S. Bums	2,800	10.0	
TOTAL	24,000	100.0			28,000	100.0	

* Case Western Reserve University (“CWRU”) purchases 1,200 shares of Osiris Therapeutics, Inc. Common Stock at a price of \$0.10 per share, equivalent to 5.0% of the Common Stock issued to the Company’s three founding scientists (the “Founding Scientists”). Upon issuance of shares of Osiris Common Stock to Case Western Reserve University, the Founding Scientists and CWRU will together constitute the Company’s founders (collectively, the “Founders”).

** James S. Burns, the Company’s Chairman, President & Chief Executive Officer has purchased 2,800 shares of Osiris Common Stock on the same basis as the Founders in exchange for funding the Company’s initial working capital requirements. The CEO’s and Founders’ Common Stock will together constitute the Company’s founding shareholders prior to the sale of additional shares to key employees, advisors, or investors in the Company’s Initial Capitalization.

Confidential

AMENDMENT NUMBER 1

TO

TECHNOLOGY TRANSFER AND LICENSE AGREEMENT

dated as of January 1, 1993

This Amendment Number 1 is effective as of the date of last signature and is entered into by and between Osiris Therapeutics, Inc., a corporation of the State of Ohio, having a place of business at 2001 Aliceanna Street, Baltimore, Maryland 21231 (hereinafter referred to as "Osiris"), and Case Western Reserve University, an Ohio non-profit Corporation having its principle office at 10900 Euclid Avenue, Cleveland, Ohio 44106 (hereinafter referred to as "CWRU").

Osiris and CWRU hereby agree to revise the Technology Transfer and License Agreement as follows:

To change Section 6.2 from

6.2 Royalties. As consideration of the License, Osiris will pay CWRU a royalty on all Product or Process providing that such Product or Process where sold is covered by a claim of a granted patent which is a Developed Patent Right licensed under this Agreement ("Royalty Bearing Product") as follows.

- (i) Three percent (3%) of the Net Sales of Royalty Bearing Products sold by OSIRIS; and
- (ii) Twenty-five percent (25%) of the royalties received by OSIRIS from its SUBLICENSEES' sales of Royalty Bearing Product.

Provided, however, that with respect to each Royalty Bearing Product covered under either (i) or (ii) above, no royalty shall be payable for the first three years in which such Royalty Bearing Product is sold. Net Sales shall be defined as the amount received from sales of all Royalty Bearing Products less discounts, returns, transportation costs, insurance costs and taxes of any kind whatsoever.

To

6.2 Royalties. As a consideration for the License, OSIRIS will pay CWRU a royalty on all Product or Process providing that such Product or Process where sold is covered by a claim of a granted patent which is a Developed Patent Right licensed under this Agreement ("Developed Patent Product") as follows.

- (i) Three percent (3%) of the Net Sales of Developed Patent Product sold by OSIRIS; and

(ii) Twenty-five percent (25%) of the royalties received by OSIRIS from its SUBLICENSEES sales of a Developed Patent Product.

As further consideration for the Licensee, OSIRIS will pay CWRU a royalty on all Product or Process providing that such Product or Process where sold is covered by a claim of a granted patent based upon United States Patent Application Number 08/377,771, filed January 24,1995 (“Marrow Transplant Patent Product”) as follows.

(iii) One and One-Half percent (1.5%) of the Net Sales of Marrow Transplant Patent Products sold by OSIRIS or its sublicensees; and

CWRU agrees that any income received from Marrow Transplant Patent Products shall be divided evenly and in its entirety between Dr. Stanton Gerson and Dr. Hillard Lazarus.

Any Marrow Transplant Patent Products or Developed Patent Products shall be designated hereinafter as a “Royalty Bearing Product.”

Provided, however, that with respect to each Royalty Bearing Product covered under either (i), (ii) or (iii) above, no royalty shall be payable for the first three years in which such Royalty Bearing Product is sold. Net Sales shall be defined as the amount received from sales of all Royalty Bearing Products less discounts, returns, transportation costs, insurance costs and taxes of any kind whatsoever.

Except as specifically modified herein, all terms and conditions of the Technology License Agreement dated January 1, 1993 remain unchanged and constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment Number 1 of the Technology License and Agreement which is effective as of the date of the last signature below.

CASE WESTERN RESERVE
UNIVERSITY

OSIRIS THERAPEUTICS, INC.

By: /s/ Casey Porto
Name: Casey Porto
Title: Associate Vice President
Date: 11-3-03

By: /s/ Donald W. Fallon
Name: Donald W. Fallon
Title: VP, Finance & CFO
Date: 10/27/03

AMENDMENT TO THE TECHNOLOGY TRANSFER AND LICENSE AGREEMENT
BETWEEN CASE WESTERN RESERVE UNIVERSITY
AND OSIRIS THERAPEUTICS, INC.

This Amendment, effective as of the _____ day of October, 1999, "Amendment Effective Date" between Osiris Therapeutics, Inc. ("OSIRIS") and Case Western Reserve University ("CWRU").

WHEREAS, OSIRIS and CWRU entered into a Technology Transfer and License Agreement effective as of January 1, 1993 (the "License Agreement");

WHEREAS, OSIRIS and CWRU desire to amend the License Agreement with respect to the manner in which OSIRIS exercises its rights to a license, and to clarify that a member of CWRU who has only limited contact with a Principal Investigator is not an Investigator.

WHEREAS the parties find that it is in their mutual best interests to amend the License Agreement.

NOW, THEREFORE, in consideration of the covenants and obligations expressed herein, and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS

1.01 In addition to the initially capitalized words and phrases defined herein, all initially capitalized words and phrases shall be defined as defined in the License Agreement.

2. AMENDMENTS

2.01 Paragraph 1.1 of the License Agreement is amended by adding the following sentence thereto:

—With respect to any Developed Patent Rights that are based on Technology developed after the Amendment Effective Date, such Developed Patent Rights shall become licensed to OSIRIS under this Paragraph 1.1 upon OSIRIS exercising OSIRIS' option thereto pursuant to the provisions of Paragraph 1.8 of this Agreement.-

2.02 The License Agreement is hereby amended to add the following

Paragraphs 1.7 and 1.8;

—1.7 CRWU shall promptly report to OSIRIS in writing any and all Technology that is potentially patentable. In reporting such potentially patentable Technology to OSIRIS, CWRU shall provide sufficient information to OSIRIS to permit OSIRIS to determine whether or not OSIRIS should exercise its option under Paragraph 1.8 with respect to such Technology.-

1.8(a) CWRU hereby grants to OSIRIS a sole and exclusive right and option to obtain a worldwide exclusive license under the terms and conditions of this Agreement with respect to Developed Patent Rights that are based on Technology developed after the Amendment Effective Date.

(b) OSIRIS shall have the right to exercise the option under Paragraph 1.8(a) with respect to Developed Patent Rights based on Technology reported to OSIRIS under Paragraph 1.7 of this Agreement by notifying CWRU of OSIRIS' election to do so within one-hundred and twenty (120) days after OSIRIS receives a report required by Paragraph 1.7 of this Agreement. If OSIRIS fails to exercise OSIRIS' option within such period with respect to any Technology reported in accordance with Paragraph 1.7 of this Agreement, then such option shall lapse and OSIRIS shall have no further interest in Developed Patent Rights that are filed on the Technology reported to OSIRIS under Paragraph 1.7 for which OSIRIS fails to exercise the option. OSIRIS shall exercise reasonable diligence to patent the Technology for which it has exercised its option herein.—

2.03 Paragraph 10.7 of the License Agreement is amended in its entirety to read as follows:

—10.07 Investigator. The term "Investigator" shall mean "Principal Investigators", and any CWRU staff member, graduate student, under graduate student or employee of CWRU who (i) works under the direction of a Principal Investigator or (ii) who collaborates with a Principal Investigator. A person who "collaborates with a Principal Investigator" is a person who is a co-author with a Principal Investigator on a published work (including papers, abstracts, posters or other scientific presentations), or is a co-inventor with a Principal Investigator on a patent application. Nothing in this paragraph shall prejudice the rights of either party to make any argument as to the meaning and intent of the original Paragraph 10.07 of the License Agreement.

3. EFFECTS

The License Agreement is amended as provided hereinabove as of October 18, 1999 in accordance with Paragraph 9.12 of the License Agreement. All other terms and provisions of the License Agreement shall be unaffected by this Agreement.

IN WITNESS WHEREOF, the parties through there authorized representatives, have executed this Amendment effective as of the date first above written.

CASE WESTERN RESERVE UNIVERSITY

OSIRIS THERAPEUTICS, INC.

BY: Richard A. Zdanis
Title: Provost
Date: 10/18/99

BY: (illegible)
Title: Acting Pres/CEO
Date: 10/12/99

**THIRD AMENDMENT TO TECHNOLOGY TRANSFER
AND LICENSE AGREEMENT**

THIS THIRD AMENDMENT TO TECHNOLOGY TRANSFER AND LICENSE AGREEMENT (the "Amendment") effective as of October 27, 2003 ("Amendment Effective Date"), by and between Case Western Reserve University, an Ohio nonprofit corporation having a place of business at 10900 Euclid Avenue, Cleveland, OH 44106 ("CWRU") and Osiris Therapeutics, Inc., a Delaware corporation with an address at 2001 Aliceanna Street, Baltimore, Maryland 21231-3043 ("OSIRIS"), in exchange for their mutual covenants herein set forth, hereby agree as follows:

WHEREAS, the Parties entered into a Technology Transfer and License Agreement effective as of January 1, 1993 (the Effective Date), which was amended on October 18, 1999 and October 27, 2003 (the "Agreement").

WHEREAS, the Parties desire to further modify, clarify, and amend certain provisions of the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 For purposes of this Amendment and the Agreement, Capitalized terms shall have the meanings specified in Article X of the Agreement unless modified herein.

1.2 The definition of "Technology" set forth in Paragraph 10.1 of the Agreement, is amended by deleting the phrase in the last two lines "during the term of this Agreement while performing research at CWRU" and replacing it with "prior to April 1, 2002 while performing research at CWRU". Technology shall not include 'Excluded Patent Rights' as defined below."

1.3 The definition of "Material" set forth in Paragraph 10.6 of the Agreement, is amended by deleting the phrase "during the term of this Agreement" and replacing it with "prior to April 1, 2002."

1.4 The definition of "Existing Patent Rights" set forth in Paragraph 10.8 of the Agreement is deleted in its entirety and replaced as follows:

10.8. "Existing Patent Rights" shall mean only (i) the patents identified in Attachment A hereto (the "Existing Patents"); (ii) any division, continuation, or continuation-in-part of an Existing Patent; and (iii) any application filed or patent issued in a foreign country equivalent to any of the foregoing (including any reissue, reexamination, or extension of such foreign patent(s)).

1.5 The definition of "Developed Patent Rights" set forth in Paragraph 10.9 of the Agreement is deleted in its entirety and replaced as follows:

10.9 “Developed Patent Rights” shall mean only (i) the patents and patent applications (including any patents maturing or claiming priority from such applications) identified in Attachment B hereto (the “Developed Patents”); (ii) any division, continuation, continuation-in-part, reissue, reexamination or extension thereof; or (iii) any application filed or patent issued in a foreign country equivalent to any of the foregoing (including any division, continuation, continuation-in-part, reissue, reexamination, or extension of such foreign patent(s)) Developed Patent Rights shall not include “Excluded Patent Rights” as defined below.

1.6 1.6. The Agreement is amended by the addition of a new Paragraph 10.10 as follows:

10.10 “Excluded Patents Rights” shall mean only (i) the patents and patent applications (including any patents maturing or claiming priority from such applications) identified in Attachment C hereto (the “Excluded Patents”); (ii) any division, continuation, continuation-in-part, reissue, reexamination, or extension thereof; or (iii) any application filed or patent issued in a foreign country equivalent to any of the foregoing (including any division, continuation, continuation-in-part, reissue, reexamination or extension of such foreign patent(s)).

2. LICENSE TERMS

2.1 Paragraph 1.3 of the Agreement (“Retained Rights”) is amended by the addition of the following: “The parties understand and agree that research (unless funded by a commercial entity in return for a license to, or ownership interest in, the results of such research) shall not be considered a commercial purpose.”

2.2 Paragraph 1.4 of the Agreement (“Sublicenses”) is amended by the addition of the following new subparagraph 1.4.1, as follows:

1.4.1. In the event CWRU notifies OSIRIS in writing that a third party desires to obtain a sublicense under the licenses granted to OSIRIS under this Agreement and further provided that (i) the sublicense is in a field of use that is not being developed by OSIRIS under this Agreement and a Product in the field of use in which a sublicense is requested would not have an adverse effect on a product being developed and/or sold by OSIRIS or by a sublicensee of OSIRIS and (ii) within sixty (60) days of such notice OSIRIS does not provide CWRU with a development plan for developing a Product in such requested field of use or thereafter in good faith does not initiate and continue development of that Product in such requested field of use and (iii) OSIRIS has the right to grant sublicenses in such requested field of use and (iv) such third party has the ability to develop a Product in such requested field of use, then OSIRIS agrees to negotiate in good faith such sublicense in such requested field of use and to also negotiate in good faith a license with respect to patents and know-how owned by OSIRIS in such requested field of use to the extent that such a license from OSIRIS is reasonably required to exercise the rights granted under such sublicense. It is expressly understood that OSIRIS is not obligated by the Agreement to grant any sublicense with respect to a product(s) where the development and/or commercialization of such

product(s) by a third party would have a potential adverse effect on a product that is being researched and/or developed and/or commercialized by OSIRIS or a licensee or sublicensee of OSIRIS. It is expressly understood that no person or entity other than CWRU is intended to be a third party beneficiary or may assert third party beneficiary rights under this Section 1.4.1.

3. PATENT RIGHTS

3.1 Paragraph 3.3 of the Agreement is deleted and replaced as follows:

3.3 Assignment of Patent Rights.

(a) As requested by OSIRIS, CWRU shall sign and shall cause the applicable inventors to sign any and all documents and papers reasonably requested by OSIRIS to evidence and/or perfect the assignment to OSIRIS of Existing Patent Rights, including, but not limited to, those to be filed in patent offices in which Existing Patents are pending and/or from which Existing Patents have been granted. To the extent that Developed Patent Rights have been assigned by CWRU to OSIRIS (although not required by the Agreement), OSIRIS shall reassign such Developed Patent Rights to CWRU within 30 days of the Amendment Effective Date.

(b) CWRU shall own any Patent Application that is directed to an invention made by an employee(s) of CWRU during the week in which the invention was conceived other than claims relating to an Existing Patent Right. OSIRIS shall own any Patent Application that does not include Excluded Patent Rights, directed to an invention made by an employee of OSIRIS who was not also an employee of CWRU during the week in which the invention was conceived. Inventions made by an employee of OSIRIS, who was not also an employee of CWRU during the week in which the invention was conceived, and an employee of CWRU shall be owned jointly by OSIRIS and CWRU.

4. Royalties, Consideration and Payments

4.1 Paragraph 6.9 of the Agreement is deleted and replaced as follows:

6.9 Minimum Performance. Upon execution of this Amendment, OSIRIS shall pay and CWRU shall accept one hundred thousand dollars (\$100,000) as royalty payments for the calendar years 2001 and 2002. For each subsequent calendar year during the term of this Agreement, if payments due to CWRU under Article VI are less than fifty thousand dollars (\$50,000), OSIRIS shall pay CWRU the difference between the amount due and fifty thousand dollars (\$50,000) on, or before, the due date for payments under Article VI (i.e. March 31 following the year payment obligations accrue). In the event OSIRIS defaults on its payment obligation, and fails to cure such default within 30 (thirty) days after receiving a notice of default and demand for payment from CWRU, any and all rights of OSIRIS to Developed Patent Rights under this License Agreement shall be terminated.

5. Miscellaneous

5.1 The Agreement is amended by the addition of the following new Paragraph 9.15 as follows:

9.15 reporting. In order to assist CWRU in its annual Bayh-Dole Invention Utilization Reporting to the NIH, OSIRIS shall submit to CWRU a written report containing the following information relating to Product(s) or Process(es) developed under the Agreement:

- Name of Product
- Latest stage of development of Product (Basic R&D; Pre-clinical; Prototype; FDA(NDA/PLA); Clinical Market)
- Calendar year of first commercial sale of Product
- Number of sublicensees for Product.

Said report shall be due annually on March 31 of each year during the term of the Agreement.

5.2 The Agreement is amended by the addition of the following new Paragraph 9.16, as follows:

9.16 No Waiver of Rights. By entering this Amendment, CWRU does not waive any right or obligation under any federal or state statute or regulation, including but not limited to those relating to commercialization and/or utilization of federally funded inventions, and no inference of any such waiver shall be drawn from this Amendment.

5.3 IN WITNESS WHEREOF, the parties have executed this Amendment or caused this Amendment to be executed on the date first above written. This Amendment is executed by the parties with the intent to be legally bound hereby.

CASE WESTERN RESERVE UNIVERSITY

By _____
Title _____

OSIRIS THERAPEUTICS, INC.

By _____
Title _____

Attachment A — Existing Patent Rights

1. Method for Enhancing the Implantation and Differentiation of Marrow-Derived Mesenchymal Cells (U.S. Patent No. 5,197,985).
2. Method for Treating Connective Tissue Disorders (U.S. Patent No. 5,226,914).
3. Human Mesenchymal Stem Cells (U.S. Patent No. 5,486,359).
4. Enhancing Bone Marrow Engraftment Using MSCS (U.S. Patent No. 5,733,542).
5. Connective Tissue Regeneration Using Human Mesenchymal Stem Cell Preparations (U.S. Patent No. 5,811,094).
6. Monoclonal Antibodies for Human Mesenchymal Stem Cells (U.S. Patent No. 5,837,539).
7. Enhancing Hematopoietic Progenitor Cell Engraftment Using Mesenchymal Stem Cells (U.S. Patent No. 6,010,696).
8. Monoclonal Antibodies for Human Mesenchymal Stem Cells (U.S. Patent No. 6,087,113).
9. In any country of the world, any issued patent or pending patent application that claims the benefit of the following U.S. Patent Application Numbers: 07/615,430, 07/716,917, 07/614,915, and 07/614,912.
10. Any reissue, reexamination or extension of any patent application or patent of items 1-9 above.

Attachment B — Developed Patent Rights

1. Transduced Mesenchymal Stem Cells (U.S. Patent Number 5,591,625).
2. Monoclonal Antibodies for Human Osteogenic Cell Surface Antigens (U.S. Patent Number 5,643,736).
3. Lineage-Directed Induction of Human Mesenchymal Stem Cell Differentiation (U.S. Patent Number 5,736,396).
4. Biomatrix for Soft Tissue Regeneration (U.S. Patent Number 5,855,619).
5. In Vitro Chondrogenic Induction of Human Mesenchymal Stem Cells (U.S. Patent Number 5,908,784).
6. Lineage-Directed Induction of Human Mesenchymal Stem Cell Differentiation (U.S. Patent Number 5,942,225).
7. Biomatrix for Soft Tissue Regeneration Using Mesenchymal Stem Cells (U.S. Patent Number 6,174,333).
8. Biological Material for the Repair of Connective Tissue Defects Comprising Mesenchymal Stem Cells and Hyaluronic Acid Derivative (U.S. Patent Number 6,482,231).
9. Hematopoietic Progenitor Cell Gene Transduction (U.S. Patent Application Number 09/321,655).
10. Myogenic Differentiation of Human Mesenchymal Stem Cells (PCT Application Number US96/08722).
11. Osteoarthritis Cartilage Regeneration Using Human Mesenchymal Stem Cells (US Patent Application Number 09/078,531).
12. Bone Regeneration in Osteoporosis Using Human Bone Marrow Mesenchymal Cells (PCT Application Number US98/01112).
13. Any patent applications that have matured into one of the Developed Patents specified above or as to which priority for such Developed Patents is claimed.
14. Any patent application(s) filed only by CWRU, with Arnold Caplan or Stephen Haynesworth as one of the inventors, that were filed prior to April 1, 2002 to the extent that it claims Technology that is not either (a) set forth in items 1-13 above, (b) within Existing Patent Rights under Attachment A, or (c) within Excluded Patent Rights under Attachment C.

Attachment C — Excluded Patent Rights

1. Multilayer Skin Or Dermal Equivalent Having A Layer Containing Mesenchymal Stem Cells (U.S. Patent No. 6,497,875).
2. Any and all patents that mature or claim priority from future patent applications filed by CWRU that relate specifically to the use of Mesenchymal Stem Cells for skin repair, regeneration or treatment which may include but should not be limited to the use of Mesenchymal Stem Cells in a skin or dermal equivalent.
3. Any and all patents that relate to cell targeting and/or applications thereof that mature or claim priority from pending U.S. Patent Application Numbers 60/389,079 and/or 60/457,151, or future patent applications filed by CWRU.
4. Any patent applications that have matured into an Excluded Patent specified above or as to which priority for such Excluded Patent is claimed.

Intellectual Property Assignment Deed

Medvet Sciences Pty Ltd
ABN 15 008 089 745

and

Angioblast Systems, Incorporated

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Intellectual Property Assignment Deed

Date 4th October 2004

Parties

1. **Medvet Sciences Pty Ltd** ABN 15 008 089 745 of 38 Payneham Road, Stepney, South Australia, 5069 Australia (**Medvet**)
2. **Angioblast Systems, Incorporated** of 279 East, 44th Street, New York, NY 10017 United States of America (**Angioblast**)

Background

- A. Medvet owns all right title and interest in and to Patent Family 1 and Patent Family 3.
- B. Medvet owns Patent Family 2 as a tenants in common in equal shares with Angioblast.
- C. Subject to the terms of this Deed:

(a) Medvet has agreed to assign to Angioblast absolutely all its right, title and interest in and to the Intellectual Property Rights subsisting in the Technology and Materials on the terms of this Deed and subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement continuing until the termination of the PeterMac Research Agreement (whether simply due to the effluxion of time or on any other basis whatsoever).

(b) to the extent that Medvet cannot assign to Angioblast any part of the Technology or Materials, Medvet will grant Angioblast an exclusive, worldwide licence (including the right to sub-licence) to use, exploit and conduct research in relation to that part of the Technology and Materials that cannot be assigned, in the Other Field on the same terms of the All Fields Licence and subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement continuing until the termination of the PeterMac Research Agreement (whether simply due to the effluxion of time or on any other basis whatever); and

(c) to the extent that Medvet cannot assign or grant an exclusive licence to Angioblast of any part of the Materials, Medvet will grant Angioblast a non-exclusive, worldwide licence (including the right to sub-licence) to use, exploit or conduct research in relation to that part of the Materials that cannot be assigned or exclusively licensed, in the Other Field on the same terms of the All Fields Licence to the extent that it applies to a non-exclusive licence, and subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement continuing until the termination of the PeterMac Research Agreement (whether simply due to the effluxion of time or on any other basis whatever).

(d) Medvet has agreed to assign to Angioblast all its right, title and interest in and to the Bone and Cartilage Licence.

1. Definitions and interpretation.

1.1 Definitions. In this Deed:

All Fields Licence means the licence granted to Angioblast by Medvet by clause 5 of the Deed executed between the parties on 27 July 2004 in the Other Field;

Bone and Cartilage Fee will have the same meaning that 'Fee' has under the Bone and Cartilage Licence;

Bone and Cartilage Field means the field of bone regeneration and repair and cartilage regeneration and repair;

Bone and Cartilage Licence means the exclusive worldwide licence granted by Medvet to Mesoblast Limited to exploit the Technology and Materials in the Bone and Cartilage Field executed on or about 28 July 2004 on terms, as amended by the Deed of Amendment executed between Medvet and Mesoblast Limited on or about the date of this Deed, which have been disclosed to Angioblast;

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in South Australia;

Cardio Fees shall have the same meaning that 'Fee' has under the Cardio Licence, notwithstanding the termination of the Cardio Licence;

Cardio Field means cell therapy applications derived from cells expressing markers of mesenchymal precursors including but not limited to STRO-1 or 3G5 markers in respect of cardiac muscle and blood vessels only. Applications may include, but are not limited to, formation of blood vessels and/or cardiac muscle for tissue repair and/or for the treatment of ischaemic conditions, cardiovascular, cerebrovascular and peripheral vascular disorders;

Cardio Licence means the licence agreement between Medvet and Angioblast executed between the parties on or about 14 May 2004, to exploit the Technology and Materials in the Cardio Field, as amended by clause 3 of the Deed executed between the parties on 27 July 2004;

Cells means mesenchymal precursor cells;

Confidential Information means all information not in the public domain or which entered the public domain subsequent to disclosure in violation of this Deed including but not limited to:

(a) know-how, trade secrets, ideas, concepts, technical and operational information, scientific or technical processes or techniques, product composition or details owned or used by either party;

(b) computer records, software, source and object codes, manuals, diagrams, graphs, charts, projections, specifications, estimates, records, accounts, plans, formulae, designs, drawings, models, methods, techniques, price lists, customer lists, market research information, business and marketing plans and projections, correspondence, documents and papers of every description, including copies of or extracts from any of the same;

(c) information concerning the affairs or property of either party or any transaction in which either party may be or may have been concerned with or interested in;

(d) the names, addresses and other contact details of any client of either party;

(e) information about the terms of this Deed or any other agreements or arrangements with clients of either party or any other third parties with whom either party has dealings;

(f) information about the business methods of either party; and

(g) any information which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to:

(i) either party; or

(ii) any third party with whose consent or approval either party uses that information;

Deed means this deed including the recitals, any schedules and any annexures;

Encumbrance means:

(a) an interest or power reserved in or over an interest in an asset, including any retention of title;

(b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or

(c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above;

Improvements To Materials means any improvement to, modifications to, applications of or adaptations of any part of the Materials (as defined excluding the Improvements To Materials) Medvet or the Institute of Medical and Veterinary Science create, develop or acquire whether now or in the future, including any improvements, modifications, applications or adaptations made through the licence granted to Medvet under clause 6 in relation to any part of the Materials;

Improvements To Technology means any improvement to, modifications to, applications of or adaptations of any part of the Technology (as defined excluding the Improvements To Technology) Medvet or the Institute of Medical and Veterinary Science create, develop or acquire whether now or in the future, including any improvements, modifications, applications or adaptations made through the licence granted to Medvet under clause 6, in relation to any part of the:

(a) Technical Information;

(b) Patent Family 1;

(c) Patent Family 2;

(d) Patent Family 3;

(e) Cells; and

(f) all know-how (including but not limited to the know-how for isolating enriching, culturing and expanding the mesenchymal precursor cells) and Confidential Information associated with (a) to (e);

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

(d) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort any field, whether or not registered or capable of registration;

(e) any application or right to apply for registration of any of those rights;

(f) any registration of any of those rights or any registration of any application referred to in paragraph (b); and

(g) all renewals and extensions of these rights;

Materials means hybridomas producing antibodies reactive with a marker expressed by cells of mesenchymal, haemopoietic, keratinocyte or any other lineage, and any Improvements To Materials;

Other Field means all fields outside the Bone and Cartilage Field;

Patent Family 1 means all rights and interests in and to issued patents and pending patent applications in any country, including all substitutions, continuations, continuations-in-part, divisional, supplementary protection certificates, renewals, all letters patent granted thereon, and all

reissues, re-examinations, extensions, confirmations, revalidations, registrations and patents of addition thereof that result either directly or indirectly from the following patent applications which are sought and obtained:

- (a) 'Mesenchymal Precursor Cell PCT/AU00/00822;
- (b) 'Mesenchymal Precursor Cell' Australian Patent Application No. 56636/00;
- (c) 'Mesenchymal Precursor Cell' U.S. Patent Application No. 10/030411;
- (d) Continuation-in-Part U.S. Patent Application No.10/813,747;
- (e) 'Perivascular Mesenchymal Precursor Cells' PCT/AU2004/00416; and
- (f) U.S. Continuation-in-Part application related to USSN10/030411 titled 'Mesenchymal Precursor Cell and use thereof in the repair of bone defects and fractures in mammals';

Patent Family 2 means 'Perivascular Mesenchymal Precursor Cell Induced Blood Vessel Formation' PCT/AU2004/00417 patent and all rights and interests in and to issued patents and pending patent applications in any country, including all substitutions, continuations, continuations-in-part, divisional, supplementary protection certificates, renewals, all letters patent granted thereon, and all reissues, re-examinations, extensions, confirmations, revalidations, registrations and patents of addition resulting either directly or indirectly from this patent;

Patent Family 3 means all rights and interests in and to issued patents and pending patent applications in any country, including all substitutions, continuations, continuations-in-part, divisional, supplementary protection certificates, renewals, all letters patent granted thereon, and all reissues, re-examinations, extensions, confirmations, revalidations, registrations and patents of addition thereof relating, whether directly or indirectly, to the proliferation of mesenchymal precursor cells and tissue specific committed cells and use thereof:

- (g) to generate cardiac muscle, bone or vascular and endothelial tissue;
- (h) to generate adipose tissue;
- (i) to generate neural and glial tissue;
- (j) to generate smooth muscle tissue; and
- (k) to generate cartilage and ligamentous tissue,

which are sought and obtained by Medvet;

PeterMac Research Agreement means the research agreement dated 1 October 1999 between Medvet and the Inner and Eastern Health Care Network trading as Peter MacCallum Cancer Institute;

Protected Country means any country in which Angioblast is and remains the proprietor or applicant of any patent or patent application in the Technology or any patent or patent application in any Improvements to Technology made or acquired by Angioblast.

Technical Information means all of the information and know-how concerning the Technology (as defined excluding the Technical Information) in Medvet's possession or control at the date of execution of this Deed, including without limitation all laboratory notebooks, research results and information relating to Patent Family 1, Patent Family 2, and Patent Family 3;

Technology means:

(h) the Technical Information;

(i) Patent Family 1;

(j) Patent Family 2;

(k) Patent Family 3;

(l) Improvements To Technology;

(m) Cells; and

(n) all know-how (including but not limited to the know-how for isolating enriching, culturing and expanding the mesenchymal precursor cells) and Confidential Information associated with (a) to (f); and

Unprotected Country means any country in the which for any reason (other than a breach of this Deed by Medvet) is not a Protected Country or at any time ceases to be a Protected Country.

1.2 Interpretation. In this Deed, unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) a gender includes the other genders;

(c) the headings are used for convenience only and do not affect the interpretation of this Deed;

(d) other grammatical forms of defined words or expressions have corresponding meanings;

(e) a reference to a document includes the document as modified from time to time and any document replacing it;

(f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

(g) the word “person” includes a natural person and any body or entity whether incorporated or not;

(h) the word “month” means calendar month and the word “year” means 12 months;

(i) the words “in writing” include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;

(j) a reference to a thing includes a part of that thing;

(k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

(l) wherever “include” or any form of that word is used, it must be construed as if it were followed by “(without being limited to)”;

(m) money amounts are stated in Australian currency unless otherwise specified;

(n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

2. Assignment.

2.1 Technology Assignment.

(a) In consideration for the payments and acknowledgements contained in clause 4 and 5 and subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement continuing until the termination of the PeterMac Research Agreement (whether simply due to the effluxion of time or on any other basis whatever), Medvet hereby assigns to Angioblast absolutely and beneficially, such assignment to be effective from the date of execution of this Deed, the whole of its rights, title and interest, whether presently existing or which arises at a date after the date of this Deed in and to any Intellectual Property Rights subsisting in the Technology including:

(i) the right to apply for and register in any country worldwide such Intellectual Property Rights; and

(ii) the right to claim (and retain) any damages and other remedies (including but not limited to an account of profits) for past infringement of and wrongful interference of such Intellectual Property Rights by third parties (whether or not they arose prior to the date this Deed came into effect).

(Assigned Technology).

(b) Medvet acknowledges and agrees that Angioblast owns and will own all right, title and interest in and to all of the Assigned Technology from the date of this Deed, or if acquired, developed or created after the date of this Deed, on the date such Assigned Technology is first acquired, developed or created.

(c) To the extent that Medvet cannot assign any part of the Technology under clause 2.1(c), **(Unassignable Technology)**, Medvet grants to Angioblast an exclusive worldwide licence (including the right to sub-licence) to use, exploit and conduct research in relation to the Unassignable Technology in the Other Field on the same terms of the All Fields Licence, such licence being subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement continuing until the termination of the PeterMac Research Agreement (whether simply due to the effluxion of time or on any other basis whatsoever).

2.2 Materials Assignment.

(a) In consideration for the payments and acknowledgements contained in clause 4 and 5 and subject to the rights (if any) granted to any third parties in relation to the Materials (including Peter MacCallum Cancer Institute under the PeterMac Research Agreement), Medvet hereby assigns to Angioblast absolutely and beneficially, such assignment to be effective from the date of execution of this Deed, the whole of its rights, title and interest, whether presently existing or which arises at a date after the date of this Deed in and to any Materials and any Intellectual Property Rights subsisting in the Materials including:

(i) the right to apply for and register in any country worldwide such Intellectual Property Rights; and

(ii) the right to claim (and retain) any damages and other remedies (including but not limited to an account of profits) for past infringement of and wrongful interference of such Intellectual Property Rights by third parties (whether or not they arose prior to the date this Deed came into effect).

(Assigned Materials).

(b) Medvet acknowledges and agrees that Angioblast owns and will own all right, title and interest in and to all of the Assigned Materials from the date of this Deed, or if acquired, developed or created after the date of this Deed, on the date such Assigned Materials is first acquired, developed or created.

(c) To the extent that Medvet cannot assign any part of the Materials under clause 2.2(a), **(Unassignable Materials)**, Medvet grants to Angioblast an exclusive worldwide

licence (including the right to sub-licence) to use, exploit and conduct research in relation to the Unassignable Materials in the Other Field on the same terms of the All Fields Licence, such licence being subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement and continuing until the termination of the PeterMac Research Agreement whether simply due to the effluxion of time or on any other basis whatsoever.

(d) To the extent that Medvet cannot grant an exclusive licence to any part of the Unassignable Materials under clause 2.2(c), (**Non-Exclusive Unassignable Materials**), Medvet grants to Angioblast an non-exclusive worldwide licence (including the right to sub-licence) to use, exploit and conduct research in relation to the Non-Exclusive Unassignable Materials in the Other Field on the same terms of the All Fields Licence to the extent that it applies to a non-exclusive licence, such licence being subject to the rights (if any) granted to Peter MacCallum Cancer Institute under the PeterMac Research Agreement and continuing until the termination of the PeterMac Research Agreement whether simply due to the effluxion of time or on any other basis whatsoever.

(e) Notwithstanding the terms of this clause 2.2, Medvet represents and warrants that it is able to freely assign all of the Materials and all Intellectual Property Rights in the Materials identified in Schedule 2 (“Essential Materials”) pursuant to clause 2.2(a), and Medvet warrants that the assignment of such Essential Materials will not breach any third party rights (including the rights granted to the Peter MacCallum Cancer Institute under the PeterMac Research Agreement).

2.3 No further grant of rights to Materials. Medvet acknowledges and agrees that it will not, from the date of this Deed, grant any further rights in relation to the Materials without Angioblast’s prior written consent (such consent to be withheld at the sole and absolute discretion of Angioblast).

2.4 Transfer of Technical Information.

(a) Medvet will within 30 days from the date of this Deed, provide and deliver all of the Technical Information to Angioblast.

(b) The parties acknowledge that Medvet is under an obligation to provide copies of all Technical Information to Mesoblast under the Bone and Cartilage Licence.

2.5 Non-admission of rights. Nothing in this Deed constitutes the admission or grant by any of the parties of any rights to the Technology or Materials to the Peter MacCallum Cancer Institute whether under the PeterMac Research Agreement or otherwise.

2.6 Moral Rights.

(a) Insofar as any moral rights may exist in any Technology and Materials (**Works**), Medvet will use its best endeavours to ensure that, to the extent that such consents have not already been obtained, within 60 days of the execution of this Deed, the authors of such Works irrevocably and unconditionally consent in writing by executing the deed poll in Schedule 1, to the fullest extent permitted by law (whether present or future), pursuant to Part IX of the *Copyright Act 1968* (Cth), to Angioblast, its licensees, assignees and successors and their licensees, and other persons authorised by any of them:

(i) reproducing, adapting, publishing, performing, exhibiting, communicating or transmitting the Works or any adaptation thereof (or any part of any of the Works or of any such adaptation) anywhere in the world, in whatever form and in whatever circumstances Angioblast thinks fit including the making of any distortions, additions or alterations to the Works or any adaptation thereof (or any part of the Works or of such adaptation) as so reproduced, adapted, published, performed, exhibited, communicated or transmitted; and

(ii) reproducing, adapting, publishing, performing, exhibiting, communicating or transmitting the Works or any adaptation thereof (or any part of any of the Works or of any such adaptation) anywhere in the world without making identification of Angioblast or Medvet or the authors or any other person in relation thereto.

2.7 Assistance and Power of Attorney.

(a) Medvet will render all assistance and execute all documentation necessary to:

(i) transfer ownership of the Assigned Technology and Assigned Materials to Angioblast; and

(ii) if necessary confirm any licence granted pursuant to clauses 2.1(c), 2.2(c) and 2.2(d).

(b) Medvet hereby irrevocably appoints Angioblast and each director and secretary for the time being of Angioblast to be Medvet's attorney and in Medvet's name and on Medvet's behalf to execute and do all such deeds, acts and things as Angioblast may consider reasonably necessary to give full effect to the assignment and the grant of licences (if any) in clauses 2.1 and 2.2.

3. Bone and Cartilage Licence Assignment.

3.1 Assignment. In consideration for the undertaking contained in clause 4, Medvet:

(a) hereby assigns to Angioblast:

(i) all the rights, title and interest of Medvet under the Bone and Cartilage Licence absolutely; and

(ii) without limiting clause 3.1(a)(i), all rights of action, claims and demands Medvet has arising from or relating to the Bone and Cartilage Licence;

(b) to the extent that Medvet cannot assign any of its duties or obligations under the Bone and Cartilage Licence to Angioblast, hereby acknowledges and agrees that, subject to Angioblast's written direction, it will continue to comply with and discharge its obligations under the Bone and Cartilage Licence at Angioblast's expense; and

(c) notwithstanding Medvet's obligations under clause 3.1(b), Medvet hereby irrevocably appoints Angioblast and each director and secretary for the time being of Angioblast to be Medvet's attorney in Medvet's name and on Medvet's behalf to execute and do all such deeds, acts and things as Angioblast may consider reasonably necessary to give full effect to this clause 3.1 and, to the extent that Medvet has any, comply with any obligations of Medvet under the Bone and Cartilage Licence.

4. Continuing Obligation. Angioblast acknowledges and agrees that, notwithstanding assignment of the Assigned Technology and Assigned Materials pursuant to clauses 2.1(a) and 2.2(a) and the Bone and Cartilage Licence pursuant to clause 3.1, from the date of this Deed Mesoblast Limited has agreed with Medvet under the Bone and Cartilage Licence to continue to pay the Bone and Cartilage Fee pursuant to the Bone and Cartilage Licence directly to Medvet until termination of the Bone and Cartilage Licence.

5. Cardio Licence and Other Fields.

(a) Parties acknowledge and agree that the Cardio Licence will terminate with effect from the date of the effective assignment and the grant of licence (if any) pursuant to clause 2 of this Deed, and notwithstanding termination of the Cardio Licence and in consideration of the assignment and the grant of licence (if any) in clause 2 Angioblast agrees to continue to pay the Cardio Fees to Medvet after the date of the effective assignment and the grant of licence (if any) pursuant to clause 2 of this Deed.

(b) In relation to the Other Fields (excluding the Cardio Field), and in consideration of the assignment and the grant of licence (if any) under clause 2 Angioblast agrees to pay Medvet the following:

(i) US\$250,000 on completion of a (human) clinical trial phase of any product incorporating the Technology falling within Other Fields (excluding the Cardio Field) developed solely by Angioblast;

(ii) US\$350,000 on FDA marketing approval of any product incorporating the Technology falling within the Other Fields (excluding the Cardio Field) developed solely by Angioblast;

payable within 30 days of the date of the invoice from Medvet for those amounts; and

(iii) 2% of Net Sales generated from the sale by Angioblast of products in Other Fields using or incorporating the Technology, payable each quarter and made in arrears within 30 days of the end of each quarter and accompanied by a written report.

(c) In this clause, 'Net Sales' means the actual sales price (exclusive of any sales or use taxes or value added tax, GST or other goods and services tax or any other similar

taxes imposed on the provision of goods and services to purchasers by the party supplying products using or incorporating the Technology) as invoiced and received by Angioblast from third party purchasers less discounts, credits and returns on the products using or incorporating the Technology and less freight and handling disbursements, and to the extent that sales are made in any currency other than Australian dollars, the rate of exchange on the day the products are paid for will be used to convert the Net Sales for those products using or incorporating the Technology to Australian dollars.

(d) Medvet acknowledges and agrees that:

(i) Angioblast will not be required to pay any fees under this clause 5 for any Unprotected Country; and

(ii) if a country becomes an Unprotected Country, Medvet will repay Angioblast any fees paid under this clause 5 for that country from the date of this Deed up until and including the date that country becomes an Unprotected Country.

6. Research Licence. In consideration for:

(a) assignment of the Assigned Technology and Assigned Materials to Angioblast;

(b) any exclusive licence to Unassignable Technology and Unassignable Materials; and

(c) any non-exclusive licence to Non-Exclusive Unassignable Materials,

Angioblast hereby grants Medvet a non-exclusive, perpetual, irrevocable, royalty free licence to use the Technology and Materials for non-commercial, internal research and academic research effective from the date of this Deed provided Medvet will not use the Technology and Materials commercially or enter contractual obligations with third parties that is either inconsistent with Angioblast's rights under this Deed or relates in any way to the Technology and Materials, and further provided that Angioblast will own all research results and Intellectual Property Rights relating thereto developed or created for or on behalf of Medvet pursuant to Medvet's licence under this clause 6.

7. Warranty. Medvet warrants and it is a condition of this Deed that:

(a) it has good legal and beneficial title to the Technology and Materials, free and clear of all Encumbrances whatsoever other than the Bone and Cartilage Licence and the PeterMac Research Agreement;

(b) it has the right to make the assignments under clauses 2.1 and 2.2, and to the extent necessary, it has the right to grant the licences (if any) under clauses 2.1 and 2.2;

(c) other than the Bone and Cartilage Licence and the PeterMac Research Agreement, it has not granted any person any right to use or exploit in any way all or any part of the Technology or Materials or to manufacture, market and sell products incorporating any part of the Technology or Materials in all or any part of the world;

(d) no person's consent is required in respect of the assignment or licence of the Technology and Materials;

(e) Medvet is entitled to make all patent applications which it has made in respect to the Technology and Materials;

(f) the assignment to Angioblast of the Assigned Technology and Assigned Materials and any exclusive licence of the Unassigned Technology and Unassignable Materials and non-exclusive licence of any Non-Exclusive Unassignable Materials, will not infringe any patent, trademark, registered design, copyright or other Intellectual Property Rights of any person, nor give rise to payment by Angioblast of any royalty or any other payments to any third party or to any liability to pay compensation;

(g) it has Mesoblast Limited's consent under the Bone and Cartilage Licence to assign the Bone and Cartilage Licence to Angioblast;

(h) it does not require the Peter MacCallum Cancer Institute's consent under the PeterMac Research Agreement to assign the Assigned Technology and Assigned Materials or to license the Unassignable Technology, Unassignable Materials on an exclusive basis or to license Non-Exclusive Unassignable Materials on a non-exclusive basis;

(i) there is no litigation or claim pending or threatened, challenging or disputing the ownership or validity of the Technology and Materials or any rights to the Technology and Materials;

(j) the Bone and Cartilage Licence is valid and subsisting in full force and effect;

(k) that there is no outstanding breach of the Bone and Cartilage Licence;

(l) at the date of this Deed, Peter MacCallum Cancer Institute has not approached or provided written notice to Medvet in relation to an exclusive licence over 'Background Intellectual Property' (as defined in the PeterMac Research Agreement) pursuant to clause 9 of the PeterMac Research Agreement;

(m) at the date of this Deed, Medvet has not given up any rights to obtain patent protection in relation to 'Future Intellectual Property' (as defined in the PeterMac Research Agreement) pursuant to clause 10.5 of the PeterMac Research Agreement, and Medvet will not do so in the future without the prior written consent of Angioblast (such consent to be withheld at the sole and absolute discretion of Angioblast); and

(n) at the date of this Deed, Medvet has not provided any 'Medvet Funding' (as defined under the PeterMac Research Agreement) to the Peter MacCallum Cancer Institute pursuant to clause 5 of the PeterMac Research Agreement.

8. Indemnity. Medvet indemnifies and will keep indemnified Angioblast against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Angioblast or which Angioblast may pay, sustain or incur as a direct or indirect result of any breach or non-performance of this Deed by Medvet.

9. GST.

(a) In this clause the expressions consideration, GST, input tax credit, recipient, 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* (GST Act). A supplier means any party treated by the GST Act as making a supply under this Agreement.

(b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

(c) If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.

10. General.

10.1 Nature of obligations.

(a) Any provision in this Deed which binds more than one person binds all of those persons jointly and each of them severally.

(b) Each obligation imposed on a party by this Deed in favour of another is a separate obligation.

10.2 Time of the essence. In this Deed, time is of the essence unless otherwise stipulated.

10.3 Entire understanding.

(a) This Deed contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications between the parties, which includes the Material Transfer Agreement executed by the parties dated 7 May 2004. To the extent that there is any inconsistency between that Material Transfer Agreement and this Deed, the provisions of this Deed will prevail to the extent of such inconsistency. For the avoidance of doubt, the operation of this Deed and its provisions overrides clauses (viii) and (ix) of that Material Transfer Agreement.

(b) Each party acknowledges that, except as expressly stated in this Deed, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Deed.

10.4 No adverse construction. This Deed is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

10.5 Further assurances. A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Deed.

10.6 No waiver.

(a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Deed does not operate as a waiver of the power or right.

(b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Deed.

(c) A waiver of a breach does not operate as a waiver of any other breach.

10.7 Severability. If any provision of this Deed offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

(a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and

(b) in any other case the offending provision must be severed from this Deed, in which event the remaining provisions of the Deed operate as if the severed provision had not been included.

10.8 Successors and assigns. This Deed binds and benefits the parties and their respective successors and permitted assigns under clause 10.9.

10.9 No assignment. Medvet cannot assign or otherwise transfer the benefit of this Deed without the prior written consent of Angioblast.

10.10 Consents and approvals Where anything depends on the consent or approval of a party then, unless this Deed provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

10.11 No variation. This Deed cannot be amended or varied except in writing signed by the parties.

10.12 Costs. Each party must pay its own legal costs of and incidental to the preparation and completion of this Deed.

10.13 Duty.

(a) Any duty (including related interest or penalties) payable in respect of this Deed or any instrument created in connection with it must be paid by Medvet.

(b) Medvet undertakes to keep Angioblast indemnified against all liability relating to the duty, fines and penalties.

10.14 Governing law and jurisdiction.

(a) This Deed is governed by and must be construed in accordance with the laws in force in Delaware, USA.

(b) The parties submit to the exclusive jurisdiction of the courts of Delaware and the USA in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

10.15 Counterparts. If this Deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

10.16 Conflicting provisions. If there is any conflict between the main body of this Deed and any schedules or annexures comprising it, then the provisions of the main body of this Deed prevail.

10.17 Non merger. A term or condition of, or act done in connection with, this Deed does not operate as a merger of any of the rights or remedies of the parties under this Deed and those rights and remedies continue unchanged.

10.18 Operation of indemnities. Unless this Deed expressly provides otherwise:

(a) each indemnity in this Deed survives the expiry or termination of this Deed; and

(b) a party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

10.19 No right of set-off. Unless this Deed expressly provides otherwise, a party has no right of set-off against a payment due to another party.

10.20 Relationship of parties. Unless this Deed expressly provides otherwise, nothing in this Deed may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

Schedule 1

This Deed Poll is made on: **day of** **2004**

By: [Insert Name]: of

[Insert Address]: _____
(Consenting Party)

In Favour of: **Angioblast Systems, Incorporated** of 279 East, 44th Street, New York, NY 10017 United States of America (**Angioblast**)

Operative Provisions

2. The Consenting Party acknowledges that it has moral rights (including rights of integrity, rights of attribution and other rights of an analogous nature) in part of or all of the Technology and Materials (**Works**). “**Technology**” and “**Materials**” will have the same meaning given to the term in the Intellectual Property Assignment Deed between Angioblast and Medvet Science Pty Ltd ACN 008 849 745 (**Medvet**) dated 2004.

3. The Consenting Party hereby irrevocably and unconditionally gives its consent, to the fullest extent permitted by law (whether present or future), pursuant to Part IX of the Copyright Act 1968 (Cth), to Angioblast, its licensees, assignees and successors and their licensees, and other persons authorised by any of them to:

(a) reproducing, adapting, publishing, performing, exhibiting, communicating or transmitting the Works or any adaptation thereof (or any part of any of the Works or of any such adaptation) anywhere in the world, in whatever form and in whatever circumstances Angioblast thinks fit including the making of any distortions, additions or alterations to the Works or any adaptation thereof (or any part of the Works or of such adaptation) as so reproduced, adapted, published, performed, exhibited, communicated or transmitted; and

(b) reproducing, adapting, publishing, performing, exhibiting, communicating or transmitting the Works or any adaptation thereof (or any part of any of the Works or of any such adaptation) anywhere in the world without making identification of Angioblast, Medvet, the Institute of Medical and Veterinary Science ABN 35 302 506 443, the Consenting Party or any other person in relation thereto.

4. If any provision of this deed offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

(a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and

(b) in any other case the offending provision must be severed from this deed, in which event the remaining provisions of the deed operate as if the severed provision had not been included.

5. This deed is governed by the laws of the State of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of that State.

6. The Consenting Party, at Angioblast's expense and within a reasonable time of being requested by Angioblast to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this deed.

7. A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this deed does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this deed. A waiver of a breach does not operate as a waiver of any other breach.

Executed as a deed poll.

Signed Sealed and Delivered by **[Insert Name]:** _____ in the presence of _____)
)
) _____ Signature

Signature of Witness

Name of Witness
(Please Print)

Schedule 2

Essential Materials (clause 2.2(e))

All hybridomas developed or created by or for IMVS or Medvet, which result in production of monoclonal antibodies reactive with antigens on the surface of mesenchymal precursor cells, or cells of haematopoietic, keratinocyte, or other lineages, including without limitation, including the following antibodies:

<u>Clone</u>	<u>Isotype</u>	<u>Antigen</u>
CC9	IgG2A	CD146
EB4	IgG1	CD146
AC9	IgG1	CD13
AB11	IgG1	CD105
XB1	IgG1	CD105
H8G	IgG1	CD68
CA12	IgG1	Alkaline Phosphatase
BB9	IgG1	ACE
HCC1	IgM	CD59
MA6	?	? Megakaryocytes
KF8	IgM	FUT-1
HYB A	IgM	? (ANTI-SHEEP)
HYB B	IgG1	? (ANTI-SHEEP)
HYB C	IgM	? (ANTI-SHEEP)
HYB D	IgM	? (ANTI-SHEEP)
HYB E	IgM	? (ANTI-SHEEP)
HYB F	IgM	? (ANTI-SHEEP)
HYB G	IgM	? (ANTI-SHEEP)
HYB H	IgG1	? (ANTI-SHEEP)
HYB I	IgM	? (ANTI-SHEEP)

<u>Clone</u>	<u>Isotype</u>	<u>Antigen</u>
CF7.B10	IgG1	Leptin receptor
CG1 B7	IgG1	Leptin receptor
7H9	IgG1	CD44
H9H11	IgG1	CD44
103B2	IgG3	CD164
105A5	IgM	CD164
96.IH5	IgG1	CD164
96.2D2	IgG1	CD164
96.3F5	IgG2B	CD164
96.10H10	IgG1	CD164
96.12H11	IgG1	CD164
JP14G12	?	BETA-1 INTEGRIN
JP15E8	?	BETA-1 INTEGRIN
JP15F5	?	BETA-1 INTEGRIN
JP2C5	?	BETA-1 INTEGRIN
JP4B4	?	BETA-1 INTEGRIN
JP4B5	?	BETA-1 INTEGRIN
10G7	IgG1	Transferrin Receptor

Executed as a deed.

Executed by Medvet Sciences Pty Ltd ABN 15 008 849 745 in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:)
)
)
)
)
)

/s/ (illegible)
Signature of director

(illegible)
Name (please print)

Executed by Angioblast Systems, Incorporated in accordance with its Constitution by its duly authorised officers)
)
)
)
)
)

Signature of authorised officer

Name (please print)

/s/ Dr. Frances Guyett
Signature of director or company secretary*
*delete whichever does not apply

Dr. Frances Guyett
Name (please print)

/s/ Silviu Itescu
Signature of authorised officer

Silviu Itescu
Name (please print)

Deed of Option and Assignment

Peter MacCallum Cancer Institute
ABN 42 100 504 883

and

Angioblast Systems, Inc.

Middletons
Melbourne office
Ref: JGUT:PTH:10005333

Deed of Option and Assignment and Termination

Date 10 August 2010

By

1. **Peter MacCallum Cancer Institute ABN 42 100 504 883**, a public hospital created by Order pursuant to section 181 of the Health Services Act 1988 (Vic.) (trading as Peter MacCallum Cancer Centre) of St Andrew's Place, East Melbourne, Victoria 3002 (**PM**)

2. **Angioblast Systems, Inc.**, a Delaware corporation, with its principal office located at 275 Madison Avenue, 4th Floor, New York, NY, 10016 (**Angioblast**)

Background

A. Medvet and PM are parties to the Agreement.

B. The Agreement provides that Medvet and PM jointly own certain Intellectual Property Rights.

C. PM has agreed to grant Angioblast an option to the assignment of PM's interest in those Intellectual Property Rights on the terms set out in this Deed.

AGREED TERMS

1. Option.

1.1 Grant of Option. In consideration of the Option Fee, PM grants to Angioblast an option to have assigned to it, subject to clause 1.4, in accordance with this Deed:

(a) any and all current and future legal and beneficial rights, title and interest in the Assigned IP;

(b) all rights and immunities relating to, or arising from, the Assigned IP, including all present and past rights to sue for infringement of the Intellectual Property Rights in the Assigned IP; and

(c) to the extent that PM owns or otherwise holds or controls any rights in the Materials:

(i) all Intellectual Property Rights subsisting in the Materials, including all Intellectual Property Rights subsisting in the composition of matter of the Materials; and

(ii) all rights and immunities relating to, or arising from, any of the Intellectual Property Rights subsisting in the Materials, including all present and past rights to sue for infringement of the Intellectual Property Rights in the Materials, for the Consideration, provided that such option is exercised in accordance with the terms of this Deed (the "Option").

1.2 Option Fee.

- (a) PM acknowledges receipt of the Option Fee.
- (b) The Option Fee is not refundable. If Angioblast does not exercise the Option the Option Fee is forfeited to PM.
- (c) If the Option is exercised, the Option Fee will be applied as part of the Consideration for the assignment as specified in clause 1.1.

1.3 Term of the Option. The option shall remain in force and effect during the Option Period. The Option shall lapse at the end of the Option Period.

1.4 Australian and Japanese Patent Rights.

(a) If Medvet's consent to the assignment referred to in clause 2.2 is required by law in:

- (i) Australia in relation to the Australian Patent Rights; and / or
- (ii) Japan in relation to the Japanese Patent Rights,

then the assignment of these Patent Rights under clause 2.2 will be conditional on the consent of Medvet in the jurisdictions where consent is required, and shall occur automatically upon such consent being obtained.

(b) It is the responsibility of Angioblast to obtain the consent outlined in clause 1.4(a).

(c) Nothing in this clause 1.4 affects the Option granted under clause 1.1, or the automatic assignment upon exercise of the Option under clause 2.2 other than in relation to the Australian and Japanese Patent Rights to the extent the consent of Medvet is required.

2. Exercising the Option.

2.1 How to exercise the Option. To exercise the Option, Angioblast must, during the Option Period, deliver to PM an unendorsed bank cheque payable to PM for the amount of the Consideration.

2.2 Automatic Assignment. On exercising the Option, there shall be an automatic assignment (which shall come into effect without the parties needing to take any action beyond Angioblast making a delivery in accordance with clause 2.3) to Angioblast of all the rights that are the subject of the Option as described in clause 1. For the avoidance of doubt, PM hereby assigns to Angioblast all such rights, which assignment shall be effective upon the exercise of the Option in accordance with clause 2.1.

2.3 Delivery of the Assigned IP. Within 5 Business Days of Angioblast making a delivery in accordance with clause 2.1, PM must, except where contrary to the Agreement to do so, deliver to Angioblast:

(a) all tangible embodiments of the Assigned IP;

(b) all documents evidencing ownership of the Assigned IP (including all copies retained for the purposes of legal proceedings) and/or the Materials and/or the use thereof that is in its possession;

(c) all the Materials in its possession or control; and

(d) all antibodies or portion thereof produced or expressed by any of the Materials.

3. Extending the Option Period. Angioblast may extend the Option Period by the Extension Period if, before the Option Period ends, Angioblast delivers to PM an unendorsed bank cheque payable to PM for the Extension Fee.

4. Confirmation. PM confirms that it only has such right, title or interest in the Materials and the Intellectual Property Rights therein, to the extent granted by the Agreement and the Patent Rights and confirms that to the extent that it does have such right, title or interest in the Materials and the Intellectual Property Rights therein, PM has granted Angioblast an option to an assignment of these under clause 1.1(c).

5. Obligations during the Option Period and any Extension Period. During the Option Period and any Extension Period, PM agrees to:

(a) provide to Angioblast all patent notices, correspondence and documentation regarding the Assigned IP and the Materials that it receives and distributes;

(b) consult with Angioblast before making any amendments to claims of the Patent Rights and have regard to Angioblast's comments and suggestions in instructing PM's appointed patent attorneys during the Option Period and any Extension Period; and

(c) consult with Angioblast with respect to any litigation for infringement of or defence of the Assigned IP and subject to the agreement of Medvet take all reasonable action in protecting the interests of Angioblast and PM.

6. Further acts.

(a) Upon the Option being exercised in accordance with clause 2, PM appoints from that date Angioblast as its attorney to do all acts and execute all documents on behalf of PM to the extent necessary to vest the rights in Angioblast as contemplated by this Deed.

(b) Upon the Option being exercised in accordance with clause 2, PM agrees to execute all such further documents and do all such further acts necessary to effect the assignment of the Intellectual Property Rights in the Assigned IP and the Materials to Angioblast.

(c) Angioblast shall reimburse PM for all out of pocket expenses incurred by PM in complying with clause 6(b).

7. Warranties. PM warrants and it is a condition of this Deed that:

(a) it has good legal and beneficial title to the Assigned IP;

(b) it has the right to grant the Option under clause 1;

(c) other than in relation to the Australian and Japanese Patent Rights to the extent the consent of Medvet is required by Australian and Japanese law respectively, it has the right to assign the rights that are the subject of the Option under clause 2.2 and no other person's consent is required in respect of the assignment of the Assigned IP or of the rights assigned under clause 2.2;

(d) to the best of its actual knowledge at the date of this Deed, Angioblast's use of the Assigned IP or of the rights that may be assigned under clause 2.2 will not infringe any third party's rights (including Intellectual Property Rights);

(e) prior to the date of this Agreement, PM has given Angioblast a true, complete and, where applicable, duly executed copy of the;

(i) 2007 Deed of Assignment; and

(ii) Settlement Deed between PM and the Australian Stem Cell Centre Limited ACN 101 957 251 ("ASCC").

and PM warrants that these documents are unamended and still in force.

8. No further claims. PM acknowledges that upon exercise of the Option under clause 2 and subject to the payment of the Consideration and the assignment of the Assigned IP and the Intellectual Property Rights in the Materials, PM has no further rights (including Intellectual Property Rights or otherwise) to ownership of the Assigned IP or to the Intellectual Property Rights in the Materials and will make no further claim of whatsoever nature for monetary compensation or otherwise against Angioblast in relation to the Assigned IP or the Materials or the past or future use of the Assigned IP or of the Intellectual Property Rights in the Materials by Angioblast.

9. GST.

9.1 Definitions. In this clause 9:

(a) the expressions **Consideration, GST, Input Tax Credit, Recipient, 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 (GST Act)*; and

(b) **Supplier** means any party treated by the GST Act as making a Supply under this Deed.

9.2 Consideration is GST exclusive. Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Deed are exclusive of GST.

9.3 Payment of GST.

(a) If GST is imposed on any Supply made under or in accordance with this Deed, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.

(b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Deed.

9.4 Reimbursement of expenses. If this Deed requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

(a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and

(b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

10. Termination of Agreement.

(a) PM confirms that it and its Scientists (as defined in the Agreement) no longer require the licence to the Background Intellectual Property (as defined in the Agreement) granted to PM under the Agreement.

(b) PM warrants that it jointly owns the Assigned IP as tenants-in-common with Medvet and the Assigned IP is the only Future Intellectual Property arising out of the Agreement.

(c) In the event that Medvet consents to the termination of the Agreement, PM agrees to terminate the Agreement within fourteen days of a request to do so by Angioblast.

(d) Notwithstanding any statement to the contrary in the Agreement, PM agrees that where the Agreement is terminated, the last sentence of clause 19.1.2 of the Agreement will be of no force and effect from the date of termination in relation to the Assigned IP and the Materials.

(e) This Clause 10(c) will survive termination of this Deed.

(f) Upon Medvet consenting to the termination of the Agreement, PM:

(i) appoints Angioblast as its attorney to do all acts and execute all documents on behalf of PM to the extent necessary to give effect to the termination;

(ii) agrees to execute all such further documents and do all such further acts necessary to effect the termination of the Agreement;
and

(iii) automatically assigns to Angioblast all necessary documentation to give effect to the termination to Angioblast.

11. General.

11.1 Nature of obligations.

(a) Any provision in this Deed which binds more than one person binds all of those persons severally not jointly.

(b) Each obligation imposed on a party by this Deed in favour of another is a separate obligation.

11.2 No adverse construction. This Deed is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

11.3 Further assurances. A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Deed.

11.4 Severability. If any provision of this Deed offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

(a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and

(b) in any other case the offending provision must be severed from this Deed, in which event the remaining provisions of the Deed operate as if the severed provision had not been included.

Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that the rights conferred on, and assignments in favour of, Angioblast under this Agreement exclude any such rights and assignments that are unlawful, which unlawfulness shall be considered in respect of each member patent and member patent application of the Patent Rights separately.

11.5 Confidentiality.

(a) Obligations of confidentiality

Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 11.5(b), the Receiving Party must:

(i) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;

(ii) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential information coming into its possession or control; and

(iii) not memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.

(b) Exceptions

(i) The obligations of confidentiality (other than as provided under clause 11.5(b)(ii)) under clause 11.5(a) do not apply to any information that:

(A) is generally available to the public (other than by reason of a breach of this Agreement); or

(B) is required to be disclosed by any applicable law.

(ii) The terms of this Deed are confidential to the parties and must not be disclosed directly or indirectly, in whole or in part, by any party unless the disclosure is:

(A) to enforce this Deed;

(B) required by law including any required announcement to a stock exchange;

(C) made to a party's insurers, legal advisers or auditors, in each case on a confidential basis; or

(D) in the case of Angioblast, in dealings with Medvet and the Central North Adelaide Health Service ABN 18 348 214 208, an incorporated hospital under the *Health Care Act 2008* (SA).

11.6 Successors and assigns. This Deed binds and benefits the parties and their respective successors and permitted assigns.

11.7 No assignment. PM shall not assign or otherwise transfer the benefit of this Deed without the prior written consent of Angioblast.

11.8 No variation. This Deed cannot be amended or varied except in writing signed by the parties.

11.9 Costs. Each party must pay its own legal costs of and incidental to the preparation and completion of this Deed.

11.10 Governing law and jurisdiction

(a) This Deed is governed by and must be construed in accordance with the laws in force in Victoria.

(b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

11.11 Counterparts. If this Deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

Schedule 1 - Dictionary

In this Deed,

2007 Deed of Assignment means the Deed of Assignment between Medvet and PM dated 11 September 2007;

Agreement means the Licence Agreement between Medvet and PM dated on or about 1 October 1999;

Assigned IP means all of PM's right, title and interest, including all Intellectual Property Rights in the Invention and Patent Rights;

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in Melbourne;

Confidential Information means all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates, including this Deed and the existence of this Deed;

Consideration means AUD\$150,000 less:

(a) the Option Fee, being a total of \$138,000; or

(b) in circumstances where the option is extended by the Extension Period in consideration for the Extension Fee in accordance with clause 3, less the Option Fee and the Extension Fee, being a total of \$132,000;

Deed means this deed and any Schedule together with any annexures;

Future Intellectual Property has the meaning ascribed to it in the Agreement;

Extension Fee means the amount of AUD\$6,000;

Extension Period means the period of 6 months;

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Intellectual Property Rights means all intellectual property rights conferred by statute, at common law or in equity and wherever existing, including:

(c) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;

(d) any application or right to apply for registration of any of these rights;

(e) any registration of any of those rights or any registration of any application referred to in paragraph (d); and

(f) all renewals and extensions of these rights;

Invention means a novel means of identifying specific populations of cell types with the use of an antibody known as BB9, for the identification and isolation of stem cells;

Materials means hybridomas that express the BB9 antibody and all cells and cell lines that have been engineered to express the BB9 antibody or any portion thereof and all parent, sister and sub-clone hybridoma cell lines and any cell or cell line into which the DNA from a hybridoma expressing the BB9 antibody or any portion thereof has been transfected (whether stably or otherwise) or otherwise transferred and all byproducts and derivatives of the foregoing biological materials;

Medvet means Medvet Science Pty Ltd ACN 008 089 746;

Option has the meaning specified in clause 1.1;

Option Fee means the amount of \$12,000 and includes the Extension Fee if Angioblast extends the Option Period under clause 3;

Option Period means the period of time commencing on the date of this Deed and expiring 12 months thereafter, unless extended under clause 3, in which case the period shall expire in accordance with clause 3;

Patent Application means a patent application as defined in the *Patents Act 1990* and any national, regional or international application for a patent (whether under the *Patent Co-operation Treaty* or not). It includes a continuation, continuation in part, division, re-issue or substitution of a patent application or application for a substantially similar form of protection for an invention granted by another country where the essence is that the holder of the protection gains an exclusive right to make, use and sell a product or process which is the subject of that invention;

Patent means a patent as defined in the *Patents Act 1990* and any national or regional patent (whether under the *Patent Co-operation Treaty* or not). It includes a re-issue, renewal or extension of a patent (whether in whole or in part) and a patent of addition or a substantially similar form of protection for an invention granted by another country where the essence is that the holder of the protection gains an exclusive right to make, use and sell a product or process which is the subject of that invention;

Patent Rights means the Patents and Patent Applications identified in Schedule 2; and

Schedule means a schedule to this Deed.

Schedule 2

List of Patent Rights

Granted Patents:

Australia(No: AU2002355970)

USA(No: 10/486845) Notice of Allowance granted by USPTO on 30 November 2009

Patent Applications:

Israel (No:160394)

Europe(No: 02750673.2)

Japan(No: 2003521372)

Canada(No: 2457632)

_the Australian Provisional Patent PR7036 filed on 15 August 2001; and

International Patent Application PCT/AU2002/001101 (No: WO/2003/016916) filed on 15 August 2002 entitled "Identification and Isolation of Somatic Stem Cells and uses thereof" and any letters patent subsequently granted in respect of such Application and any further corresponding patent application filed by PM or PM and other joint owner, Medvet in any country of the world.

EXECUTED and delivered as a deed in Melbourne

Signed Sealed and Delivered by the authorised)
representative of **Peter MacCallum Cancer Institute**)
ABN 42 100 504 883 trading as Peter MacCallum)
Cancer Centre in the presence of:)
)

/s/ Les Manson
Signature of witness

Les Manson
Name of witness
(please print)

Signed Sealed and Delivered for and on behalf of **Angioblast Systems**)
Inc. in accordance with its Constitution by its duly authorised)
representative in the presence of:)
)

/s/ Kate O'Callahan
Signature of witness

Kate O'Callahan
Signature of witness
(please print)

/s/ Craig Bennett

Signature of authorised representative By executing this agreement
the representative states that they have received no notice that their
authority to do so has been revoked.

C. A Bennett
Name of authorised representative
(please print)

CEO, Peter Mac
23 July, 2010

/s/ Silviu Itescu

Signature of authorised representative
By executing this agreement the representative states that they have
received no notice that their authority to do so has been revoked.

Silviu Itescu
Name of authorised representative
(please print)
Executive Director
10 August 2010

AGREEMENT OF SUB-SUBLEASE

THIS AGREEMENT OF SUB-SUBLEASE (this "Sub-Sublease"), made and entered into as of the 23rd day of September, 2013, by and between CARLO PAZOLINI (USA) LLC, a Delaware limited liability company, with offices at 505 Fifth Avenue, Fifth Floor, New York, New York 10017 ("Carlo Pazolini"), and MESOBLAST INC., a Delaware corporation, with offices at 505 Fifth Avenue, 3rd Floor, New York, New York 10017 ("Mesoblast"),

W I T N E S S E T H:

WHEREAS, Fifth @ 42nd LLC ("Landlord") leased to CIT Group Inc. ("CIT") certain premises (the "Premises") in the building located at 505 Fifth Avenue, New York, New York 10017 (the "Building"), as more particularly described therein, pursuant to a certain Agreement of Lease dated June 7, 2005 (the "Lease"); and

WHEREAS, CIT subleased to Carlo Pazolini a portion of the Premises (the "Subleased Premises") consisting of 15,624 rentable square feet on the 5th floor of the Building, pursuant to a certain Sublease dated as of March , 2011 (the "Sublease"); and

WHEREAS, Mesoblast now desires to sub-sublease the Subleased Premises from Carlo Pazolini, and Carlo Pazolini is willing to sub-sublease the Subleased Premises to Mesoblast, upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and obligations herein contained, the parties hereby agree as follows:

1. Subleased Premises. Carlo Pazolini hereby subleases the Subleased Premises to Mesoblast, and Mesoblast hereby hires the Subleased Premises from Carlo Pazolini, upon and subject to the terms and conditions set forth herein.

2. Term of Sub-Sublease. The term of the sublease (the "Term") provided for under this Sub-Sublease shall commence on the date (the "Commencement Date") that is the later to occur of (a) five (5) business days after the date upon which a written consent to this Sub-Sublease is executed and delivered (provided delivery may be by means of PDF) by each of CIT and Landlord and (b) February 1, 2014 and shall terminate on May 29, 2021 (the "Expiration Date"), unless sooner terminated as provided herein. Carlo Pazolini shall deliver possession of the Subleased Premises to Mesoblast vacant of tenancies, broom clean and in "as is" condition on the Commencement Date, and Mesoblast shall accept such possession. If Carlo Pazolini is unable to deliver possession of the Subleased Premises to Mesoblast by the date stated in the preceding clause (b), then Carlo Pazolini shall not be in default hereunder or be liable for damages therefor, and provided that this Sub-Sublease has not been terminated pursuant to Paragraph 5(i), Mesoblast shall accept possession of the Subleased Premises on the date when Carlo Pazolini tenders possession thereof to Mesoblast (which date or, if later, the date that is five (5) business days after receipt of consent to this Sub-Sublease from each of CIT and Landlord, will then be defined as the Commencement Date). Notwithstanding anything herein to the contrary, Carlo Pazolini shall be required to deliver the Subleased Premises to Mesoblast in substantially the same condition that existed as of the date

hereof, reasonable wear and tear excepted, and Carlo Pazolini shall afford Mesoblast the opportunity to have access to the Subleased Premises on the date hereof for the purpose of confirming the condition of the Subleased Premises. If any damage is caused to the Subleased Premises by Carlo Pazolini or its partners, agents, contractors, employees or representatives from and after the date hereof and prior to the delivery of possession by Carlo Pazolini to Mesoblast, Carlo Pazolini shall be obligated to repair same within thirty (30) days after notice thereof from Mesoblast.

3. Fixed Rent.

(a) Mesoblast shall pay Carlo Pazolini fixed rent ("Fixed Rent") for the Subleased Premises, as follows:

From the Commencement Date until the day immediately preceding the fourth (4th) anniversary of the Commencement Date, Nine Hundred Fifty-Three Thousand Sixty-Four Dollars (\$953,064.00) per annum, payable in advance in monthly installments of Seventy-Nine Thousand Four Hundred Twenty Two and 00/100 Dollars (\$79,422.00) on the Commencement Date and on the first day of each and every calendar month.

From the fourth (4th) anniversary of the Commencement Date until the Expiration Date, Nine Hundred Ninety-Nine Thousand Nine Hundred Thirty-Six Dollars (\$999,936.00) per annum, payable in advance in monthly installments of Eighty Three Thousand Three Hundred Twenty Eight and 00/100 Dollars (\$83,328.00) on the first day of each and every calendar month.

(b) Notwithstanding anything to the contrary in the foregoing, Mesoblast shall pay the first monthly installment of Fixed Rent upon the signing of this Sub-Sublease by Mesoblast.

(c) The Fixed Rent for any portion of a calendar month falling within the Term shall be prorated.

(d) Fixed Rent and Additional Rent (as hereinafter defined) shall be paid promptly when due, without notice or demand therefor (except as provided in Paragraph 4(c) below), and without deduction, abatement, counterclaim or setoff of any kind for any reason whatsoever.

(e) Fixed Rent and Additional Rent shall be paid in lawful money of the United States by either (i) wire transfer in accordance with Carlo Pazolini's instructions, or (ii) check drawn on a bank which is a member of the New York Clearing House Association to Carlo Pazolini at its address set forth in the preamble to this Sub-Sublease or at such other address as Carlo Pazolini may from time to time designate by notice to Mesoblast; provided, however, that, if requested by Carlo Pazolini, Mesoblast shall pay Fixed Rent and Additional Rent by direct remittance to a bank account of Carlo Pazolini which shall be designated by the Carlo Pazolini from time to time for such purpose.

(f) Notwithstanding anything to the contrary contained in this Paragraph 3, provided that no Event of Default has occurred and is then continuing, the Fixed Rent for the first two (2) months of the Term shall be abated. To the extent the Commencement Date starts on a date other than the first day of the month, the abatement shall be prorated for the month in which the abatement expires, and Mesoblast shall pay to Carlo Pazolini Fixed Rent for the portion of such month after the date in which the abatement expires on the first day of such month.

4. Additional Rent.

(a) At least five (5) days prior to each date on which any payment on account of Additional Rent is required to be paid by Carlo Pazolini to CIT pursuant to the terms of the Sublease or to Landlord pursuant to the terms of the Lease, Mesoblast shall pay to Carlo Pazolini the corresponding amount due to CIT pursuant to this Sub-Sublease. In addition, commencing on January 1, 2015, at least five (5) days prior to each date thereafter on which any payment in respect of Taxes (as defined in Section 3.01(D) of the Lease) ("CP's Tax Payment") and Operating Expenses (as defined in Section 3.03(E) of the Lease), ("CP's Operating Payment") is required to be paid by Carlo Pazolini to CIT pursuant to Section 4(c) of the Sublease, Mesoblast shall pay to Carlo Pazolini the amounts by which CP's Tax Payment and CP's Operating Payment exceed the respective amounts of CP's Tax Payment and CP's Operating Payment payable by Carlo Pazolini to CIT for the 2014 calendar year. Within ten (10) days after receipt of Landlord's Statement, Carlo Pazolini shall furnish to Mesoblast a statement setting forth CP's Tax Payment payable on June 1 and December 1 of the following calendar year and CP's Operating Payment payable each month for the following calendar year, which statement shall be based on the corresponding statements or estimates received from Landlord or CIT, as applicable, for such year. In addition, Carlo Pazolini shall furnish to Mesoblast, promptly after receipt thereof by Carlo Pazolini, copies of (i) any Landlord Statements (as defined in the Lease) or Landlord estimates with respect to Tenant's Operating Payments or Tenant's Tax Payments (each of such terms, as defined in the Lease) received from Landlord or CIT and (ii) any notices, estimates or statements received from CIT relating to CP's Operating Payments and/or CP's Tax Payments. If Carlo Pazolini shall receive any refund or credit with respect to any overpayment by Carlo Pazolini of CP's Operating Payments and/or CP's Tax Payments for any year with respect to which Mesoblast has made payments of Additional Rent for same pursuant to this Paragraph 4(a), Carlo Pazolini shall within ten (10) business days after receipt of such refund pay to Mesoblast or credit against Additional Rent payments next coming due hereunder the portion of such refund that relates to the respective Additional Rent paid by Mesoblast under this Paragraph 4(a) for such year.

(b) Mesoblast shall pay for electricity supplied to the Subleased Premises directly to the utility company providing such electrical service pursuant to Section 33 of the Sublease. Mesoblast shall also have usage control over the HVAC package unit located within the Subleased Premises and shall be entitled to utilize one (1) conduit benefitting the Subleased Premises in accordance with Section 33 of the Sublease.

(c) In the case of any of Additional Rent payments which are not due on a regular basis on the first day of the month, Carlo Pazolini shall give Mesoblast notice of the due date and amount thereof promptly after its receipt of an invoice from CIT or Landlord, and Mesoblast shall make payment to Carlo Pazolini (or if permitted by CIT or Landlord, directly to CIT or Landlord, as applicable) in each case within ten (10) days after its receipt of such notice together with a copy of the related bill and/or supporting documentation received from CIT and/or Landlord, as applicable, except where a shorter period is specified in this Sub-Sublease.

5. Subordination to and Incorporation of Sublease and Lease.

(a) Obligations. Mesoblast confirms that it has read the Sublease and the Lease and is familiar with all of the terms and provisions set forth therein (other than any redacted provisions). Subject to the modifications and exclusions set forth in this Sub-Sublease, the terms, provisions, covenants, stipulations, conditions, rights, obligations, remedies, agreements and definitions contained in the Sublease are incorporated herein by reference and are made a part hereof and shall, as between Carlo Pazolini and Mesoblast (as if they were the “Sublandlord” and the “Subtenant,” respectively, under the Sublease and as if the Subleased Premises were the “Premises” under the Sublease), constitute the terms of this Sub-Sublease as if herein set forth at length, mutatis mutandis, except to the extent that they are inapplicable, inconsistent with, or modified by the terms of this Sub-Sublease, and except as otherwise set forth herein. Mesoblast agrees to observe, carry out, perform and discharge the terms and provisions of the Sublease and the Lease to the extent required to be observed, carried out, performed or discharged by Carlo Pazolini under the Sublease, except to the extent that they are inapplicable, inconsistent with or modified by the terms of this Sub-Sublease.

(b) Subordination. Mesoblast hereby agrees that (i) this Sub-Sublease is and shall remain in all respects subject and subordinate to the Sublease and the Lease (as incorporated pursuant to the terms of the Sublease), (ii) except to the extent otherwise expressly permitted by this Sub-Sublease, Mesoblast will occupy the Subleased Premises in accordance with the terms of the Sublease and the Lease, will maintain the Subleased Premises in accordance with the provisions of the Sublease and the Lease as though it were the “Subtenant” thereunder (or the “Tenant” thereunder) and will not do or cause to be done, or suffer any act or omit to do, any act which might result in a violation of or a default under any of the terms, conditions, covenants or agreements of the Sublease or the Lease.

(c) Conflicting Terms. Except as otherwise specifically provided herein, in the event that any term and/or condition of this Sub-Sublease shall conflict with, or be inconsistent with, any term and/or condition of the Sublease or the Lease, this Sub-Sublease will govern, unless such term and/or condition would constitute a default under or breach of the Sublease or the Lease, in which case the Sublease or the Lease, as the case may be, will govern. Mesoblast shall not take or suffer any action which would constitute a default under, or be a violation of, the Sublease or the Lease.

(d) Excluded Provisions; Modified Provisions. The following provisions of the Sublease shall be deemed to be excluded from this Sub-Sublease: Article 2; Article 3; Section 4(a); Section 4(b); Section 4(d); Article 5; Article 6(c), Article 7; the second and third sentences of Section 9(a); the third and fourth sentences of Section 10(a); Article 11; the first paragraph of Article 20; Article 21; Article 22; Article 24; Article 25; first sentence of Article 34; Article 35; Section 36(b); Article 37; Exhibit A; Exhibit B; and Exhibit E. For purposes of this Sub-Sublease (i) the reference to “thirty (30) days” in Section 13(c) shall be replaced with “twenty (20) days” and (ii) each reference to “Prime Lease” in Article 7 of the Sublease shall be deemed to mean the Sublease.

(e) Termination of Sublease or Lease. In the event that the term of the Sublease and the Lease is terminated prior to the Expiration Date, this Sub-Sublease shall automatically cease and terminate on the date of such termination. In the event of such termination, Carlo Pazolini shall return to Mesoblast that portion of Fixed Rent and Additional Rent paid in advance by Mesoblast, if any, pro-rated as of the date of such termination.

(f) Entry and Inspection. CIT, Carlo Pazolini and Landlord shall have the right to enter and inspect the Subleased Premises pursuant to the applicable provisions of the Sublease and the Lease.

(g) Services. Mesoblast shall be entitled to the services, utilities and repairs which Landlord is obligated to furnish or make to CIT pursuant to the terms of the Lease, but Carlo Pazolini shall have no obligation to make any repairs or provide such utilities or services. Carlo Pazolini shall in no event be liable to Mesoblast nor shall the obligations of Mesoblast thereunder be impaired, or the performance thereof be excused, because of any failure or delay on the part of Landlord in furnishing such services or in making such repairs unless such failure or delay results from a default by Carlo Pazolini under the Sublease or the Lease. If Landlord or CIT shall default in any of their respective obligations to provide or perform services, Carlo Pazolini will in accordance with Paragraph 12 below, reasonably assist Mesoblast's efforts to obtain such services or, at Mesoblast's request, exercise its rights under the Sublease on behalf of Mesoblast.

(h) Consents and Notices. In all provisions of this Sub-Sublease (including provisions of the Sublease and the Lease incorporated hereby) requiring the approval or consent of CIT and/or Landlord, Mesoblast shall be required to obtain the approval or consent of Carlo Pazolini, and Carlo Pazolini shall apply to CIT for such approval or consent promptly after receipt of the application from Mesoblast. In all provisions of this Sub-Sublease (including provisions of the Sublease and the Lease incorporated hereby) requiring that notice be given, Mesoblast shall be required to give notice to Carlo Pazolini, CIT and Landlord. Any covenants, warranties, representations or other undertakings of CIT under the Sublease and Landlord under the Lease shall not be deemed to be made by, or otherwise constitute obligations of Carlo Pazolini under this Sub-Sublease.

(i) Consent to this Sub-Sublease. Carlo Pazolini shall, promptly after execution of this Sub-Sublease by both parties, submit copies of same to CIT and Landlord and shall use reasonable efforts to obtain CIT's and Landlord's consent to this Sub-Sublease; provided, however, that Carlo Pazolini shall not be required to make any payments or commence any action or proceeding in order to obtain CIT's or Landlord's consent to this Sub-Sublease and shall not in any event be liable to Mesoblast for any failure to obtain same (as long as Carlo Pazolini shall have used reasonable efforts as aforesaid to obtain CIT's and Landlord's consent to this Sub-Sublease). Mesoblast shall fully cooperate with Carlo Pazolini in order to obtain CIT's and Landlord's consent to this Sub-Sublease, including, but not limited to, promptly supplying such financial, business or other information or documentation as CIT and/or Landlord may reasonably request of Carlo Pazolini in connection with this Sub-Sublease. In the event that CIT's and Landlord's consent to this Sub-Sublease is not obtained within thirty (30) business days after this Sub-Sublease has been executed and delivered by the parties hereto, either party may terminate this Sub-Sublease by giving at least three (3) days' prior written notice of termination to the other party. If such consent is

received prior to the end of such notice period (inclusive of the last day of such period), then this Sub-Sublease shall not terminate and any prior notice of termination shall be deemed withdrawn and of no further force or effect. If this Sub-Sublease is terminated pursuant to the immediately preceding sentence of this Paragraph 5(i), Carlo Pazolini shall within five (5) business days return to Mesoblast the first monthly installment of Fixed Rent which was paid by Mesoblast pursuant to Paragraph 3(b) above and the Security Deposit which was submitted by Mesoblast pursuant to Paragraph 19(a) below, and, except as aforesaid, neither party shall have any further obligation to the other party under this Sub-Sublease.

6. Use of Subleased Premises; Quiet Enjoyment.

(a) Mesoblast covenants that it will use and occupy the Subleased Premises for general, executive and administrative offices and other uses permitted under the Sublease only and for no other purposes.

(b) Provided that this Sub-Sublease is in full force and effect and no Event of Default then exists, Mesoblast shall have, hold and enjoy the Subleased Premises peaceably and quietly during the Term hereof without hindrance or molestation by Carlo Pazolini, or any party claiming through or under Carlo Pazolini, subject to the terms and conditions of this Sub-Sublease, the Sublease and the Lease.

7. Improvements. Mesoblast shall make no improvements, alterations or refurbishing of the Subleased Premises without the prior written consent of Carlo Pazolini, CIT and Landlord. Subject to the consent of Landlord and CIT, Carlo Pazolini consents to the installation, at Mesoblast's sole cost and expense, of signage as and to the extent provided in Section 23 of the Sublease. Upon the request of Mesoblast (and two originals prepared by Mesoblast for Carlo Pazolini's submission), Carlo Pazolini shall forward to CIT an Original Alterations Notice (as defined in the Sublease) and/or a Second Alterations Notice (as defined in the Sublease). Carlo Pazolini shall not unreasonably withhold or delay its consent to any work proposed to be done by Mesoblast to prepare the Subleased Premises for its initial occupancy or to any subsequent non-structural interior work or to any signs proposed by Mesoblast, provided that CIT and Landlord have consented thereto. All Mesoblast improvements shall be performed by Mesoblast at its sole cost and expense. Mesoblast's rights and obligations with respect to alterations within the Subleased Premises shall be further governed and limited by the relevant provisions of the Sublease and the Lease. Mesoblast shall reimburse Carlo Pazolini for all out-of-pocket expenses incurred in connection with improvements, alterations or refurbishments (including fees and expenses imposed upon Carlo Pazolini by CIT or Landlord) in connection with Mesoblast's improvements, alterations or improvements (including requests therefor).

8. Default by Mesoblast.

(a) The following shall constitute events of default (each an "Event of Default"):

(i) if (A) Mesoblast shall fail to pay any Fixed Rent or Additional Rent on the due date thereof and such default shall continue for a period of five (5) days after notice by Carlo Pazolini to Mesoblast of such default, or (B) Mesoblast shall fail to comply with any term, provision

or covenant of this Sub-Sublease or any applicable term, provision or covenant of the Sublease or the Lease, or Mesoblast shall violate any rules and regulations now or hereafter established for the operation of the Building and Mesoblast shall fail to remedy such failure within fifteen (15) days after notice from Carlo Pazolini, or if such failure complained of shall be of a nature that the same cannot be completely cured and remedied within said fifteen (15) day period, and Mesoblast shall not (1) promptly upon the giving by Carlo Pazolini of such notice, advise Carlo Pazolini of Mesoblast's intention to institute all steps necessary to remedy such situation, (2) promptly institute and thereafter diligently pursue all steps necessary to remedy the same and (3) effect such remedy within a reasonable time after the date of the giving of said notice by Carlo Pazolini and in any event prior to such time as would subject Carlo Pazolini, CIT, Landlord, their respective agents or any mortgagee or ground lessee to civil or criminal liability or prosecution for a crime; or

(ii) if, within any period of twelve (12) months during the Term, Mesoblast shall on three (3) separate occasions, fail to pay any Fixed Rent or Additional Rent on the due date thereof and Carlo Pazolini shall have given the notice contemplated by Paragraph 8(a)(i)(A) and either (A) Mesoblast shall pay the overdue amount within the time period specified in Paragraph 8(a)(i)(A) or (B) Carlo Pazolini shall, in its sole discretion, have permitted Mesoblast to cure such breach after the said cure period; or

(iii) if (A) any petition is filed by Mesoblast under any provision of Federal or state bankruptcy laws or other statute whether domestic or foreign involving creditors' rights or the insolvency of debtors or any such petition is filed against Mesoblast and Mesoblast fails to secure a dismissal or stay thereof within sixty (60) days, or (B) Mesoblast shall become insolvent or make an assignment for the benefit of creditors, or (C) a receiver is appointed for all or substantially all of the assets of Mesoblast and Mesoblast fails to secure a dismissal or stay thereof within sixty (60) days, or (D) Mesoblast shall be dissolved or liquidated.

(b) Upon the occurrence of an Event of Default Carlo Pazolini shall have the right, at its option, to do and perform any one or more of the following, in addition to, and not in limitation of any other remedy or right permitted it by law, by this Sub-Sublease, the Sublease or by the Lease:

(i) terminate this Sub-Sublease, in which event Mesoblast shall immediately surrender the Subleased Premises to Carlo Pazolini, but if Mesoblast shall fail to do so, Carlo Pazolini may, without prejudice to any other right or remedy Carlo Pazolini may have, either by law or under this Sub-Sublease or otherwise, obtain possession and rent in arrears, enter upon the Subleased Premises and expel or remove Mesoblast and Mesoblast's personal property, with force or without force, and without being liable to Mesoblast, and Mesoblast, in addition to its foregoing obligations, agrees to indemnify and hold Carlo Pazolini harmless for all losses or damages which Carlo Pazolini may suffer by reason of such termination, whether through inability to relet the Subleased Premises or through decrease in rent or by damage to the Subleased Premises, or otherwise, or

(ii) enter the Subleased Premises and remove Mesoblast and its personal property therefrom without terminating this Sub-Sublease or being liable to Mesoblast in any manner whatsoever for such acts, and, at Carlo Pazolini's option, relet the Subleased Premises as the

agent of Mesoblast and receive rent therefor, and in such case Mesoblast shall be liable on a monthly basis when rent is otherwise due and payable to Carlo Pazolini for any deficiency which may arise by reason of such reletting during the remainder of the Term hereof, but shall not be entitled to any surplus so arising. In the event of a conflict between the provisions of this Sublease or the Lease, the provisions of this Paragraph 8 shall prevail.

9. Subletting and Assignment.

(a) Mesoblast shall not assign, mortgage, pledge, encumber or in any manner transfer this Sub-Sublease or any part thereof nor further sublet or suffer the Subleased Premises or any part thereof to be used by others, except as expressly permitted by this Sub-Sublease, the Sublease (including, without limitation, the first sentence of Section 10(a) thereof) and the Lease. If this Sub-Sublease is assigned in violation of the provisions of this Sub-Sublease, Carlo Pazolini may and is hereby empowered to collect rent from the assignee. In such event, Carlo Pazolini may apply the net amount received by it to the Fixed Rent, Additional Rent or any other payments herein reserved or provided for, and no such collection shall be deemed a waiver of the covenant herein against assignment, mortgage, pledge or encumbrance, or an acceptance of the assignee as a tenant or subtenant under this Sub-Sublease or a release of Mesoblast from the further performance of its covenants herein. If the Subleased Premises or any part thereof is further sublet or occupied by others in violation of the provisions of this Sub-Sublease, Carlo Pazolini is hereby empowered to collect rent from the subtenant or other occupant, and to apply the same to the curing of any default hereunder in any order of priority Carlo Pazolini may elect, any unexpended balance to be applied by Carlo Pazolini against any rental or other obligations subsequently becoming due. The making of any assignment, mortgage, pledge, encumbrance or subletting in whole or in part, and whether or not in violation of the provisions of this Sub-Sublease, shall not operate to relieve Mesoblast from its obligations under this Sub-Sublease and, notwithstanding any such assignment, mortgage, pledge, encumbrance or further subletting, Mesoblast shall remain liable for the payment of all Fixed Rent, Additional Rent and other charges and for the due performance of all the covenants, agreements, terms and provisions of this Sub-Sublease until the end of the Term (except to the extent of any rents actually collected by Carlo Pazolini from any such assignee or subtenant). Each and every assignee, whether as assignee or as successor in interest of Mesoblast or as assignee or successor in interest of any assignee, shall immediately be and become and remain liable jointly and severally with Mesoblast and with each other for the payment of the Fixed Rent, Additional Rent and other charges payable under this Sub-Sublease and for the due performance of all the covenants, agreements terms and provisions of this Sub-Sublease on the part of Mesoblast to be paid and performed until the end of the Term.

(b) Any proposal by Mesoblast to assign this Sublease or to further sublet the Subleased Premises or any portion thereof shall be subject to the prior written consent of Carlo Pazolini, CIT and Landlord. Upon the request of Mesoblast (and two originals prepared by Mesoblast for Carlo Pazolini's submission), Carlo Pazolini shall forward to CIT an Original Transfer Notice (as defined in the Sublease) and/or a Second Transfer Notice (as defined in the Sublease). Carlo Pazolini will not unreasonably withhold, delay or condition its consent to a proposed assignment or further subletting of the Subleased Premises or a portion thereof, provided that (i) Mesoblast is not then in default under this Sub-Sublease and (ii) CIT and Landlord have consented thereto. Mesoblast shall reimburse Carlo Pazolini for all reasonable out-of-pocket expenses incurred in connection with a proposed assignment or subletting by Mesoblast, including, without limitation the reasonable out-of-pocket fees and disbursements of Carlo Pazolini's attorneys.

10. Liability; Insurance.

(a) Neither Carlo Pazolini nor its successors, assigns or agents shall be liable for any loss of or damage to property of Mesoblast or Mesoblast's subtenants, assigns, employees, agents or visitors, except for loss or damage resulting from Carlo Pazolini's gross negligence or willful misconduct. With respect to the Subleased Premises, Carlo Pazolini, its successors, assigns, employees and agents shall not be liable for any injury or damage to persons or property except for loss or damage resulting from the gross negligence or willful misconduct of Carlo Pazolini, its successors, assigns, employees and agents.

(b) Mesoblast shall maintain with respect to the Subleased Premises comprehensive general public liability insurance, property insurance and other insurance in the manner and with the minimum limits and maximum deductibles set forth in the Lease, with insurance companies qualified to do business in the State of New York and otherwise meeting the standards set forth in the Sublease and the Lease, insuring Mesoblast, Carlo Pazolini, CIT, Landlord and any other parties required in accordance with the Sublease and/or the Lease as named insureds, against, inter alia, claims and liabilities for bodily injury or death to persons, and damage to property. Each party shall look exclusively to any insurance carried by it pursuant to this Sub-Sublease, the Sublease and the Lease for loss or damage to property resulting from the negligence of the other party or its agents, servants, employees, contractors, invitees or licensees, and, to the extent permitted by law, Carlo Pazolini and Mesoblast each hereby releases and waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise, provided that such waivers of liability are permitted and are available under both Carlo Pazolini's and Mesoblast's policies of insurance or such waivers are approved by their insurance carriers. Each party agrees to pay the added cost, if any, of obtaining such approval from its insurance carrier. Mesoblast shall deliver a certificate of insurance to Carlo Pazolini with respect to all insurance required under this Sub-Sublease, the Sublease and the Lease prior to the Commencement Date. Each of Mesoblast's policies of insurance shall provide that such policy may not be changed, amended, canceled or allowed to lapse except upon thirty (30) days' (other than for cancellation for non-payment, which shall be upon ten (10) days') prior notice to Carlo Pazolini, CIT, Landlord and any other parties required in accordance with the Sublease or Lease. Such insurance shall be subject to Carlo Pazolini's reasonable approval as to form, content, coverage and expiration dates, which approval shall be deemed granted if not refused within thirty (30) days after delivery of the certificate of insurance to Carlo Pazolini.

11. Indemnification. Except as provided in Paragraph 10 hereof, Mesoblast shall indemnify and hold harmless Carlo Pazolini from and against all claims, losses, costs, damages, expenses and liabilities (including, but not limited to, the costs of legal proceedings and reasonable attorneys' fees and disbursements) which Carlo Pazolini may incur, pay or have asserted against it by reason of any injuries to persons occurring in, on or about the Subleased Premises caused by the acts or omissions of Mesoblast, its agents, employees, guests or invitees or by reason of any breach, failure or default hereunder on Mesoblast's part, including any breach or default which results in a breach of or possible termination or forfeiture of the Sublease and/or the Lease. Except as provided

in Paragraph 10 hereof, Carlo Pazolini shall indemnify and hold harmless Mesoblast from and against all claims, losses, costs, damages, expenses and liabilities (including, but not limited to, the costs of legal proceedings and reasonable attorneys' fees and disbursements) which Mesoblast may incur, pay or have asserted against it by reason of any breach or default which results in a breach of or possible termination or forfeiture of the Sublease and/or the Lease; provided, that, the foregoing indemnity shall not include any default under the Sublease and/or the Lease to the extent arising from Mesoblast's failure to perform any of its obligations under this Sub-Sublease. In the event of a conflict between the provisions of this Paragraph 11 and any provision of the Sublease or the Lease, the provisions of this Paragraph 11 shall prevail. The provisions of this Paragraph 11 shall survive the expiration or earlier termination of this Sub-Sublease.

12. Mesoblast's Rights. Notwithstanding anything to the contrary herein set forth, Mesoblast shall in no case have any rights in respect of the Subleased Premises greater than the rights of Carlo Pazolini under the Sublease or CIT under the Lease. Mesoblast will look solely to Landlord under the Lease for the enforcement of Mesoblast's rights. Carlo Pazolini agrees to use reasonable efforts (not including the expenditure of funds or the institution of litigation) to obtain for the benefit of Mesoblast any services or other benefits provided by Landlord under the Lease which relate to the use and enjoyment of the Subleased Premises. If Landlord shall default in any of its obligations to CIT with respect to the Subleased Premises, in addition to any other remedies, Mesoblast shall also be entitled to request that Carlo Pazolini endeavor to enforce the Lease against Landlord either directly or through CIT but Carlo Pazolini shall have no obligation to bring any action or proceeding or to take any steps to enforce the Lease against Landlord. If, after receipt of a written request from Mesoblast, Carlo Pazolini shall fail or refuse to initiate an appropriate enforcement action against Landlord (as may be permitted pursuant to the Sublease) with respect to the Subleased Premises, Mesoblast shall have the right, at Mesoblast's sole expense, to take such action in its own name or, in the event that Mesoblast lacks standing to take such action in its own name, to use the name of Carlo Pazolini for taking such action. For the purpose of such an action and only to such extent, all of the rights of Carlo Pazolini under the Sublease are hereby conferred upon and assigned to Mesoblast, Mesoblast is hereby subrogated to such rights and Carlo Pazolini agrees to reasonably cooperate, at Mesoblast's expense, with Mesoblast's prosecution of any such action. In addition to the indemnification provided under Paragraph 11 hereof, Mesoblast hereby indemnifies and agrees to hold harmless Carlo Pazolini from and against all claims, losses, costs, damages, expenses and liabilities (including but not limited to, the costs of legal proceedings and reasonable attorneys' fees and disbursements) which Carlo Pazolini may incur, pay or have asserted against it by reason of the prosecution of any such action by Mesoblast or Carlo Pazolini's cooperation therewith. The provisions of the foregoing sentence shall survive the expiration or earlier termination of this Sub-Sublease.

13. Possession, Care and Condition of Subleased Premises.

(a) Possession and Condition. Mesoblast acknowledges that Carlo Pazolini has afforded Mesoblast the opportunity for full and complete investigation, examination and inspection of the Subleased Premises. Mesoblast acknowledges that it has examined the Subleased Premises and that it is leasing the Subleased Premises in their "as is" condition. Carlo Pazolini shall leave in place in the Subleased Premises in their "as is" condition, all furniture and other items which are listed on "Exhibit A" which is attached to this Sub-Sublease as an integral part hereof (the "Carlo

Pazolini Property”). The Carlo Pazolini Property shall remain the property of Carlo Pazolini, and Mesoblast shall exercise the care of a prudent custodian in its use and care of the Carlo Pazolini Property during the Term. Mesoblast shall be responsible for any damage to or loss of any of the Carlo Pazolini Property, ordinary wear and tear excepted. Notwithstanding the foregoing, the Carlo Pazolini shall be the owner of the Carlo Pazolini Property throughout the Term. On the Expiration Date, as defined above, Mesoblast shall purchase the Carlo Pazolini Property for One Dollar (\$1.00) and the Carlo Pazolini Property shall become the property of the Mesoblast. Carlo Pazolini has made no representation or warranty concerning the condition of the Subleased Premises or the Carlo Pazolini Property, except as expressly set forth in this Sub-Sublease. Subject to the provisions of Paragraph 2. hereof, on the date upon which the term hereof shall expire and come to an end, whether by expiration, by lapse of time or otherwise, Mesoblast, at its sole cost and expense, shall quit and surrender the Subleased Premises to Carlo Pazolini in substantially the same condition as delivered to Mesoblast on the Commencement Date, ordinary wear and tear and damage from any casualty excepted, and broom clean; provided, however, that, if required by CIT under the Sublease or Landlord under the Lease, Mesoblast shall, prior to the Expiration Date, remove any improvements and alterations which have been installed in the Subleased Premises by Mesoblast and restore the Subleased Premises, but in no event shall Mesoblast have any liability or obligation for removal of any alterations or improvements made by CIT, Carlo Pazolini or any of their respective sublessees, licensees or occupants. If Mesoblast shall fail to promptly remove any such alterations, installations, additions, and improvements which CIT or Landlord shall designate to be removed in accordance with this Section, then such items may be removed by Carlo Pazolini, and Mesoblast shall promptly reimburse Carlo Pazolini for any expenses incurred by Carlo Pazolini in connection therewith, including, without limitation, the cost of removal thereof and of repairing any damage caused thereby, plus a fifteen percent (15%) administration fee. Mesoblast shall also remove from the Premises all of Mesoblast’s goods, effects, movable personal property, business and trade fixtures, and machinery and trade equipment, and shall repair all damage resulting from such removal. Any of such items not so removed by Mesoblast at the expiration or termination of this Sublease shall be conclusively deemed to have been abandoned by Mesoblast. Mesoblast shall not receive any cost or credit therefor, and Carlo Pazolini may dispose of the same without any liability to Mesoblast; provided, however, that Mesoblast shall promptly reimburse Carlo Pazolini for any expenses incurred by Carlo Pazolini in connection therewith, including, without limitation, the cost of removal thereof and of repairing any damage caused thereby, plus a fifteen percent (15%) administration fee.

(b) Obligation to Repair. Mesoblast shall take good care of the Subleased Premises and the fixtures and appurtenances therein. All damage or injury to the Subleased Premises and to its fixtures, glass, appurtenances and equipment or to the Building caused by Mesoblast’s moving of Mesoblast’s property in or out of the Building or by Mesoblast’s installation or removal of furniture, fixtures or other property, or resulting from Mesoblast’s negligent acts, omissions or misconduct shall be promptly repaired by Mesoblast, at its sole cost and expense, to the reasonable satisfaction of Carlo Pazolini, CIT and Landlord. If a request is made by CIT or Landlord for Carlo Pazolini to repair the Subleased Premises in accordance with the Sublease or the Lease, Mesoblast shall undertake such repair at its cost in accordance with the Sublease and the Lease. All of said repairs required to be made by Mesoblast shall be in quality and class substantially equal to the original work or installation and shall be done in a good and workmanlike manner. If Mesoblast fails to make such repairs after ten (10) days’ notice or such longer period as

may be reasonably required to make such repairs (provided Mesoblast is then diligently pursuing completion of such repairs), the same may be made by Carlo Pazolini, CIT or Landlord at the expense of Mesoblast and all reasonable sums so spent and expenses incurred by Carlo Pazolini shall be collectible as Additional Rent and shall be paid by Mesoblast to Carlo Pazolini within ten (10) days after rendition of bills or statements therefor.

14. Notices. Notices, demands and any other communications hereunder shall be in writing and shall be given or made by overnight delivery by a recognized national courier service or by certified mail, return receipt requested, addressed to Carlo Pazolini at its address hereinabove set forth, provided after the Commencement Date hereof, Carlo Pazolini will provide Mesoblast with an alternative notice address, and addressed to Mesoblast at the address hereinabove set forth, to the attention of Michael Schuster or at such other address which either party may hereafter designate for such purpose by a written notice; provided, however, that after Mesoblast has moved into the Subleased Premises, notices, demands and any other communications shall be sent to Mesoblast at the Subleased Premises. Notices, demands and other communications shall be deemed given (a) if delivered by personal delivery or by overnight courier service, on the date of delivery or rejection of such delivery or (b) if sent by certified mail, upon receipt or rejection of such delivery. Carlo Pazolini shall, within five (5) days after receipt thereof, give to Mesoblast a copy of each notice or demand received from CIT or Landlord relating to the Subleased Premises, and Mesoblast shall, within five (5) days after receipt thereof, give to Carlo Pazolini a copy of each notice or demand received from CIT or Landlord relating to the Subleased Premises.

15. Miscellaneous. This Sub-Sublease contains the entire agreement of the parties with respect to the transactions contemplated hereby, supersedes all prior agreements or understandings between the parties and may not be changed or modified in any way unless such change or modification is in writing and signed by the parties hereto. Neither Carlo Pazolini nor Mesoblast has made any representations or warranties with respect to this Sub-Sublease except as expressly set forth herein. If any provision of this Sub-Sublease shall be held to be invalid or unenforceable in any respect, the validity or enforceability of the remaining portions of this Sub-Sublease shall be unaffected thereby. This Sub-Sublease shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. The headings in this Sub-Sublease are for convenience only and shall not be used in construing the intentions of the parties. This Sub-Sublease shall be governed by and construed in accordance with the laws of the State of New York. Carlo Pazolini and Mesoblast each represents that (i) it is duly organized, validly existing and in good standing in the State of Delaware, (ii) it has full right and authority to enter into this Sub-Sublease and that the officer signing this Sub-Sublease on its behalf is authorized to do so and (iii) the execution, delivery and performance of this Sub-Sublease have been duly authorized by all necessary action of such party. Carlo Pazolini represents that the Sublease and to Carlo Pazolini's knowledge, the Lease are each in full force and effect, no default exists under the Sublease or, to Carlo Pazolini's knowledge, under the Lease, and to Carlo Pazolini's knowledge, no fact, event or condition has occurred or exists which, with or without notice, the passage of time or both, would constitute a default under the Sublease or, to Carlo Pazolini's knowledge, under the Lease

16. Intentionally Omitted.

17. Interest, Late Charges. Mesoblast shall, on demand, pay interest on any Fixed Rent, Additional Rent and other amounts payable by Mesoblast to Carlo Pazolini pursuant hereto if any such amount is received after its due date. Interest will accrue at a fluctuating rate per annum equal to three percent (3%) above the rate of interest announced by Citibank, N.A., or its successor, from time to time as its prime or base lending rate (but in no event at a rate in excess of the maximum legal rate permitted by law) from the date such amounts of Fixed Rent, Additional Rent or other amounts first became due hereunder until the same are received by Carlo Pazolini. In addition, if any Fixed Rent, Additional Rent or other amount payable by Mesoblast to Carlo Pazolini pursuant hereto is not paid within fifteen (15) days after its due date, Mesoblast shall pay to Carlo Pazolini a late charge of five cents (\$.05) for each Dollar of the overdue amount to defray Carlo Pazolini's administrative costs for handling the late payment. The right of Carlo Pazolini to collect interest and late charges shall be without derogation of any other right of Carlo Pazolini hereunder. The amounts payable under this Paragraph 17 shall be deemed to be Additional Rent for purposes of this Sub-Sublease. In the event of any inconsistency between this Paragraph 17 and any provision of the Sublease or the Lease, this Paragraph 17 shall prevail.

18. Brokerage. Carlo Pazolini and Mesoblast each represents and warrants to the other party that it has had no dealings or communications with any broker or agent in connection with this Sub-Sublease other than Adams & Co. Real Estate, LLC ("Adams") and Cushman & Wakefield, Inc. (together with Adams, the "Brokers"). Carlo Pazolini and Mesoblast each agrees to hold harmless and indemnify the other party from and against any and all costs, expenses or liability (including, without limitation, the cost of legal fees and related expenses) incurred by the other party in connection with or relating to the breach by it of the representation set forth above. The commission due to the Brokers shall be paid by Carlo Pazolini pursuant to a separate agreement between Carlo Pazolini and Adams.

19. Security Deposit.

(a) As security for the full and punctual performance by Mesoblast of all of the terms and conditions of this Sub-Sublease, Mesoblast shall deposit the sum of Seven Hundred Fourteen Thousand Seven Hundred Ninety Eight Dollars (\$714,798.00) (the "Security Deposit") with Carlo Pazolini by means of an irrevocable letter of credit (such letter of credit and all renewals and replacements thereof are referred to herein as the "Letter of Credit") substantially in the form of Exhibit "B" which is attached to this Sub-Sublease as an integral part hereof and issued in the Borough of Manhattan, State of New York to Carlo Pazolini as the sole beneficiary thereunder by Bank of America, N.A. or another bank or trust company (the "Issuing Institution") reasonably acceptable to Carlo Pazolini and having an expiration date of no later than three hundred sixty five (365) days after its date of issuance with automatic annual renewals. The Letter of Credit shall not limit the number of times that Carlo Pazolini is entitled to draw thereunder and shall be transferable by Carlo Pazolini to any successor to Carlo Pazolini's position as sub-sublandlord under this Sub-Sublease without cost to Carlo Pazolini or such successor. The final Letter of Credit established hereunder shall have an expiration date which falls at least sixty-five (65) days after the Expiration Date. The Security Deposit shall be submitted to Carlo Pazolini by Mesoblast concurrently with the signing of this Sub-Sublease by Mesoblast.

(b) Upon the occurrence of an Event of Default by Mesoblast under this Sub-Sublease or whenever Carlo Pazolini has obtained a judgment against Mesoblast based on a claim arising out of this Sub-Sublease, Carlo Pazolini may draw against the Letter of Credit, to the extent required for the payment of any Fixed Rent or Additional Rent or for any sum which Carlo Pazolini may expend or be required to expend by reason of Mesoblast's default or the amount of such default or judgment, as the case may be. The Letter of Credit may be drawn upon by presentation to the Issuing Institution of a statement of any officer of Carlo Pazolini certifying that Carlo Pazolini is entitled to draw such amount pursuant to the terms of this Sub-Sublease. The application of any amounts drawn under the Letter of Credit shall not constitute the cure by Mesoblast of the underlying default to which the Security Deposit is so applied.

(c) If Carlo Pazolini receives notice of non-renewal of any Letter of Credit required to be maintained under this Paragraph 19 and Mesoblast fails to renew or replace same by no less than thirty (30) days prior to its expiration with a renewal or replacement Letter of Credit meeting the requirements of this Paragraph 19, then Carlo Pazolini, at any time after such thirtieth (30th) day and prior to such renewal or replacement, may draw on such Letter of Credit for the undrawn amount of such Letter of Credit and deposit the proceeds of such draw into an account maintained by Carlo Pazolini (which account may include other funds of Carlo Pazolini) and Carlo Pazolini shall have the right to draw on such proceeds whenever Carlo Pazolini would have had the right to draw on the Letter of Credit, if such Letter of Credit had been renewed or replaced. Any renewal or replacement Letter of Credit shall be submitted to and held by Carlo Pazolini.

(d) In the case of every use, application or retention of the Security Deposit, Mesoblast shall, within five (5) days after demand, either increase the Letter of Credit by such sum or pay to Carlo Pazolini the sum so used, applied or retained, so that the Security Deposit shall be replenished to the amount which Mesoblast is required to maintain hereunder.

20. Consent to Jurisdiction. Each of the parties hereto hereby irrevocably consents and agrees that any legal action or proceeding with respect to this Sub-Sublease may be brought in any of the Federal or state courts having subject matter jurisdiction located in the Borough of Manhattan, The City of New York, and, by its execution and delivery of this Sub-Sublease, each such party hereby (a) accepts the non-exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any appeal) of any such court with respect to this Sub-Sublease, and (c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding with respect to this Sub-Sublease brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

21. Covenants, Representations and Warranties. Each of the parties hereby covenants, represents and warrants to the other party as follows as of the date of this Sublease:

(a) This Sub-Sublease and the transactions contemplated hereby shall, upon execution by it, be its legal, valid and binding obligation and shall be enforceable against it in accordance with their terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies.

(b) The execution and delivery of this Sub-Sublease and the documents to be delivered pursuant to this Sub-Sublease and compliance by it with the provisions hereof and thereof will not (i) conflict with, result in a breach of, or constitute a default under, its certificate of incorporation or by-laws or other comparable organization documents or (ii) conflict with, result in a breach of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which it is a party or by which it is bound.

In addition, Carlo Pazolini hereby covenants, represents and warrants as follows as of the date of this Sub-Sublease:

(c) A true, correct and complete copy of the Sublease (including any amendments or modifications thereto) and Lease (except for those business terms which have been redacted therefrom) has been provided to Mesoblast's attorney pursuant to those certain e-mails dated August 7, 2013 sent by David.Glassman@cushwake.com at 3:23 P.M. to Jane Wright-Mitchell at Jane.Wright-Mitchell@mesoblast.com.

22. This Sub-Sublease may be executed by two or more of the parties hereto in any number of separate counterparts, and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of this Sub-Sublease by facsimile transmission or electronic mail shall be effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF, this Sub-Sublease has been executed by the duly authorized representatives of the parties as of the day and year first above written.

CARLO PAZOLINI (USA) LLC

By: /s/ Sheryl Bloom

Name: Sheryl Bloom

Title: CEO

MESOBLAST INC.

By: /s/ Michael Schuster

Name: Michael Schuster

Title: EVP Global Programs

/s/ Sue MacLeman

Sue MacLeman

SVP Corporate

MESOBLAST ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 19 day of September, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael Schuster, who proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he (she) executed the same in his (her) capacity, and that by his (her) signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Kathleen Hegierski
Notary Public

CARLO PAZOLINI ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) ss.:
COUNTY OF ESSEX)

On the 19 day of September, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Sheryl Bloom, who proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he (she) executed the same in his (her) capacity, and that by his (her) signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Daniele Natale
Notary Public

EXHIBIT A

Carlo Pazolini's Property

505 5th Floor Furniture Inventory

<u>CIT INVENTORY</u>	<u>ITEMS</u>	<u>QUANTITY</u>
A. Conference Room 5A	Steelcase Convene Wedge 8' Table	1
	Steelcase Convene Credenza 60x24	1
	Room Wizard	1
	Keilhauer Elite Mid Back Faux (Ultrasuede) Chairs	8
B. Conference Room 5B	Steelcase Convene Round Table	1
	Steelcase Convene Credenza 60x24	1
	Keilhauer Elite Mid Back Faux (Ultrasuede) Chairs	6
C. Legal Library	Keilhauer Elite Mid Back Faux (Ultrasuede) Chairs	4
	7 Shelf Bookcase	3
D. Pantry	Chairmaster Bar Stools	3
	Subzero Refrigerator	1
	Amana Microwave	1
	Oasis Water Machine	1
	Uline Ice Maker	1
	Dell Monitor	1
	Endeleo Remote	1
	Blue Recycle Bins	2
E Ladies Room	Gray Trash Receptacle	1
F Other	Steelcase—36" Lateral File Cabinets (5 Drawers)	8
	Steelcase—36" Lateral File Cabinets (2 Drawers)	5
	Steelcase—30" Lateral File Cabinets (2 Drawers)	12
	Steelcase—30" Lateral File Cabinets (3 Drawers)	21
	Steelcase—Coat Closet	1
	Plastic Waste Paper Baskets	47
	Blue Recycle Bin	1
H "A" Office Modular Desk Sets —Elective Elements	Keys for all Furniture & File Cabinets	
	P Top Desk With 2 Rectangular Worksurfaces	
	3 Lateral Files	3
	Wall Mounted Storage Unit and Tack Boards	9
	Hardwired Task Lights and Ambient Lights Above	3
	Wall Mounted Storage Unit.	3
	Mobile Pedestal	3
	Steelcase Leap Desk Chair	3
Geiger Guest Chairs	7	

<u>CIT INVENTORY</u>	<u>ITEMS</u>	<u>QUANTITY</u>
I "B" Office Modular Desk Sets —Elective Elements	Bullet Top Desk With 2 Rectangular Worksurfaces	23
	2 Lateral Files	46
	Wall Mounted Storage Unit and Tack Boards	23
	Hardwired Task Lights and Ambient Lights Above	23
	Wall Mounted Storage Unit.	23
	Mobile Pedestal	23
	Steelcase Leap Desk Chair	46
	Geiger Guest Chairs	
J Powered Steelcase Montage Workstation	Rounded Work Surface With Box/Box/File	21
	2 Lateral Files	40
	Slat Wall	21
	Monitor Arm	21
	Steelcase Leap Desk Chair	19
	In/Out Tray	40
	Pen/Pencil Holder	20
	Dual Paperclip Holder	21
K Miscellaneous from Touchdowns	Steelcase Leap Desk Chair	2
L Reception/Waiting Area	Reception Desk	1
	Waiting Area Chairs	4
	Waiting Area side Table	2
M Conference Room/04	Tables	4
	Chairs	8

EXHIBIT B

FORM OF LETTER OF CREDIT

Form of Letter of Credit

Date: _____
L/C No.: _____
Amount: \$714,798.00

CARLO PAZOLINI (USA) LLC
505 Fifth Avenue, Fifth Floor
New York, New York 10017
Attention: Sheryl Bloom

Ladies/Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of CARLO PAZOLINI (USA) LLC for the account of MESOLBLAST LIMITED for a sum not exceeding \$ _____, available by your drafts at sight on us effective immediately and expiring at our counters at our close of business on _____.

Drafts drawn hereunder must be accompanied by a statement signed by one of your officers reading as follows: "The amount of the accompanying draft is due and payable to CARLO PAZOLINI (USA) LLC, by MESOLBLAST LIMITED under a certain Agreement of Sub—Sublease between CARLO PAZOLINI (USA) LLC, as sub-sublandlord, and MESOLBLAST LIMITED, as sub-subtenant."

Drafts drawn hereunder must indicate: "Drawn under Letter of Credit No. _____ of [Name of Issuing Bank]."

It is a condition of this Letter of Credit that it shall be automatically extended without amendment for further periods of one year from the present and each future expiration date through August 3, 2021, unless, at least forty-five (45) days prior to such date, we shall send you notice in writing by registered or certified mail, return receipt requested, that we elect not to renew this Letter of Credit for such additional period. Any such notice will be effective two (2) days after being sent by us, and thereafter you may draw draft(s) on us at sight for amounts up to the remaining balance of this Letter of Credit on or before the then applicable expiration date, and such draft(s) need not be accompanied by any statement.

This Letter of Credit is transferable in its entirety to any assignee or transferee of your interest in the Agreement of Sub-Sublease referred to above without any fee or charge on your part or on the part of the transferee.

Partial drawings under this Letter of Credit are permitted. The amount and date of presentation of any draft drawn and presented pursuant to the terms of this Letter of Credit shall be noted on this Letter of Credit by us. After making such notation, this Letter of Credit shall be returned immediately to you, unless any such draft presented and paid shall have exhausted this credit, in which case this Letter of Credit shall be retained by us.

We hereby engage with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this Letter of Credit that such drafts will be duly honored if presented for payment at our office located at _____ or at our principal office in New York City prior to the time of expiration hereof. Such drafts will be paid in immediately available funds before 2:00 p.m. New York time on the Banking Day after the day on which such draft is so presented. "Banking Day" means a day on which commercial banks are open for business in New York.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (Publication No. 600).

Very truly yours,
[Name of Issuing Bank]

Authorized Signature

SUBLEASE

This SUBLEASE (“**Sublease**”), is made as of the 27th day of September, 2011 (“**Effective Date**”), by and between CIT Group Inc., a Delaware corporation (“**Sublandlord**”), and Mesoblast, Inc., a Delaware corporation (“**Subtenant**”).

WITNESSETH:

WHEREAS, Sublandlord leases approximately 130,116 rentable square feet of office space commonly known as third (3rd) through fourteenth (14th) floors (“**Original Premises**”) in the building commonly known as 505 Fifth Avenue, New York, New York (“**Building**”) pursuant to that certain Agreement of Lease dated June 7, 2005 (“**Prime Lease**”), by and between Fifth @ 42nd LLC, a Delaware limited liability company, as landlord (“**Prime Landlord**”), and Sublandlord, as tenant; and

WHEREAS, Subtenant desires to sublease the entire third (3rd) floor of the Building (“**Premises**”) from Sublandlord, and Sublandlord has agreed to sublease such Premises to Subtenant upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. **DEFINED TERMS**. All capitalized terms used herein shall have the same meaning as in the Prime Lease unless otherwise defined herein.

2. **SUBLEASE**. Subject to all the terms, covenants, conditions, and provisions of the Prime Lease, Subtenant hereby subleases the Premises from Sublandlord, which consists of Fifteen Thousand Six Hundred Twenty Four (15,624) stipulated rentable square feet of office space, as depicted in the Prime Lease. All of the terms and conditions of the Prime Lease are hereby incorporated by reference except to the extent expressly modified by, or excluded from, this Sublease. Sublandlord represents and warrants to Subtenant that the Prime Lease attached hereto as Exhibit E is, except to the extent redacted, a true, correct, and complete copy of the Prime Lease and there are no further amendments thereto. Except as expressly permitted in the Prime Lease or this Sublease, Sublandlord shall not voluntarily terminate or modify the Prime Lease so as to materially adversely affect Subtenant or its use and occupancy of the Premises without Subtenant’s prior written consent.

3. **COMMENCEMENT AND EXPIRATION DATES**. The Premises shall be subleased for a term (“**Term**”) beginning on the date (“**Sublease Commencement Date**”) which is two (2) business days after the latest to occur of: (i) the mutual execution and delivery of this Sublease; and (ii) receipt of Prime Landlord’s written consent hereto in substantially the same form attached hereto as Exhibit F (“**Prime Landlord’s Consent**”), and expiring at 11:00 p.m. on May 30, 2021 (“**Sublease Termination Date**”). Notwithstanding anything contained herein to the contrary, Subtenant shall not be entitled to possession of the Premises until Sublandlord receives the LC (defined hereafter) and certificate of Subtenant’s insurance as required herein.

4. **RENT.**

(a) The annual base rent (“**Base Rent**”) under this Sublease shall be payable at the same times and in the same manner as rent is payable under the Prime Lease, except that: (i) Subtenant shall pay the seventh (7th) monthly installment of Base Rent in the amount of Sixty Five Thousand One Hundred and No/100 Dollars (\$65,100.00), within five (5) business days after full execution of this Sublease and receipt of Prime Landlord’s Consent to the Sublease; (ii) Subtenant shall pay each month’s Rent (defined hereafter) on or prior to the first day of each month, as required herein, and thereafter through the Sublease Termination Date; and (iii) Base Rent shall be payable in the amounts stated in the following Base Rent Schedule:

Base Rent Schedule

15,624 Stipulated Rentable Square Feet

<u>Months</u>	<u>Monthly Base Rent</u>	<u>Annual Base Rent</u>
One (1) through forty-two (42)	\$ 65,100.00	\$ 781,200.00
Forty-three (43) through seventy-eight (78)	\$ 83328.00	\$ 999,936.00
Seventy-nine (79) through Sublease Termination Date	\$ 98,001.54	\$ 1,176,018.48

The Base Rent, Additional Rent, and such other sums due hereunder are collectively referred to as “**Rent**”. All Rent shall be paid to Sublandlord as follows: CIT, Global Real Estate, 1 CIT Drive, Livingston, NJ 07039, or such other place as Sublandlord may designate, without any set-off or deduction whatsoever.

(b) Notwithstanding the foregoing to the contrary, so long as an Event of Default (defined hereafter) does not occur during the Term, Subtenant shall receive an abatement of Base Rent only in the total amount of Three Hundred Ninety Thousand Six Hundred and No/100 Dollars (\$390,600.00) (“**Total Abatement**”) for the first six (6) months of the Term. If an Event of Default occurs during the Term, then the then-unamortized portion of the Total Abatement shall immediately become due and payable as provided in this Sublease, as if same had not been abated, which shall be computed by multiplying the Total Abatement by a fraction, the numerator of which shall be the number of months left in the Term as of the date of the Event of Default, and the denominator of which shall be the total months in the Term as originally set on the Sublease Commencement Date; provided, however, if Sublandlord does not terminate this Sublease or Subtenant’s possession of the Premises, and Subtenant further cures such Event of Default, then such abatement of Base Rent shall not become immediately due and payable. To the extent the Sublease Commencement Date starts on a date other than the first day of the month, the Total Abatement shall be prorated over additional months, as necessary, so that the Total Abatement is fully realized by Subtenant, subject to the terms of this paragraph.

(c) In addition to Base Rent, Subtenant shall pay to Sublandlord: (i) Twelve and 01/100 percent (12.01%) (“**Subtenant’s Share**”) of Tenant’s Operating Payment and Tenant’s Tax Payment due and payable by Sublandlord to Prime Landlord under the Prime Lease in excess of the respective amounts of Tenant’s Operating Payment payable by Sublandlord for the 2011 calendar year and Tenant’s Tax Payment payable by Sublandlord for the 2011 fiscal year (i.e. the period from July 1, 2011 through June 30, 2012); and (ii) one hundred percent (100%) of the charges for any services or other fees (not already constituting a portion of Tenant’s Operating Payment) relating solely to the Premises due under the Prime Lease (collectively, “**Additional Rent**”), at the same times, provided same notice is delivered to Subtenant in the same manner as such sums are due under the Prime Lease. Notwithstanding the foregoing, in no event shall Subtenant be charged for Subtenant’s Share of costs charged pursuant to Section 3.02E of the Prime Lease which relate to Tenant’s Tax Payment for any years prior to the 2010/2011 fiscal year.

(d) Sublandlord will use reasonable efforts to procure Prime Landlord’s Consent in accordance with the terms of the Prime Lease. If, notwithstanding such reasonable efforts, Sublandlord fails to procure Prime Landlord’s Consent within thirty (30) days after the Effective Date, then Sublandlord or Subtenant may terminate this Sublease with at least three (3) days prior written notice to the other party. If Prime Landlord’s Consent is received by Sublandlord at any time within the foregoing three (3) day notice period (inclusive of the 3rd day), then this Sublease shall not terminate, and any prior notice of termination given by Sublandlord and/or Subtenant shall be deemed withdrawn and without force or effect.

5. SECURITY.

(a) Within two (2) business days after the full execution of this Sublease and receipt of Prime Landlord’s Consent to the Sublease, Subtenant shall deliver to Sublandlord an irrevocable, clean, commercial letter of credit in favor of Sublandlord, in form and substance reasonably acceptable to Sublandlord, in the amount of One Million One Hundred Seventy Six Thousand Eighteen and 48/100 Dollars (\$1,176,018.48) (“**LC**”), issued by a United States financial institution reasonably acceptable to Sublandlord (“**LC Bank**”), as security for the full and faithful performance and observance by Subtenant of the terms, covenants, and conditions of this Sublease. The use, application, or retention of the LC, or any portion thereof, by Sublandlord shall not prevent Sublandlord from exercising any other right or remedy provided by this Sublease or by law, it being intended that Sublandlord shall not first be required to proceed against the LC, and the LC shall not operate as a limitation on any recovery to which Sublandlord may otherwise be entitled. Subtenant shall cause the LC to remain in full force and effect during the entire Term and thereafter until sixty (60) days after the natural expiration or earlier termination (not due to an Event of Default (defined hereafter)) of this Sublease.

(b) Immediately upon, and at any time or from time to time after, the occurrence of an Event of Default, Sublandlord will have the unconditional right to draw on the LC at the LC Bank’s Manhattan offices located in New York, New York to the extent necessary: (i) to cure any default of Subtenant’s; (ii) to pay any other sum to which Sublandlord becomes obligated by reason of a Subtenant default; or (iii) to compensate Sublandlord for any monetary loss or damage which Sublandlord suffers thereby arising from a default by Subtenant. Upon the payment to Sublandlord of the proceeds of any draw or draws made by Sublandlord under the LC, together with any and all

interest accruing thereon (collectively, "**Draw Proceeds**"), Sublandlord will hold the Draw Proceeds in its own name and for its own account, without liability for interest, to use and apply any and all of the Draw Proceeds: (i) to cure any default of Subtenant's; (ii) to pay any other sum to which Sublandlord becomes obligated by reason of a Subtenant default; or (iii) to compensate Sublandlord for any monetary loss or damage which Sublandlord suffers thereby arising from a default by Subtenant. Among other things, it is expressly understood that the Draw Proceeds will not be considered an advance payment of Base Rent or Additional Rent, nor a measure of Sublandlord's damages resulting from any default by Subtenant hereunder (past, present, or future). Further, immediately upon the occurrence and during the continuance of any Event of Default, Sublandlord may, from time to time and without prejudice to any other remedy, use the Draw Proceeds (whether from a contemporaneous or prior draw on the LC) to the extent necessary to make good any arrearages of Base Rent or Additional Rent, and/or to pay to Sublandlord any and all amounts to which Sublandlord is entitled in connection with the pursuit of any one or more of its remedies hereunder. Any delays in Sublandlord's draw on the LC or in Sublandlord's use of the Draw Proceeds as provided in this Section will not constitute a waiver by Sublandlord of any of its rights hereunder with respect to the LC or the Draw Proceeds. Within five (5) business days after the application of the Draw Proceeds, Subtenant will cause the LC to be replenished to its full amount thereunder. Sublandlord will not be liable for any indirect, consequential, special, or punitive damages incurred by Subtenant arising from a claim that Sublandlord violated the bankruptcy code's automatic stay in connection with any draw by Sublandlord of any Draw Proceeds, Sublandlord's liability (if any) under such circumstances being limited to the reimbursement of direct costs as and to the extent expressly provided in this Section. Nothing in this Sublease or in the LC will confer upon Subtenant any property rights or interests in any Draw Proceeds; provided, however, that within sixty (60) days after the natural expiration or earlier termination (not due to an Event of Default (defined hereafter)) of this Sublease, and after application of any proceeds towards any default by Subtenant hereunder, Sublandlord agrees to return any remaining unapplied balance of the Draw Proceeds then held by Sublandlord, and the LC itself (if and to the extent not previously drawn in full) to the Subtenant.

Subtenant acknowledges that Sublandlord has the right to transfer its interest in this Sublease, and Subtenant agrees that in the event of any such transfer, Sublandlord shall have the right, at Subtenant's sole cost and expense, to transfer or assign the LC and/or the Draw Proceeds to the transferee. In such event, Subtenant shall look solely to such transferee for return of the LC and/or the Draw Proceeds so transferred. Subtenant shall, within ten (10) business days of request by Sublandlord, execute such further instruments or assurances as Sublandlord may reasonably deem necessary to evidence or confirm Sublandlord's transfer or assignment of the LC and/or Draw Proceeds to such transferee or mortgagee.

6. RIGHTS AND OBLIGATIONS OF SUBTENANT.

(a) Subtenant shall conform to, and use the Premises in accordance with, all the terms, covenants, and conditions of the Prime Lease to the extent applicable to the Premises, the use of the Common Areas, and the Rules and Regulations for the Building as set forth in the Prime Lease, and will do no act, or fail to do any act, which will result in a violation of such terms, covenants, or conditions. Subtenant shall perform all of the terms, obligations, covenants, and conditions of the Prime Lease to be performed on the part of the "Tenant" therein named to the

extent applicable to the Premises and to the extent incorporated by reference in the Sublease, as well as relating to the use of the Common Areas, and the Rules and Regulations for the Building as set forth in the Prime Lease. Subtenant shall carry and maintain all insurance coverage required of the "Tenant" under the Prime Lease with respect to the Premises and Subtenant's occupancy thereof, and such insurance shall name Prime Landlord and the Sublandlord as additional insureds. Subtenant shall provide Prime Landlord and Sublandlord with insurance certificates or other required evidence and proof of payment thereof (or, to the extent required by the Prime Lease, copies of Subtenant's insurance policy or a binder of insurance), proving the foregoing insurance is in place prior to Subtenant's taking possession of the Premises, and shall update same if and as when required by the Prime Lease. Furthermore, Subtenant shall be responsible for causing the Premises to comply with the Americans with Disabilities Act, and any similar law which relates to the Premises, as same may be amended from time to time (collectively, "**Code**"). Notwithstanding the foregoing, if, as of the Sublease Commencement Date, the Premises shall not be in compliance with the Code, then Sublandlord shall, at its sole cost and expense, promptly cause the Premises to be brought into compliance with the Code, except to the extent same is expressly Prime Landlord's responsibility under the Prime Lease. Thereafter during the Term, if the Premises shall not be in compliance with the Code, whether due to a change in laws, alterations performed by Subtenant, or otherwise, then Subtenant shall, at its sole cost and expense, promptly cause the Premises to be brought into compliance with the Code, except to the extent same is expressly Prime Landlord's responsibility under the Prime Lease.

(b) Subject to the terms hereof, Subtenant shall be entitled to the rights of Sublandlord as "Tenant" under the Prime Lease, insofar as the same relate to the Premises, and Sublandlord shall have no liability by reason of any default of the Prime Landlord, it being understood that if Sublandlord shall fail to fulfill any obligation of the Sublandlord hereunder, and if such failure is caused, in whole or in part, by the failure of the Prime Landlord, Subtenant, or any other subtenant, licensee, or non-Sublandlord occupant of the Original Premises to comply with its obligations under the Prime Lease, then Sublandlord shall have no obligation or liability to Subtenant by reason of such failure, provided Sublandlord uses reasonable efforts to enforce the obligations of any such other subtenant, licensee, or non-Sublandlord occupant under their respective agreements pursuant to Section 36 below. Notwithstanding the foregoing, Sublandlord shall be entitled to all of the rights, but not the obligations, of the Prime Landlord under the Prime Lease in relation to Subtenant and this Sublease, and Subtenant shall look solely to the Prime Landlord for compliance with the Prime Landlord's duties under the Prime Lease.

(c) During the Term: (i) Sublandlord will make commercially reasonable efforts to cause Prime Landlord to perform its obligations under the Prime Lease as same relate to the Premises; and (ii) if necessary, as reasonably determined and requested by Subtenant, Sublandlord shall, at the expense of Subtenant, prosecute legal action against Prime Landlord to enforce Prime Landlord's obligations under the Prime Lease. Subtenant shall be entitled to receive and retain any recovery allocable solely to the Premises resulting from any such actions by Sublandlord (after recovery by Sublandlord of all reasonable loss, claim, liability, cost, and expense due to Sublandlord by Subtenant hereunder) including any abatement of Rent to the extent, if any, provided under the Prime Lease, and solely as such permitted abatement relates to the Premises.

(d) Notwithstanding anything contained herein to the contrary, with respect to Sublandlord's audit rights under Sections 3.09B and 3.09C of the Prime Lease (collectively, "**Audit Rights**"), Sublandlord covenants it will continue to conduct an annual "desktop review," i.e. a limited, but diligent review of Landlord's Statements. If, upon completion of any such review, Sublandlord would have commenced a full audit (or a more significant review) of Landlord's records when Sublandlord fully occupied the entire Original Premises, then Sublandlord shall commence and enforce Sublandlord's rights to audit (or more significantly review, as applicable) in a prompt manner and in accordance with the terms of the Prime Lease. Subtenant acknowledges and agrees that Sublandlord's exercise of its Audit Rights shall not constitute Sublandlord's agreement or acquiescence that Sublandlord was overcharged under the Prime Lease, nor shall same constitute a guaranty, promise, or obligation of a payment of any sums to Subtenant; however, Subtenant shall nevertheless be entitled to receive and retain any refund or credit allocable solely to the Premises resulting from such overcharge and to the extent same relates to payments made by Subtenant.

7. **OBLIGATIONS OF SUBLANDLORD.** Sublandlord shall:

(a) Pay "Rent" as due;

(b) and comply, in all material respects, with all other obligations under the Prime Lease, except to the extent same have been delegated or conveyed to other subtenants, licensees, and/or non-Sublandlord-occupants of the Original Premises;

(c) Duly observe and perform every term and condition of the Prime Lease that is performable by Sublandlord (which excludes any term or condition related to any subleased, licensed, and/or non-Sublandlord-occupied portions of the Original Premises) and that either cannot be performed by Subtenant or is not Subtenant's responsibility under the Sublease; and

(d) Not knowingly do any act that would constitute a default under the Prime Lease.

Notwithstanding anything contained herein to the contrary, Sublandlord shall not be liable to Subtenant for any damages or claims arising by reason of the termination of the Prime Lease or this Sublease, except for such as may be directly caused by Sublandlord's breach of this Sublease or Sublandlord's default under the Prime Lease resulting in the termination thereof, unless such default is due to any act or failure to act on the part of Subtenant (or any other subtenant, licensee, and/or non-Sublandlord-occupant of the Original Premises) or any breach or default by Subtenant in the performance of its obligations under this Sublease (which includes compliance with the Prime Lease except as otherwise expressly excluded herein), or a default by any other subtenant, licensee, or non-Sublandlord occupant of the Original Premises, in which case Sublandlord shall not be liable to Subtenant for any damages or claims whatsoever. In any event, and notwithstanding anything contained herein to the contrary, Sublandlord shall not be liable to Subtenant under any circumstances for any consequential, special, or punitive damages by reason of the termination of this Sublease or any default of Sublandlord hereunder.

8. **USE.** Subtenant shall use the Premises exclusively for the purposes expressly permitted by the Prime Lease (“Use”), and for no other purpose. Subtenant shall not use the Premises for any purpose which is prohibited under the Prime Lease.

9. **ALTERATIONS.**

(a) Subtenant shall not make any alterations in or to the Premises without the prior written consent of Sublandlord (which consent Sublandlord shall not unreasonably withhold), and the Prime Landlord (to the extent required by the Prime Lease) in each instance, and without complying with the provisions of the Prime Lease. Sublandlord shall request Prime Landlord’s consent to any such alterations by Subtenant promptly upon Subtenant’s request. In the event Sublandlord fails to respond to any request for alterations made by Subtenant in writing (“**Original Alterations Notice**”) within fifteen (15) business days after Sublandlord’s receipt of such request, then Subtenant may resubmit such request in writing to Sublandlord with a notice set forth at the top of its request for approval, containing a legend in 14 point bold type which states in bold and all-capital letters: “**URGENT NOTICE OF WAIVER OF RIGHTS BY SUBLANDLORD,**” and the content of such notice identifies this Section and Article 6 of the of the Prime Lease and further states in bold and all capital letters: “**IF SUBLANDLORD FAILS TO RESPOND TO THIS NOTICE WITHIN THREE (3) BUSINESS DAYS AFTER SUBLANDLORD’S RECEIPT OF SAME, THEN SUBLANDLORD’S CONSENT TO THE PROPOSED ALTERATIONS SHALL BE DEEMED TO HAVE BEEN GIVEN**” (“**Second Alterations Notice**”). In the event Sublandlord receives a Second Alterations Notice, and if Sublandlord fails to respond thereto within such three (3) business day period, then Sublandlord’s consent solely to the alterations set forth in the Second Alterations Notice (if and only if such alterations have not been amended or modified in any way from those set forth in the Original Alterations Notice), shall automatically deemed to have been given. Nothing contained in the foregoing to the contrary shall in any way release Subtenant from the obligation to procure the Prime Landlord’s consent to any alterations, nor shall Sublandlord’s approval, or deemed approval, of any alterations constitute Prime Landlord’s consent to same, nor otherwise bind Prime Landlord in any way. Similarly, Prime Landlord’s consent to any alterations shall in no way constitute Sublandlord’s consent to same, nor, in way, bind Sublandlord. Prime Landlord’s required response to a request for its approval of any alterations shall be pursuant to the terms of the Prime Lease, and Sublandlord shall have no liability to Subtenant for Prime Landlord’s failure to comply with the terms thereof.

(b) To the extent Sublandlord incurs any costs or expenses (whether as a result of charges by the Prime Landlord under the Prime Lease or Sublandlord’s own reasonable, out-of-pocket expenses in connection with any review), Subtenant shall reimburse Sublandlord for all such reasonable, out-of-pocket costs and charges, which fees shall not exceed One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each review solely for Sublandlord (“**Sublandlord’s Review Fee**”), plus any sums due the Prime Landlord under the Prime Lease, within thirty (30) days after being billed therefor. Notwithstanding the foregoing, Sublandlord’s Review Fee shall not be applicable to the Work (as defined in the attached Work Letter). In the event that any mechanic’s lien is filed or recorded against the Premises or Building as a result of any work or act of, by, through, or for Subtenant, the Subtenant, at its expense, shall discharge or bond over the same so as to be in compliance with the Prime Lease within twenty (20) days from the filing or recording thereof. If Subtenant fails to discharge said mechanic’s lien within such twenty (20) day period,

Sublandlord may bond or pay same without inquiring into the validity of merits or such lien, and all sums so advanced, plus interest at the Interest Rate (defined hereafter), shall be paid to Sublandlord upon demand as Additional Rent. At, or prior to, the end of the Term, Subtenant shall remove any alterations installed by, or for the benefit of, Subtenant, if required by Prime Landlord pursuant to the Prime Lease or, upon an Event of Default, if requested by Sublandlord (and such removal would be required under the Prime Lease at the end of the term therefor), and Subtenant shall repair any damage caused as a result of such removal, all at Subtenant's sole cost and expense. As a condition to Sublandlord's consent to any alterations (other than the Work), Sublandlord shall have the right to require Subtenant to deposit reasonable security with Sublandlord with respect to any alterations Subtenant intends to undertake, and Sublandlord shall have the right to establish a construction escrow for payment of such security deposit to pay for any construction costs directly to the contractor and subcontractors, all at Subtenant's sole cost and expense. Notwithstanding the foregoing to the contrary, so long as: (i) Subtenant has a net worth in excess of Fifty Million and No/100 Dollars (\$50,000,000.00), as verified by Sublandlord in its reasonable judgment; and (ii) the aggregate anticipated cost of the alterations which Subtenant intends to perform in any twelve (12) month period is less than Five Hundred Thousand and No/100 Dollars (\$500,000.00), then Subtenant shall not be required to deposit additional security with respect to such intended alterations.

(c) Sublandlord shall not be entitled to any management, coordination or supervision fee in connection with any alterations made by Subtenant in the Premises, including, without limitation, pursuant to the Work Letter attached to the Sublease as Exhibit A. Notwithstanding the foregoing, nothing in this Section (c) shall prevent Sublandlord from collecting any such fees which are due and payable to Prime Landlord under the Sublease, which Sublandlord agrees to promptly pay to Prime Landlord.

10. NO ASSIGNMENT OR SUBLETTING.

(a) To the extent either the Prime Lease and/or the Prime Landlord's consent to this Sublease expressly permits any affiliates or successors by merger of any subtenant of Sublandlord to use and access the Premises (whether by assignment, sublease, or general occupancy), such rights are granted to Subtenant herein; provided, however, in such event: (1) Subtenant shall not be released from its obligations hereunder; (2) Subtenant and any such affiliates and successors shall be jointly and severally liable with Subtenant hereunder; (3) such transfer shall not be permitted if the intent or the result is that Subtenant avoids liability under this Sublease; and (4) the surviving entity, if applicable, shall have a net worth equal to or greater than that of Subtenant as of the day prior to the consummation of such transfer. Except as stated above, Subtenant may not assign this Sublease, nor further sublet the Premises, nor permit the same to be used or occupied by others without the prior written consent of Sublandlord (which consent Sublandlord shall not unreasonably withhold), as well as Prime Landlord (to the extent required under the Prime Lease). Sublandlord shall request Prime Landlord's consent to any such assignment or subletting by Subtenant promptly upon Subtenant's request. In the event Sublandlord fails to respond to any request for an assignment, sublease, or other transfer of Subtenant's interest in and to the Premises (collectively, "**Transfer**"), made by Subtenant in writing ("**Original Transfer Notice**") within fifteen (15) business days after Sublandlord's receipt of such request, then Subtenant may resubmit such request in writing to Sublandlord with a notice set forth at the top of its request for approval, containing a legend in 14 point bold type which states in bold and all-capital letters:

“URGENT NOTICE OF WAIVER OF RIGHTS BY SUBLANDLORD,” and the content of such notice identifies this Section and Article 11 of the of the Prime Lease and further states **“IF SUBLANDLORD FAILS TO RESPOND TO THIS NOTICE WITHIN THREE (3) BUSINESS DAYS AFTER SUBLANDLORD’S RECEIPT OF SAME, THEN SUBLANDLORD’S CONSENT TO THE PROPOSED TRANSFER SHALL BE DEEMED TO HAVE BEEN GIVEN” (“Second Transfer Notice”).** In the event Sublandlord receives a Second Transfer Notice, and if Sublandlord fails to respond thereto within such three (3) business day period, then Sublandlord’s consent to the proposed Transfer set forth in the Second Transfer Notice (if and only if the request for such Transfer has not been amended or modified in any way from the Original Transfer Notice), shall automatically deemed to have been given. Nothing contained in the foregoing to the contrary shall in any way release Subtenant from the obligation to procure the Prime Landlord’s consent to any Transfer, nor shall Sublandlord’s approval, or deemed approval, of any Transfer constitute Prime Landlord’s consent to same, nor otherwise bind Prime Landlord in any way. Similarly, Prime Landlord’s consent to any Transfer shall in no way constitute Sublandlord’s consent to same, nor, in way, bind Sublandlord. Prime Landlord’s required response to a request for its approval of a Transfer shall be pursuant to the terms of the Prime Lease, and Sublandlord shall have no liability to Subtenant for Prime Landlord’s failure to comply with the terms thereof.

(b) If Sublandlord (and Prime Landlord to the extent required under the Prime Lease) consents to Subtenant’s assignment of this Sublease or further sublease of the Premises, at a rental or for other consideration in excess of the Rent due and payable by Subtenant under this Sublease, then Subtenant shall pay to Sublandlord, as “Additional Rent” (in addition to any other sums comprising Additional Rent hereunder): (i) on the first day of each month during the term of any such sublease, fifty percent (50%) of the excess of all rent and other consideration actually received from the sub-subtenant for such month over the Rent then payable to Sublandlord pursuant to the provisions of this Sublease for said month, following the deduction of any direct, reasonable and out-of-pocket expenses incurred by Subtenant in connection therewith, including without limitation, legal, brokerage, construction, fees and free rent (or if only a portion of the Premises is being sublet, the excess of all rent and other consideration due from the sub-subtenant for such month over the portion of the Rent then payable to Sublandlord pursuant to the provisions of this Sublease for said month which is allocable on a square footage basis to the space sub-sublet) and any amounts due to Prime Landlord pursuant to Article 11 of the Prime Lease; and (ii) with respect to any assignment, immediately upon receipt thereof, fifty percent (50%) of the entirety of any other profit or gain realized by Subtenant from such assignment following the deduction of any direct, reasonable and out-of-pocket expenses incurred by Subtenant in connection therewith, including without limitation, legal and brokerage fees and other concessions and any amounts due to Prime Landlord pursuant to Article 11 of the Prime Lease. Notwithstanding anything contained in this Section to the contrary, no assignment of this Sublease or further sublease shall release Subtenant from its liability hereunder. Further notwithstanding the foregoing to the contrary, any profit splitting between Sublandlord and Subtenant with respect to this Section shall only occur with respect to any profit which remains, if any, after Subtenant pays to the Prime Landlord one hundred percent (100%) of any sums due Prime Landlord pursuant to the terms of the Prime Lease with respect to such sublease, assignment, or other conveyance. Subtenant shall also be required to reimburse Sublandlord for its reasonable out-of-pocket costs incurred by Sublandlord in connection with Sublandlord’s review or assessment of a proposed sublease or assignment by Subtenant hereunder in an amount not to exceed \$3,000.00.

(c) Further notwithstanding anything contained herein to the contrary, Sublandlord shall have the right to withhold its consent to a sublease or assignment for any of the following reasons, all of which shall be illustrative of reasonable reasons Sublandlord may withhold its consent, but which shall not be deemed exhaustive: (i) in Sublandlord's reasonable judgment, the transferee is engaged in a business or activity, or the Premises will be used in a manner, which: (1) is not consistent with the Use, or (2) does or would likely violate any restrictions or requirements set forth in the Prime Lease; (ii) the transferee, in Sublandlord's reasonable opinion, is not reputable, or does not have sufficient financial means to perform all of its obligations under the sublease or assignment, as the case may be; (iii) there will be more than two (2) entities (including Subtenant, but excluding any affiliates of Subtenant whose occupancy is permitted pursuant to the terms of the Prime Lease and/or the Prime Landlord's Consent) occupying the Premises after any sublease; and (iv) the transferee shall be entitled, directly or indirectly, to diplomatic or sovereign immunity, or shall not be subject to the service of process in, and the jurisdiction of the courts of, the State of New York.

11. **DEFAULT.** Upon the occurrence of any one or more of the following events (each referred to as an "Event of Default"), Subtenant shall be deemed in default:

(a) if Subtenant shall fail to make the full payment of any installment of Rent when due and such amounts remain unpaid for more than three (3) business days after written notice to Subtenant; provided, however, no such notice and grace period shall apply if Subtenant fails to make any payment when due more than twice in any twelve (12) month period;

(b) if Subtenant shall default in the observance or performance of any term, covenant, or condition of this Sublease or the Prime Lease on Subtenant's part to be observed or performed (other than as described in Section 11(a), (c), or (d)), and Subtenant shall fail to remedy such default within twenty (20) days (or such lesser time as provided by the Prime Lease), after notice by Sublandlord to Subtenant of such default; or, in the case of a happening or default which cannot, with due diligence, be cured within such twenty (20) day period, and the continuation of such period will not constitute a violation of the Prime Lease, or subject Sublandlord and/or Prime Landlord to the risk of criminal liability, or termination of any superior lease (including the Prime Lease), or foreclosure of any superior mortgage, if Subtenant shall not: (i) within said twenty (20) day period, advise Sublandlord and Prime Landlord of Subtenant's intention to duly institute all steps necessary to remedy such situation; (ii) duly institute within said twenty (20) day period, and thereafter diligently and continuously prosecute to completion all steps necessary to remedy the same; and (iii) complete such remedy within such time after the date of the giving of said notice of default by Sublandlord and/or Prime Landlord (whichever is earlier) as shall be reasonably necessary. In the event of a conflict, the terms of this Section 11(b) shall prevail over any conflict with any other non-monetary grace periods contained in this Sublease not contained in this Section 11;

(c) if Subtenant: (i) cannot meet its obligations as they become due; (ii) becomes, or is declared, insolvent according to any law; (iii) makes a transfer in fraud of creditors according to any applicable law; (iv) makes a general assignment of all or a substantial portion of its property for the benefit of creditors; or (v) files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar law (collectively "**Applicable Bankruptcy Law**"); (vi) a receiver or trustee is appointed for Subtenant or its property (vii) the interest of Subtenant under this Sublease is levied on under execution or under other legal process; (viii) any involuntary petition is filed against Subtenant under Applicable Bankruptcy Law; or (ix) any action is taken to reorganize or modify Subtenant's capital structure if Subtenant is a corporation or other entity (provided that no such levy, execution, legal process, or petition filed against Subtenant shall constitute a breach of this Sublease if Subtenant shall vigorously contest the same by appropriate proceedings and shall remove or vacate the same within sixty (60) days from the date of its creation, service, or filing, or such lesser time as provided in the Prime Lease); or

(d) if Subtenant makes an unpermitted assignment of this Sublease or to further sublease the Premises or any portion thereof in violation of the terms herein.

In the event of a conflict or contradiction between the terms of this Sublease and the Prime Lease as to what constitutes an Event of Default, the more beneficial provision or provisions to Sublandlord shall prevail.

12. **REMEDIES.** Upon the occurrence of an Event of Default, and in addition to Sublandlord's rights under Section 5 of this Sublease, Sublandlord may, at any time thereafter, give to Subtenant five (5) days notice of termination of this Sublease or of Subtenant's possession of the Premises. The Term or Subtenant's possession of the Premises, as the case may be, shall terminate upon the expiration of said five (5) days with the same effect as if the date of expiration of said five (5) day period was the termination date of this Sublease, but Subtenant shall remain liable for damages as provided in this Section, in this Sublease, and in the Prime Lease.

(a) In addition, after the occurrence of an Event of Default:

(i) Sublandlord or Sublandlord's agents or servants may, in addition to any rights and remedies granted the Prime Landlord under the Prime Lease which are also granted to Sublandlord hereunder, immediately, or at any time after such default or the termination of this Sublease or Subtenant's possession of the Premises, as the case may be, re-enter the Premises or any part thereof, without notice, either by summary proceedings or by any other applicable action or proceeding, or by force or otherwise (without being liable to indictment, prosecution, or damages therefor), and may repossess the Premises and dispossess Subtenant and any persons from the Premises, and remove any and all of their property and effects therefrom without incurring any liability to Subtenant or any other person for such repossession or removal; and

(ii) Sublandlord, at Sublandlord's sole option, may relet the whole, or any part or parts of the Premises, from time to time, either in the name of Subtenant, Sublandlord, or otherwise, to such tenant or tenants, for such term or terms ending before, on, or after the expiration date of this Sublease, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Sublandlord, in Sublandlord's sole discretion, may determine. Sublandlord shall, solely to the extent required by applicable law, attempt to relet the Premises; provided, however, subject to Sublandlord's obligations, if any, pursuant to applicable law, in no

event shall Sublandlord be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any Rent due upon any such reletting, or for the Prime Landlord's refusal to accept any proposed tenant, and no such refusal or failure shall operate to relieve Subtenant of any liability under this Sublease or otherwise affect any such liability. Sublandlord, at Sublandlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations, and other physical changes in and to the Premises as Sublandlord, in Sublandlord's sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Subtenant of any liability under this Sublease or otherwise affecting any such liability.

(b) Acceptance of Rent by Sublandlord with knowledge of any default, or the failure of Sublandlord to seek redress for any default, or to insist upon the strict performance of any term, covenant, condition, or obligation of this Sublease shall not constitute a waiver thereof, and Sublandlord shall have all remedies provided herein and by applicable law with respect to any subsequent act or omission which would have originally constituted a default. Sublandlord's remedies for any default which are available to it under this Sublease, the Prime Lease, or at law or in equity, shall be cumulative, and Sublandlord's decision to pursue any particular remedy following any default shall not affect the availability of any other remedy for such default or for any subsequent default.

(c) If this Sublease and the Term shall terminate, or if Subtenant's possession of the Premises is terminated, as the case may be, expire, or come to an end as provided in this Section, or by or under any summary proceeding, or any other action or proceeding, or if Sublandlord shall re-enter the Premises as provided in this Section, then, in any of these events:

(i) Subtenant shall pay to Sublandlord all Rent and other charges payable under this Sublease by Subtenant to Sublandlord to the date upon which this Sublease and the Term shall have expired or to the date of re-entry upon the Premises by Sublandlord, as the case may be; and

(ii) Subtenant shall also be liable for, and shall pay to Sublandlord as damages, any deficiency ("**Deficiency**") between the Rent for the period of time which constitutes the remainder of the Term (based on the original, intended Term of this Sublease) less the amount, if any, of the rents collected under any reletting effected pursuant to the provisions of this Section for any part of such period (which shall be net of Sublandlord's expenses in connection with the termination of this Sublease or Sublandlord's re-entry upon the Premises, and net of the costs of such reletting including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs, and other expenses of preparing the Premises for such reletting). Upon a default hereunder by Subtenant, Sublandlord shall be entitled to accelerate all payments required of Subtenant hereunder throughout the Term, and Sublandlord may demand the entire Deficiency under this Sublease in one action, without the requirement to file suit as each month's Deficiency would have come due hereunder; provided, such sums shall be discounted to the then-present value using a discount factor of the Prime Rate (defined hereafter); and

(iii) Nothing contained in this Section shall be deemed to limit or preclude the recovery by Sublandlord from Subtenant of the maximum amount allowed to be obtained as damages by any statute, rule of law, or equitable judgment, or of any sums or damages to which Sublandlord may be entitled in addition to the damages set forth in this Section. Any and all duties or liabilities of Subtenant hereunder which accrue on or before the date of expiration or termination of this Sublease shall not be terminated with the Sublease, but instead shall survive such termination. Notwithstanding anything contained herein to the contrary, Subtenant hereby waives any right of redemption it may have as a result of Sublandlord's default under this Sublease or otherwise.

13. **DAMAGE OR CONDEMNATION.**

(a) If Prime Landlord or Sublandlord shall elect to terminate the Prime Lease after an event of casualty or condemnation, this Sublease shall also terminate. In any such event, Subtenant shall have no claim (against Sublandlord, Prime Landlord, or otherwise), by reason of such termination, and Subtenant shall have no interest in any insurance proceeds (other than proceeds from its own policies), or any condemnation award.

(b) If a casualty or condemnation shall occur and Prime Landlord and Sublandlord do not elect to terminate the Prime Lease, this Sublease shall remain in full force and effect and neither Sublandlord nor Subtenant shall have the right to terminate this Sublease by reason of such casualty or condemnation (but Subtenant shall be entitled to an abatement of Rent to the extent, if any, provided under the Prime Lease, and solely as such permitted abatement relates to the Premises).

(c) Notwithstanding the foregoing to the contrary, in the event: (i) of damage or destruction to the Premises; and (ii) (1) Prime Landlord's estimate (required pursuant to Section 10.03 of the Prime Lease) to rebuild such damage for which Prime Landlord is responsible under the Prime Lease ("**Rebuild Estimate**") exceeds fifteen (15) months after the date of such damage or destruction, or such damage occurs during the last fifteen (15) months of the Term; or (2) the rebuild is not completed and possession of the Premises is not delivered by Prime Landlord to Subtenant by the date first estimated by Prime Landlord in the Rebuild Estimate, subject to any delays excusable under the Prime Lease (i.e., due to adjustment of insurance, labor trouble, governmental controls, acts of God, or any other reason beyond Prime Landlord's reasonable control); and (3) such damage or destruction involves a substantial part of the Premises (i.e. an amount, not in any event less than fifty percent (50%) of the rentable area of the Premises, such that Subtenant cannot reasonably be expected to conduct its business as contemplated hereby in the balance of the Premises), then, Subtenant may terminate this Sublease by notice to Sublandlord ("**Subtenant's Termination Notice**"). In order to be effective, Subtenant's Termination Notice must be given within thirty (30) days after the first to occur of (ii)(1) or (ii)(2) above, as applicable, and such termination shall be effective upon the giving of Subtenant's Termination Notice. Subtenant's failure to provide the Subtenant's Termination Notice within such thirty (30) day period shall be deemed Subtenant's election not to terminate this Sublease, and Subtenant shall make any repairs to the Premises required of "Tenant" under the Prime Lease.

14. **SUCCESSORS AND ASSIGNS.** This Sublease, and the rights and obligations of the parties hereunder, shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, subject to the terms of Section 10 hereof.

15. **APPROVAL.** In the event Subtenant desires to do anything which would require the Prime Landlord's approval under the terms of this Sublease or the Prime Lease, then Subtenant, in addition to requesting Prime Landlord's consent, shall also be required to submit a written request to Sublandlord for its prior written approval, which approval shall not be unreasonably withheld or delayed. Subtenant agrees to indemnify, defend (using counsel reasonably satisfactory to Sublandlord), and hold Sublandlord harmless from and against any and all costs, expenses, reasonable attorneys' fees, lawsuits, judgments, losses, and the like, relating to, or arising from, directly or indirectly, Subtenant's failure to comply with the terms hereof.

16. **SPECIFIC PROVISIONS OF PRIME LEASE.** Except as otherwise expressly provided in, or otherwise inconsistent with, this Sublease, or to the extent not applicable to the Premises, the terms, provisions, covenants, stipulations, conditions, rights, obligations, remedies and agreements contained in the Prime Lease are incorporated in this Sublease by reference, and are made a part hereof as if herein set forth at length. For purposes of incorporating the Prime Lease into this Sublease, all references in the Prime Lease to (a) the term "Landlord" shall be deemed to mean "Sublandlord" except as otherwise set forth in this Sublease, (b) the term "Tenant" shall be deemed to mean "Subtenant" except as otherwise set forth in this Sublease, and (c) the term "demised premises" shall be deemed to mean "Premises." Notwithstanding the foregoing to the contrary, and except as expressly set forth herein, Sublandlord shall not be liable, nor responsible, for any of the obligations, covenants, representations, warranties, liability, or responsibility of the Prime Landlord under the Prime Lease, nor shall this paragraph be construed to imply or require same of Sublandlord. Furthermore, in the event Subtenant defaults under the Prime Lease, nothing contained herein shall be deemed to limit Subtenant's liability for such default solely as it relates to the Premises; instead, Subtenant shall be liable for all liability of the "Tenant" under the Prime Lease for the entire Original Premises resulting from such default by Subtenant. To the extent incorporated herein and except for any Rent obligations, Subtenant shall be responsible for all duties and obligations of the named "Tenant" under the Prime Lease as same relates to the Premises, and notwithstanding anything contained herein or in the Prime Lease to the contrary, Subtenant shall not have the right to: (a) renew the Prime Lease or this Sublease; (b) expand the Premises (or exercise any option to expand the Premises); or (c) use any allowance allocated Sublandlord as "Tenant" under the Prime Lease. In addition the following sections and exhibits of the Prime Lease shall not be applicable to this Sublease: "Witnesseth" paragraph; Section 1.01; Section 1.02; Section 1.03; Section 1.04; Article 2; Section 3.01(A); Section 3.01(F); Section 3.03(B); Section 3.06 (except to the extent such amounts due thereunder relate to the Premises); Section 3.09(B); Section 3.09(C); Section 6.01 (first paragraph only); Section 7.04 (all but first sentence, but same shall not affect Subtenant's rights under Section 6(c) hereof); Section 7.05; Section 7.07; Section 9.07; Section 9.08(a); Section 9.08(b); Section 9.10; Article 10; Section 11.05(a); Section 11.06(e); Section 11.08; Section 11.09; Section 11.10; Article 12; Section 19.01(a)(i) (all but first two sentences); Section 19.01(b)(ii) and (iii); Section 19.01(c) (beginning with the sixth full sentence through the remainder of the Section); Section 19.01(d); Section 19.01(f)(2); Section 19.04 (first full sentence through word "withheld"); Section 19.07; Section 20.01; Article 22; Section 23.05; Section 24.02; Section 28.02; Article 29; Section 32.02; Section 34.07; Section 34.14; Section 34.15; the last sentence of Section 34.20(c); Section 34.22; Articles 35 through 42; Schedule F; Exhibit I; Schedule J; Schedule K; Schedule L; and Schedule O. Reference to "Landlord" in Sections 13.01 through 13.03, Section 34.10, and Section 34.16 shall be deemed a reference to Prime Landlord only.

17. **HOLD HARMLESS.**

(a) In addition to any other rights or remedies of Sublandlord hereunder, Subtenant, its officers, directors, and assigns hereby covenant and agree to indemnify, defend (using counsel reasonably approved by Sublandlord), and hold Sublandlord, its officers, directors, employees, and assigns harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, contingent or otherwise (collectively "**Losses**"), which Sublandlord, its officers, directors, employees, or assigns may incur arising out of Subtenant's breach of the terms and conditions of this Sublease and the Prime Lease, including, but not limited to, any Losses which occur as a result of Sublandlord's breach of the Prime Lease, which are directly or indirectly, and in whole or in part, due to Subtenant's breach of this Sublease. The obligations under this Section shall survive the expiration or sooner termination of the Sublease.

(b) Sublandlord does hereby covenant and agree to indemnify, defend, and hold Subtenant harmless from and against any and all Losses, which Subtenant incurs arising directly and solely out of Sublandlord's breach of the terms and conditions of this Sublease and the Prime Lease (excluding any Losses which occur as a result of Sublandlord's breach of the Prime Lease, which is directly or indirectly, and in whole or in part, due to Subtenant's breach of this Sublease or a default by any other subtenant, licensee, or non-Sublandlord occupant of the Original Premises). Notwithstanding anything contained herein to the contrary, in no event shall Sublandlord be liable to Subtenant for any consequential, special, or punitive damages whatsoever. The obligations under this Section shall survive the expiration or sooner termination of the Sublease.

18. **ESTOPPEL.** If Sublandlord or the Prime Landlord requests that Subtenant provide an estoppel certificate or a subordination and attornment agreement, or a document of similar import, Subtenant shall provide Sublandlord and Prime Landlord with same, and pursuant to the requirements of the Prime Lease, within the earlier of: (a) eight (8) days after Prime Landlord's or Sublandlord's request for same, as the case may be; and (b) two (2) days prior to the time same is due under the Prime Lease, but in no event less than five (5) days after submission of same to Subtenant. Sublandlord shall attempt to promptly provide Subtenant with a request for an estoppel and/or subordination and attornment agreement upon receipt of same from Prime Landlord. Subtenant acknowledges and agrees that any duty of the Prime Landlord to provide Sublandlord with a non-disturbance agreement and/or any right of Sublandlord to same under the Prime Lease shall not constitute a duty of Sublandlord, nor a right of Subtenant, with respect to same.

19. **PRIME LEASE.** Notwithstanding anything to the contrary contained herein, in the event the Prime Lease is terminated for any reason whatsoever, this Sublease shall terminate on the date that the Prime Lease is terminated. Upon any such termination of the Prime Lease for any reasons other than Subtenant's breach or default hereunder, or Sublandlord's default under the Prime Lease occasioned by Subtenant's failure to perform its obligations hereunder, all Rent due and owing hereunder shall be pro-rated, where applicable, as of the date of such termination, and paid to Sublandlord, and thereafter in the event of a termination of the Prime Lease which is not due to Subtenant's breach or default under this Sublease and/or Sublandlord's default under the Prime Lease which is due to Subtenant's breach or default under this Sublease, then, Sublandlord shall have no further obligation or liability to Subtenant arising from, through, or under this Sublease except as more particularly set forth herein, and upon Subtenant's return of possession of the Premises to

Sublandlord and Subtenant's compliance with its obligations hereunder accruing on and/or before the date of such termination, Subtenant shall have no obligation or liability to Sublandlord accruing after the date of such termination relating to this Sublease, except as more particularly set forth herein.

20. **CONDITION OF PREMISES.** Except as expressly set forth in this Sublease, neither Sublandlord nor Sublandlord's agents, employees, or contractors have made any representations, warranties, or promises with respect to the Premises, or the equipment, furniture, or improvements therein situated, if any, or the physical condition or size of the Premises. Subtenant accepts the Premises in its present "as-is where is and with all faults" condition, and subject to normal wear and tear between the date of this Sublease and the date of occupancy by Subtenant. Except as expressly set forth in the attached Exhibit A, neither Sublandlord nor the Prime Landlord shall be under any obligation to make and/or pay for any alterations, additions, installations, substitutions, improvements, or decorations to the Premises. Sublandlord hereby grants to Subtenant a license to use the existing furniture, fixtures, equipment and wiring located in or serving the Premises, which is detailed on the attached Exhibit B (collectively, "**Furniture**"), for no additional consideration so long as this Sublease is in force. Subtenant shall not acquire any title or other ownership rights in or to the Furniture during the Term; provided, however Subtenant shall have the right to remove all or any portion of same during the Term so long as Subtenant replaces same with other furniture of equal or greater value and quality; provided further, however, Subtenant shall remain responsible to return all of the Furniture to Sublandlord in the event of an early termination of this Sublease. Upon expiration or earlier termination (for reasons other than an Event of Default) of this Sublease, Subtenant shall: (a) be required to purchase the Furniture from Sublandlord for the amount of one dollar (\$1.00); (b) remove the Furniture from the Premises; and (c) return the Premises to the condition same was in as of the Sublease Commencement Date, normal wear and tear permitted by the Prime Lease and damage for which Subtenant is not responsible excepted, and to the extent required by the terms of the Prime Lease. During the Term, Subtenant shall, at Subtenant's sole cost and expense, insure the Furniture for its full replacement value (with Sublandlord named as an additional insured and as loss payee).

Subtenant shall not hold over after the expiration of the Term. If Subtenant fails or refuses to surrender possession of the Premises pursuant to the provisions of this Sublease at the natural expiration or earlier termination of this Sublease (which, in the event of an earlier termination is due to an earlier termination of the Prime Lease), such possession shall be construed to be a tenancy at sufferance, and Subtenant shall remain liable to Sublandlord for daily use and occupancy at the daily rate the greater of: (i) the amount due on a daily basis (or monthly if not prorated on a daily basis pursuant to the terms of the Prime Lease) from Sublandlord, as "Tenant" under the Prime Lease in the event of Sublandlord's holdover thereunder for the entire Original Premises; (ii) the amount due on a daily basis during the last month of the Term; or (iii) the amount which would be due if the Premises had been relet at market rent (as reasonably determined by Sublandlord) at the time of such holdover, and, in addition to the foregoing, Subtenant shall indemnify, defend (using counsel reasonably determined by Sublandlord), and hold Sublandlord harmless from and against all damages, losses, and expenses, including, without limitation, consequential damages, arising from such holdover.

To the Sublandlord's actual knowledge, without duty of inquiry, no Hazardous Material is present in the Premises (including asbestos). Notwithstanding anything to the contrary, under no circumstance shall Subtenant be liable for any Hazardous Material present at any time on or about the Premises or the Building, or the soil, air, improvements, groundwater or surface water thereof, or the violation of any laws, orders or regulations, relating to any such Hazardous Material, except to the extent that any of the foregoing actually results from the release or emission of Hazardous Material by Subtenant or its agents or employees in violation of applicable environmental laws.

21. **PAYMENT OF CHARGES.** As provided in Section 4 hereof, Subtenant shall pay to Sublandlord the full amount of any and all other charges due hereunder, without any set-off or deduction whatsoever except as expressly set forth herein or under the terms of the Prime Lease incorporated herein. Without limiting the generality of the foregoing, Subtenant shall not be entitled to set off against the Rent payable hereunder by reason of any alleged inaccuracy of impropriety of any charge imposed under the Prime Lease or this Sublease with respect to the Premises. In the event that Subtenant is delinquent in paying Sublandlord for any amounts due hereunder, all such amounts (including Rent) shall bear interest from the date due until the date paid at a rate which is the lower of: (a) the highest lawful rate; or (b) the "Prime Rate" as announced by JP Morgan Chase Bank, N.A. (or its successor or similarly situated bank if JP Morgan Chase Bank, N.A. is no longer in existence) from time to time, for ninety (90) day unsecured loans to its customers, changing automatically and simultaneously with each change in the Prime Rate made by JP Morgan Chase Bank, N.A. (or its successor or similarly situated bank if JP Morgan Chase Bank, N.A. is no longer in existence), from time to time ("**Prime Rate**") plus five percent (5%) ("**Interest Rate**"). In addition to Sublandlord's right to charge interest on any unpaid amounts hereunder as provided for in this Section, Subtenant shall pay Sublandlord a late payment charge equal to five percent (5%) of any payment due hereunder not received by Sublandlord within three (3) days after delivery of written notice of nonpayment. The foregoing late payment charge shall apply individually to all past due payments and shall not be subject to any pro rata adjustment or reduction.

22. **SURRENDER OF PREMISES.** Upon the expiration or earlier termination of this Sublease or the termination of Subtenant's right of possession to the Premises, Subtenant shall surrender and vacate the Premises and deliver possession thereof to Sublandlord peaceably and quietly in the same condition they are in as of the date hereof, reasonable wear and tear and damage from casualty excepted, and Subtenant shall further comply with all of Sublandlord's duties as "Tenant" under the Prime Lease relating to surrender of the Premises, if any. If: (a) required by the terms of the Prime Lease or this Sublease; or (b) upon the occurrence of an Event of Default hereunder (and in such case, at Sublandlord's request), Subtenant shall promptly remove any alterations, installations, additions, and improvements, and Subtenant shall repair any damage occasioned by the removal thereof, all to the extent required by, and in accordance with, Section 9 hereof. If Subtenant shall fail to promptly remove any such alterations, installations, additions, and improvements which Sublandlord or the Prime Landlord shall designate to be removed in accordance with this Section, then such items may be removed by Sublandlord, and Subtenant shall promptly reimburse Sublandlord for any expenses incurred by Sublandlord in connection therewith, including, without limitation, the cost of removal thereof and of repairing any damage caused thereby, plus a fifteen percent (15%) administration fee. Subtenant shall also remove from the Premises all of Subtenant's goods, effects, movable personal property, business and trade fixtures, and machinery and trade equipment, and shall repair all damage resulting from such removal. Any of such items not so removed by Subtenant at the expiration or termination of this Sublease shall be conclusively deemed to have been abandoned by Subtenant. Subtenant shall not receive any cost or

credit therefor, and Sublandlord may dispose of the same without any liability to Subtenant; provided, however, that Subtenant shall promptly reimburse Sublandlord for any expenses incurred by Sublandlord in connection therewith, including, without limitation, the cost of removal thereof and of repairing any damage caused thereby, plus a fifteen percent (15%) administration fee. Subtenant shall have no obligation to remove any installations or improvements made to the Premises prior to the Term.

23. **SIGNAGE.** Subject to the terms of the Prime Lease, and pursuant to Section 19.06 of the Prime Lease, Sublandlord shall, at Subtenant's sole cost and expense, assist Subtenant with obtaining Prime Landlord's consent for suite signage, in accordance with the terms set forth on Exhibit D attached hereto and made a part hereof by this reference; provided, however, Sublandlord shall in no way be responsible to Subtenant for Sublandlord's failure or inability to obtain Prime Landlord's consent to such signage.

24. **NOTICES.** All notices, demands, statements, and communications required hereunder shall be in writing, and shall be sent by registered or certified mail, personal delivery, or via a nationally recognized overnight courier. If to Sublandlord, sent as follows: CIT Group Inc., 1 CIT Drive, Livingston, NJ 07039, Attn: Global Real Estate, with a copy to David Braffman, Esq., 11 West 42nd Street, 12th Floor, New York, NY 10036, and with a copy to William J. Lewis, Esq., Vedder Price P.C., 222 N. LaSalle Street, Suite 2500, Chicago, Illinois 60601, or to any other address that Sublandlord may specify to the Subtenant in writing. If to Subtenant, addressed to Subtenant at the Premises, or to any other address that Subtenant may specify to Sublandlord in writing. All notices shall be deemed given upon the date of receipt or refusal if mailed, personally delivered, or sent via overnight courier.

25. **BROKER.** Subtenant and Sublandlord each represent and warrant to the other that, other than Cushman & Wakefield, representing Subtenant, and Newmark Knight Frank, representing Sublandlord (collectively "**Brokers**"), the representing party has not dealt with any broker, finder, or the like, and that no broker, finder, or the like, negotiated this Sublease or is entitled to any commission in connection therewith. Each party shall indemnify, defend, and hold the other party, and its respective agents and employees harmless from any and all claims of any brokers, finders, or the like, other than Brokers, in connection with the representing party's breach of the representation and warranty contained in the immediately preceding sentence. Sublandlord shall pay all commissions to the Brokers in accordance with the terms of a separate agreement between Sublandlord and the Brokers, if any. Notwithstanding the foregoing to the contrary, no third party shall be deemed a beneficiary of this Sublease.

26. **ENTIRE AGREEMENT.** This Sublease embodies the entire understanding of the parties and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. In the event of a contradiction between the terms of this Sublease and the Prime Lease, the terms and conditions of this Sublease shall prevail as it relates to the relationship between Sublandlord and Subtenant, except to the extent such terms would permit or cause a default under the Prime Lease. This Sublease shall not become effective, and shall have no force or effect unless and until: (a) it shall be executed and delivered in quadruplicate by both parties; (b) the written consent of the Prime Landlord is obtained pursuant to the terms of the Prime Lease; and (c) the LC and Rent required to be pre-paid hereunder, if any, have been received by Sublandlord.

27. **SEVERABILITY**. If any term, covenant, or condition of this Sublease, or application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

28. **GOVERNING LAW**. The laws of the State of New York shall govern the validity, performance and enforcement of this Sublease.

29. **AUTHORITY**. The undersigned signator(s) warrant that they have full power and authority to execute this Sublease on behalf of the respective parties hereto. In the event Subtenant is a general partnership, all present and future partners shall be jointly and severally liable hereunder.

30. **COUNTERPARTS**. The Sublease may be executed in counterparts, each of which executed counterparts shall be deemed an original, and which, taken together, shall constitute one instrument. In the event of a conflict between the provisions of any original Sublease with the provisions of any other original Sublease, then, in such event, the provisions of Sublandlord's original Sublease will govern and control.

31. **HEADINGS**. The headings of sections are for convenience only, and do not limit or construe the contents of the sections.

32. **ATTORNEYS' FEES**. In the event that Sublandlord files a lawsuit to enforce the terms of this Sublease, and Sublandlord is the prevailing party in a final judgment, then Subtenant shall reimburse Sublandlord for all reasonable costs and expenses including, without limitation, reasonable attorneys' fees, actually incurred by Sublandlord and/or Prime Landlord as a result of such enforcement. In the event that Subtenant files a lawsuit to enforce the terms of this Sublease, and Subtenant is the prevailing party in a final judgment, then Sublandlord shall reimburse Subtenant for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees actually incurred by Subtenant as a result of such enforcement.

33. **UTILITIES**. Except for those utilities and services to be provided to Sublandlord as "Tenant" pursuant to the Prime Lease, Subtenant shall be responsible for procuring, and for the cost of, Subtenant's utility, electric, gas, water, and communication needs which include, but are not limited to, telephone systems, wire installation, computers, and all other communication functions, as well as all housekeeping and separately metered electric and utilities to the Premises. Subtenant shall be responsible for the cost to repair and maintain all such systems within the Premises. In the event any utilities are not separately metered, Subtenant shall pay for the cost to install such meters for the Premises. In addition to the foregoing, during the Term, Subtenant shall have usage control over the HVAC package unit located within the Premises, and Subtenant shall be responsible for the cost of any repairs to, and replacement of, such HVAC package. Subtenant also acknowledges and agrees that, in addition to Subtenant's obligations herein, to the extent Sublandlord is responsible under the Prime Lease for the maintenance, repair, and/or replacement of HVAC related ductwork which is located in, or benefits, the Premises, Subtenant shall also be responsible for same.

34. **MAINTENANCE AND REPAIR CONTRACTS.** Within five (5) days of the Sublease Commencement Date, Sublandlord shall provide Subtenant with names, addresses, and contact information for all service providers (as shown on the attached Exhibit C), currently performing general maintenance and repair work, HVAC maintenance, and similar services in the Premises or any of the Original Premises that are not furnished by Prime Landlord. Subtenant shall contract directly with these service providers for similar services. If Subtenant desires to use other service providers for any of such services, it shall first obtain Sublandlord's consent, which consent shall not be unreasonably withheld, as well as the Prime Landlord's prior written consent.

35. **REPRESENTATIONS AND WARRANTIES OF SUBLANDLORD.** Sublandlord represents and warrants that:

(a) it has delivered a true and correct redacted copy of the Prime Lease and all amendments thereto to Subtenant;

(b) it is a corporation duly organized, validly existing, and in good standing in its state of incorporation, and if such state is not New York, is qualified to do business and is in good standing under the laws of the State of New York;

(c) it has all requisite corporate power and authority to execute, deliver, and perform its obligations under, this Sublease, the execution, delivery and performance of this Sublease by the Sublandlord, and the consummation of all transactions contemplated hereby, have been duly authorized by all necessary corporate action of Sublandlord and will not violate any laws or governmental or court regulations or orders or any agreements to which Sublandlord is a party or is subject or by which it is otherwise bound;

(d) Sublandlord has neither given nor received any notice of default under the Prime Lease, not heretofore cured or waived, and the Prime Lease is in full force and effect; and

(e) Sublandlord has not exercised, and will not exercise, its rights with respect to maintaining the Floor Unit(s) pursuant to Section 19.01(c) of the Prime Lease.

36. **MISCELLANEOUS.** Notwithstanding anything else contained herein or in the Prime Lease to the contrary, except if it is the direct or indirect result of the default of Subtenant hereunder and/or the default of Subtenant, and/or any other subtenant, licensee, and/or non-Sublandlord occupant of the Original Premises under the Prime Lease, Subtenant shall not be obligated under the Prime Lease for: (a) late charges; (b) Sublandlord's failure to comply with the terms of the Prime Lease; or (c) any sums due to Prime Landlord and relating to periods prior to the Sublease Commencement Date. Further notwithstanding anything contained herein to the contrary, in the event: (i) of a default under the Prime Lease by any subtenant, licensee, and/or non-Sublandlord occupant of the Original Premises other than Subtenant; (ii) Sublandlord has received notice of such default by the Prime Landlord; and (iii) such default will, if not cured, cause the termination of the Prime Lease, and thus this Sublease, then Sublandlord agrees to use commercially

reasonable efforts to enforce any agreement between Sublandlord and such other subtenant, licensee, and/or non-Sublandlord occupant of the Original Premises, and, in the event efforts to enforce such obligations are not fruitful within the cure period provided under the Prime Lease, Sublandlord shall exercise all of its rights and remedies available at law, or in equity, as Sublandlord reasonably deems necessary or beneficial, against such party.

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IN WITNESS WHEREOF, the parties have executed and delivered this Sublease as of the day and year first above written.

SUBLANDLORD:

CIT GROUP INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

SUBTENANT:

MESOBLAST, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Work Letter

CIT Group Inc., a Delaware corporation (“**Sublandlord**”) and Mesoblast, Inc., a Delaware corporation (“**Subtenant**”) are executing simultaneously herewith that certain Sublease (“**Sublease**”) as more particularly described therein. In connection with the execution of the Sublease, Sublandlord and Subtenant have further agreed as follows (all terms herein without definition shall have the meaning ascribed to such terms in the Sublease):

1. **Space Plan**. Subtenant shall direct and authorize an architect licensed in the State of New York (“**Architect**”) to prepare a space plan of the Premises (“**Space Plan**”) depicting the physical layout of the improvements proposed to be constructed by Subtenant to the Premises. Upon completion, Subtenant shall deliver the Space Plan to Sublandlord and Prime Landlord for their approval, which approval with respect to Sublandlord only, shall not be unreasonably withheld, delayed, and/or conditioned.

2. **Working Drawings**. Subtenant shall also cause Architect to prepare the final architectural, mechanical (including heating, ventilating and air-conditioning) electrical, plumbing and structural plans and specifications (“**Working Drawings**”) necessary to complete the work (“**Work**”) required to construct the improvements to the Premises depicted in the Space Plan previously approved by Sublandlord and Prime Landlord. The Working Drawings shall be in compliance with all of the applicable terms, requirements, and conditions set forth in the Prime Lease relating thereto, including, without limitation, Article 6 (Alterations and Installations) and Schedule H (Conditions for Alterations).

Subtenant shall cause Architect to submit the finished Working Drawings to Sublandlord and Prime Landlord for their review and approval, not to be unreasonably withheld, delayed, and/or conditioned. Sublandlord shall review the Working Drawings and grant its consent or denial thereof within ten (10) business days after receipt thereof and a written request for Sublandlord’s approval (“**Original WD Notice**”). To the extent Sublandlord withholds its consent to the Working Drawings as aforesaid, Sublandlord shall state, with specificity, Sublandlord’s reasons for such disapproval. In the event Sublandlord fails to respond to the Original WD Notice within such ten (10) business days period, then Subtenant may resubmit such request in writing to Sublandlord with a notice set forth at the top of its request for approval, containing a legend in 14 point bold type which states in bold and all-capital letters: “**URGENT NOTICE OF WAIVER OF RIGHTS BY SUBLANDLORD,**” and the content of such notice identifies this Work Letter and Article 6 of the Prime Lease, and further states in bold and all capital letters: “**IF SUBLANDLORD FAILS TO RESPOND TO THIS NOTICE WITHIN THREE (3) BUSINESS DAYS AFTER SUBLANDLORD’S RECEIPT OF SAME, THEN SUBLANDLORD’S CONSENT TO THE WORKING DRAWINGS SHALL BE DEEMED TO HAVE BEEN GIVEN**” (“**Second WD Notice**”). In the event Sublandlord receives a Second WD Notice, and if Sublandlord fails to respond thereto within such three (3) business day period, then Sublandlord’s consent solely to the alterations set forth in the Second WD Notice (if and only if the Working Drawings have not been amended or modified in any way from those set forth in the Original WD Notice), shall automatically deemed to have been given. Nothing contained in the foregoing to the contrary shall in any way release Subtenant from procuring the

Prime Landlord's consent to the Working Drawings, nor shall Sublandlord's approval, or deemed approval, of any Working Drawings constitute Prime Landlord's consent to same, nor otherwise bind Prime Landlord in any way. Similarly, Prime Landlord's consent to the Working Drawings shall in no way constitute Sublandlord's consent to same, nor, in way, bind Sublandlord.

Prime Landlord's required response, if any, shall be pursuant to the terms of the Prime Lease and Sublandlord shall have no liability to Subtenant for Prime Landlord's failure to comply with the terms thereof. Subtenant shall be required to make such corrections as Sublandlord reasonably and/or as Prime Landlord may designate and resubmit the Working Drawings to Sublandlord and Prime Landlord for their consent, subject to Section 6(c) of the Sublease.

Subsequent to Sublandlord's and Prime Landlord's approval of the Working Drawings, any changes to the Working Drawings requested by Subtenant shall be subject to the prior written consent of Sublandlord, not to be unreasonably withheld, conditioned, or delayed, and Prime Landlord, except for minor changes thereto customarily made in the field, which minor changes shall not require the consent of Sublandlord or, unless required under the Prime Lease, Prime Landlord.

3. Work. Subtenant hereby agrees that the Work shall be completed by a general contractor ("**General Contractor**") and subcontractors (each, a "**Subcontractor**" and collectively, "**Subcontractors**") approved by Sublandlord, in its reasonable discretion, and Prime Landlord. Subtenant hereby agrees to indemnify and hold Sublandlord and Prime Landlord harmless from and against any loss, cost, damage, liability or expense (including reasonable attorneys' fees and court costs) incurred by Sublandlord and/or Prime Landlord with respect to all of Subtenant's obligations set forth in this Section 3. Subtenant shall cause the Work to be completed in the following manner: (a) free of all liens; (b) substantially in accordance with the Working Drawings; (c) in accordance with all of the applicable terms, requirements, specifications, and conditions set forth in the Prime Lease, including, without limitation, Article 6 (Alterations and Installations) and Schedule H (Conditions for Alterations); and (d) in accordance with all applicable laws, rules and regulations (it being acknowledged by Sublandlord and Subtenant the provisions of the Sublease regarding the filing of mechanics' liens against the Building (or underlying real estate on which the Building is located) by or through Subtenant shall control with respect to mechanics' liens filed against the Building (or underlying real estate on which the Building is located) as a result of the Work. Subtenant shall only conduct the Work during the hours permitted for such Work pursuant to the Prime Lease, unless otherwise consented to by Sublandlord and Prime Landlord, and shall cause as minimal disruption as reasonably possible to other tenants and subtenants of the Building.

4. Access to Premises for Performance of the Work. Subtenant may access the Premises to commence construction of the Work on the day which is the later to occur of: (a) the Sublease Commencement Date; (b) the date on which Subtenant receives Sublandlord's and Prime Landlord's final approval of the Working Drawings; (c) the date of delivery of insurance certificates by Subtenant, General Contractor and all Subcontractors pursuant to this Work Letter and Sublease; and (d) the date of issuance of all permits and governmental approvals as may be required for the commencement of the Work. For purposes of the Work, Subtenant shall have the non-exclusive right to use the Building's freight elevator subject to availability and scheduling as may be established by Sublandlord and Prime Landlord. Such freight elevator use by Subtenant shall be subject to any applicable charges and fees charged by Prime Landlord.

5. Cost of Work.

(i) Subject to the terms and conditions provided herein, Sublandlord shall provide to Subtenant a construction allowance in the amount of Three Hundred Twelve Thousand Four Hundred Eighty and No/100 Dollars (\$312,480.00) ("**Construction Allowance**") to be applied to the actual hard cost of completion of the Work based upon documented invoices approved by Sublandlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Subtenant shall provide Sublandlord with copies of invoices relating to the Work and customary lien waivers and other documentation reasonably required by Sublandlord and Prime Landlord with respect thereto. To the extent the actual hard cost of the Work ("**Cost of the Work**") exceeds the Construction Allowance ("**Excess Costs**"), Subtenant shall be obligated to pay, in a timely manner, the Excess Costs from its own funds. In addition, Subtenant shall be obligated to pay, in a timely manner, all soft cost and other expenses and fees incurred by Subtenant in connection with the Work, in a timely manner, from its own funds. In the event the Cost of the Work is less than the Construction Allowance ("**Savings**"), all Savings shall inure to the benefit of Sublandlord, and Subtenant shall have no right to any Savings.

(ii) Provided Subtenant is not in default under the Sublease beyond applicable notice, grace and/or cure periods, the Construction Allowance shall be paid to Subtenant for the Cost of the Work after final completion of the Work (as determined by Sublandlord in its reasonable discretion) within thirty (30) days after receipt and approval by Sublandlord of the following: (a) an application for payment and completion affidavit of General Contractor covering the Work (AIA forms G702-1992 and G703-1992); (b) all of Subtenant's General Contractor's, Subcontractors', and material suppliers' full and final waivers of liens (AIA form G706A-1994); (c) receipted bills covering all labor and materials expended and used; (d) final approved Working Drawings of the Work; (e) the certification of Subtenant's Architect that the Work has been installed in a good and workmanlike manner substantially in accordance with the Working Drawings (AIA form G704-2000); and (f) any other documentation or information required pursuant to the Prime Lease. Subtenant agrees promptly to pay to Subtenant's Contractors all amounts payable to them pursuant to their respective contracts in excess of the portion of the Construction Allowance disbursable hereunder; provided, however, Subtenant shall not make any payments to Subtenant's Contractors which are not then payable pursuant to said contracts.

6. Insurance. Subtenant shall fully comply with all insurance requirements of the "Tenant" as set forth in the Prime Lease, and shall, in addition to any requirement to name Prime Landlord as an additional insured, name Sublandlord as an additional insured on any commercial general liability policy and, to the extent not in violation of the Prime Lease, as loss payee with respect to the property insurance covering the Work.

7. Indemnification. To the fullest extent permitted by law, except for the negligence and/or willful misconduct of Sublandlord and/or Prime Landlord (solely to the extent Sublandlord is released from same under the Prime Lease), Subtenant shall indemnify, defend and hold harmless Sublandlord, Prime Landlord, and/or their respective directors, officers, shareholders, employees, and agents (collectively, "**Indemnified Parties**") from and against any and all loss, costs, expense, damage, injury, liability, claim, demand, penalty or cause of action (including attorneys' fees and court costs), directly or indirectly arising out of, resulting from or related to (in whole or in part):

(a) the Work; (b) this Work Letter; (c) any mechanics' liens which may be placed against the Building as a result of the Work; and (d) any act or omission in connection with the Work of Subtenant, General Contractor, any Subcontractor or any individual, partnership, joint venture or corporation: (i) directly or indirectly employed by General Contractor or a Subcontractor; or (ii) for whose acts or omissions General Contractor or any Subcontractor may be liable. Subtenant shall promptly advise Sublandlord in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Subtenant, at Subtenant's expense, shall assume on behalf of Sublandlord and conduct with due diligence and good faith the defense thereof with counsel reasonably satisfactory to Sublandlord; provided, that Sublandlord shall have the right to be represented therein by advisory counsel of its own selection and its own expense.

Prior to performing the Work at the Premises or Building, all contractors (including the General Contractor and all Subcontractors) shall be required to execute, and deliver, an indemnity agreement to Prime Landlord in the form attached to Schedule H of the Prime Lease.

8. Acknowledgment of Rent Commencement. Subtenant acknowledges that, as of the Sublease Commencement Date, the Base Rent shall be paid in accordance with the terms of Section 4 of the Sublease, whether or not Subtenant has completed the Work.

9. Approvals by Prime Landlord. Sublandlord shall request Prime Landlord's approval to any matter requiring Prime Landlord's approval hereunder promptly upon Subtenant's request.

[THE END OF WORK LETTER]

EXHIBIT B
LIST OF FURNITURE

505 3rd Floor Furniture Inventory

<u>CIT INVENTORY</u>	<u>ITEMS</u>	<u>QUANTITY</u>
<u>A Conference Room 3A</u>	Steelcase Convene Wedge 8' Table	1
	Steelcase Convene Credenza 60x24	1
	Keilhauer Elite Mid Back Faux (Ultrasuede) Chairs	8
<u>B Pantry</u>	Chairmaster Bar Stools	3
	Subzero Refrigerator	1
	Amana Microwave	1
	Oasis Water Machine	1
	Uline Ice Maker	1
	Dell Monitor	1
<u>D Ladies Room</u>	Gray Trash Receptacle	1
<u>E Other</u>	Steelcase—36" Lateral File Cabinets (5 Drawers)	4
	Steelcase—36" Lateral File Cabinets (2 Drawers)	2
	Steelcase—30" Lateral File Cabinets (2 Drawers)	18
	Steelcase—36" Lateral File Cabinets (3 Drawers)	2
	Steelcase—30" Lateral File Cabinets (3 Drawers)	14
	Plastic Waste Paper Baskets	42
	Blue Recycle Bin	6
	Keys for all Furniture & File Cabinets	
<u>F "A" Office Modular Desk Sets—Elective Elements</u>	P Top Desk With 2 Rectangular Worksurfaces	3
	3 Lateral Files	9
	Wall Mounted Storage Unit and Tack Boards	3
	Hardwired Task Lights and Ambient Lights Above	
	Wall Mounted Storage Unit.	3
	Mobile Pedestal	3
	Steelcase Leap Desk Chair	3
	Geiger Guest Chairs	6
<u>G "B" Office Modular Desk Sets—Elective Elements</u>	Bullet Top Desk With 2 Rectangular Worksurfaces	22
	2 Lateral Files	44
	Wall Mounted Storage Unit and Tack Boards	22
	Hardwired Task Lights and Ambient Lights Above	
	Wall Mounted Storage Unit.	22
	Mobile Pedestal	22
	Steelcase Leap Desk Chair	22
	Geiger Guest Chairs	44

<u>CIT INVENTORY</u>	<u>ITEMS</u>	<u>QUANTITY</u>
<u>H Powered Steelcase Montage Workstation</u>	Rounded Work Surface With Box/Box/File	21
	2 Lateral Files	42
	Slat Wall	21
	Monitor Arm	19
	Steelcase Leap Desk Chair	18
	In/Out Tray	15
	Pen/Pencil Holder	4
	Dual Paperclip Holder	8
<u>I Powered Steelcase Montage Touchdown</u>	Rounded Work Surface With Box/Box/File	2
	2 Lateral Files	4
	Slat Wall	2
	Monitor Arm	1
	Steelcase Leap Desk Chair	2
<u>J Locker Room</u>	Republic Standard Lockers 18" x 18" x 72"	4

EXHIBIT C
LIST OF SERVICE PROVIDERS

AAA LOCKSMITHS

(Keys) 44 West 46th St.
New York, N.Y. 10036
Bus: 212- 840-3939
Fax: 212- 921-5086
Email: www.aahardware.com

AFD CONTRACT FURNITURE

(Office, Workstation Furniture
& File Cabinets)
VALERIE PEASE
88 West End Avenue
New York, New York 10023
Bus: 212- 626-9419
Cell: 917- 608-7628
Fax: 212- 626-9479
E-mail vpease@afd-inc.com
JACKIE LUI
Email: jlui@adf-inc.com

AMATO

(Furniture)
JOHN AMATO
51-02 21st Street
Long Island City, NY 11101
Bus: 212-925-3639
Fax: 212-941-8637
Email: JAmato@amatofurniture.com

AMERICAN CHRISTMAS DECORATING

(Holiday Decorations @ 505 & 11W)
ROBERT SOLOFF
1135 Bronx River Avenue
Bronx, New York 10472
Bus: 718- 402-9700

CAPITAL MOVING & STORAGE

(Movers)
STEVE McINERNEY
Bus: 201- 332-7510
Cell: 201- 376-5089
Fax: 201- 332-7178
Email: steve@capitalmoving.net

CON EDISON

4 Irving Place
Cooper Station
P.O. Box 138
New York, N.Y. 10276
Bus: 800-752-6633
Email: www.coned.com

CONFIDENTIAL SHREDDING

(Shredding bins)
STEVEN ANASTASIO
P.O. Box 8643
Woodcliff Lake, NJ 07677
Bus: 201- 573-1400
Fax: 201- 573-1496
Email: shredconfidential.com

CONSOLIDATED CARPETS

(Carpeting)
DAVE WHITE
45 West 25th Street
New York, New York 10010
Bus: 212- 226-4600, Ext. 235
Fax: 212- 226-4644
Cell: 732-809-9132
dwhite@consolidatedcarpet.com

DAY & NITE REFRIGERATION

(Service for Refrigerators & Ice makers)
PAT FAVA
10 Charles Street
P.O. Box 310
New Hyde Park, New York 11040
Bus: 516- 378-1176
Fax: 516- 378-1735

DIRECT TV, INC.

(Plasma screens pantries)
Business Service Center
PO Box 5392
Miami, Fla. ###-###-####
Bus: 888- 388-4249

GENERAL PLUMBING

(24 hr. Emergency Plumber)
ROENEN ISRAEL — Manager
Bus: 212- 972-5000 ext. 107
ANDREW MORAN — Plumber
Bus: 212- 972-5000
Bus: 718-782-4400
Fax: 718-782-2405

HARVARD MAINTENANCE

(Cleaning Company)
NICOLE JENNINGS —Account Executive
570 Seventh Ave.
New York, N.Y. 10018
Bus: 212- 730-0001
Fax: 212-302-9560
Cell: 917- 560-8253
Email: Nicole@harvardmaint.com
PETER PAPANIKU — Night Supervisor
Cell: 917- 299-9173

HORTICULTURAL CREATIONS INC.

(Interior plants)
DOUG LINK
53-55 Beach Street
New York, New York 10013-2399
Bus: 212- 925-5200
Fax: 212- 925-7563
Email: douglink@hcinc.org

KIPP STAWSKI MANAGEMENT

GROUP
(505 Landlord)
1212 6th Avenue
New York, N.Y. 10021
ARTIE GIAMMARINO
Building Manager
TONY KLOBOCISTA
Tenant Coordinator
505 5th Avenue
Bus: 212- 370-0635
New York, New York 10017
Cell: 646- 465-0060
Bus: 212- 370-0635
Email: Tonyk@kipp-stawski.com
Cell: 917-771-7449
Fax: 212-370-0133
Email: artie505@yahoo.com

LVC INTERIORS, INC.

(MOTORIZED SHADES: 7TH FLOOR)
PAUL RUTNIK
176 Kansas Street
Hackensack, N.J. 07601
Bus: 201- 525-0222
Fax: 201- 525-0345
Email: paul.rutnik@lvcinteriors.com

MIDHATTEN WOODWORKING CORP.

(Repair Wood Interiors)
STEVE GOLDBERG
P.O. Box 163
3130 Bordentown Road
Old Bridge, N.J. 08857
Bus: 732- 727-3020
Fax: 732- 727-0201
Cell: 646- 208-9875
Email: sgoldberg@midhatten.com

P.J. MECHANICAL

(Air Conditioning Maintenance)
ARNOLD VARELA — Field Supervisor
135 West 18th Street
New York, New York 10011-4153
Bus: (212) 886-6666
Fax: (212) 229-2216
Cell: (917) 699-9433
Email: avarela@pjmechanical.com

PETROCELLI ELECTRIC CO., INC.

(Light Maintenance)
ED PERRY
22-09 Queens Plaza North
Long Island City, New York 11101-4003
Bus: (718) 752-2312
Fax: (718) 937-6628
Cell: (917) 670-1968
Email: e.perry@petrocelli.com

SMITH GRAPHICS, INC.

(Signage)
RICK SMITH
99 Farrell Street
Long Beach, NY 11561
Bus: 631- 420-4180
Email: rich@smithgraphicsinc.com
T.F. NUGENT, INC.
(Painting Contractor)

COFFEE DISTRIBUTING CORP.
(Coffee, vending machine equipment, & supplies)
ROB KRENSE
Bus: 800- 356-8881. Ext. 147 (Jose)
E-mail:RobK@cdccoffee.com
Peggy Susino — Account Rep
Bus: 516-746-7010 Ext.143

FIRE EXTINGUISHER MAINTENANCE
CO.
(Annual Fire Extinguisher Maintenance)
P.O. Box 100115
166 Broadway
Staten Island, New York 10310-0115
Bus: 718- 727-0701

T.F. NUGENT, INC
ANDY NUGENT
10 Rockefeller Plaza
New York, New York 10020
Bus: 212- 757-1995 ext. 11
Cell: 917- 560-1838
Fax: 212- 956-3148

APPROVED CONTRACTOR LIST

505 FIFTH AVENUE

GENERAL CONTRACTORS

1. StructureTone (212) 481-6100
Contact: Robert Leon
2. Tri-Star Construction (212) 486-0808
Contact: Mike Barton
3. OPT (212) 239-1557
Contact: Oliver Papraniku
4. J.T. Megan Construction (212) 790-4200
Contact: Maurice Regan

DRYWALL, CARPENTRY & ACOUSTICS

1. San Jon, Inc. (914) 878-2210
2. Ess & Vee (718) 786-1100
3. Component Assembly System, Inc. (914) 738-5400
4. Superior Acoustics Drywall (631) 269-4500
5. Concept Carpentry (212) 636-0260

CARPET & RESILIENT FLOORING

1. Flooring by Cantabria, Inc. (212) 973-9752
2. Ashland (845) 267-0059
3. Sherland & Farrington (212) 206-7500
4. BC/Exchange (212) 391-7727

PAINTING & WALLCOVERING

1. L & L Painting Co., Inc. (516) 349-1900
2. Hudson Shatz Painting (212) 757-6363

3. Bond Painting (212) 944-0070

SPRINKLERS

- 1. Sirina Fire Protection (516) 942-0400
- 2. Abco Peerless Sprinkler Corporation (516) 294-6850
- 3. Federated Mechanical Corp. (212) 367-7658
- 4. Acme Sprinkler Corp. (212) 255-4034

PLUMBING

- 1. City Suburban/Plumbing Corp. (914) 738-0894
Contact: Carmine Sprio
- 2. Par Plumbing (516) 887-4000
- 3. MJM Plumbing Inc. (212) 966-2444
- 4. Parkview Plumbing (718) 792-3500

HVAC

- 1. Kaback Enterprises, Inc. (212) 645-5100
- 2. Admore Air Conditioning Corp. (914) 237-3000
Paul Rowley
- 3. Concept Air Conditioning & Refrigeration (718) 326-2660
Jessica Delgeorge

ELECTRICAL

- 1. Michael Mazzeo Electric Corp. (718) 361-0306
Contact: Nicholas Imperato
- 2. E-J Electric (718) 786-9400
Contact: Ed Harley
- 3. H & L Electric (718) 361-6400
Contact: Barry Berger
- 4. Polo Electric (212) 627-8220
Contact: Dino Stathis

5. All State Electric Corp.
Contact: Lenny Sainovski

(212) 244-3580

WOODWORKING

- | | |
|---------------|----------------|
| 1. NJS | (908) 687-8443 |
| 2. Hordic | (718) 456-7000 |
| 3. Mid-hattan | (732) 727-3020 |

FILING AGENT

- | | |
|--|----------------|
| 1. Metropolis Consulting Group
Contact: Frank Fortino | (212) 233-6344 |
|--|----------------|

BUILDING LOCAL LAW 5 VENDOR

- | | |
|--------------------------|----------------|
| 1. Cross Fire & Security | (718) 234-8600 |
|--------------------------|----------------|

ENGINEERS

- | | |
|--|----------------|
| 1. JB & B Consulting Engineers | (212) 530-9300 |
| 2. Jack Green Associates | (212) 629-0850 |
| 3. Rossenwasser Grossman
Structural Engineers | (212) 564-2424 |

DOOR MAINTENANCE

- | | |
|-----------------------------|----------------|
| 1. Versatile Services | (201) 541-0036 |
| 2. Harvard Door Maintenance | (212) 730-0001 |

EXHIBIT D

SUBTENANT'S PROPOSED SIGNAGE



D-1

EXHIBIT E

COPY OF PRIME LEASE IS ATTACHED HERETO

E-1

EXHIBIT F

FORM OF PRIME LANDLORD'S CONSENT

(See attached)

F-1

CONSENT TO SUBLEASE

FIFTH @ 42nd LLC, a Delaware limited liability company, having an office at 565 Fifth Avenue, 30th Floor, New York, New York 10017 (herein called "Landlord"), hereby consents to the subletting by CIT GROUP INC., a Delaware corporation, having an office at 505 Fifth Avenue, New York, New York (herein called "Tenant"), to Mesoblast, Inc., a Delaware corporation, having an office at 275 Madison Avenue, 4th Floor, New York, New York 10016 (herein called "Subtenant"), of the entire third (3rd) floor of the building commonly known as 505 Fifth Avenue, New York, New York (such space hereinafter called the "Sublet Space" and such building hereinafter called the "Building") for a term expiring not later than May 30, 2021, (which such subletting is hereinafter referred to as the "Sublease") which premises are now leased and demised by Landlord to Tenant by that certain lease dated June 7, 2005, (said lease as the same may have been and may hereafter be amended by any indentures or agreements supplemental thereto, is herein called the "Lease"), such consent being subject to and upon the following terms and conditions, to each of which Landlord, Tenant and Subtenant expressly agree:

1. Nothing herein contained shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions or conditions contained in the Lease (except as may be herein expressly provided), or to waive any breach of Tenant in the due keeping, observance or performance thereof.

2. Tenant shall be and remain liable and responsible for the due keeping, performance and observance throughout the term of the Lease, of all of the covenants, agreements, terms, provisions and conditions therein set forth on the part of Tenant to be kept, performed and observed and for the payment of the fixed rent, additional rent and all other sums now and/or hereafter becoming payable thereunder, expressly including as such additional rent, any and all charges for any property, material, labor, utility or other services furnished or rendered by Landlord in or in connection with the Sublet Space in accordance with the Lease (each a "Service," collectively, "Services"), whether for, or at the request of, Tenant or Subtenant; provided, however: (i) Tenant shall have no obligation to pay for any Services provided to Subtenant and/or the Sublet Space if Tenant has not received evidence from the Landlord that such Services were requested by Subtenant; and (ii) unless Tenant shall have previously approved or requested such Services in writing, Tenant shall have no obligation to pay for any Services provided to Subtenant and/or the Sublet Space if the cost of any particular Service exceeds Five Thousand and No/100 Dollars (\$5,000.00).

3. The Sublease shall be subject and subordinate at all times to the Lease, and to all of the covenants, agreements, terms, provisions and conditions of the Lease and of this Consent, and Subtenant shall not do, permit or suffer anything to be done in, or in connection with Subtenant's use or occupancy of, the Sublet Space which would violate any of said covenants, agreements, terms, provisions and conditions. Upon the occurrence of an event of termination, re-entry or dispossession by Landlord under the Lease in connection with or as a consequence of a default by Tenant under the Lease, Landlord may at its option, take over all of the right, title and interest of Tenant as sublessor under the Sublease and in any such event Subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of the Sublease, and in such event, Subtenant's possession

of the Sublet Space shall not be disturbed except that Landlord shall not (a) be liable for any previous act or omission of Tenant under the Sublease, (b) be subject to any offset which theretofore accrued to Subtenant against Tenant or (c) be bound by any previous modification of the Sublease to which Landlord has not consented or by any previous pre-payment of more than one month's fixed rent or additional rent.

4. This Consent shall not be construed as a consent by Landlord, to, or as permitting, any other or further subletting by either Tenant or Subtenant or any assignment of the Sublease, and no such further assignment or subletting shall be made without the prior written consent of Landlord in each instance, except as set forth in Section 11.02 of the Lease, the provisions of which Landlord hereby agrees shall also be applicable with respect to Subtenant.

5. The Sublet Space shall (subject to all of the covenants, agreements, terms provisions and conditions of the Lease) be used solely for general, administrative and executive office purposes.

6. Upon the expiration or any earlier termination of the term of the Lease with respect to the Sublet Space or in case of the surrender of the Lease by Tenant to Landlord, the Sublease and the term and estate thereby granted shall terminate as of the effective date of such expiration, termination or surrender, and Subtenant shall vacate the Sublet Space on such date.

7. The Landlord hereby represents and warrants to Tenant and Subtenant that as of the date hereof, to Landlord's best knowledge, Tenant is not in, and has no continuing default under the terms of the Lease, and no event has occurred which with the giving of notice or the passage of time would constitute a default under the Lease.

8. A true and complete copy of the Sublease and a true and complete copy of each amendment thereto shall be delivered to Landlord within ten (10) days after the full execution and delivery thereof by the parties thereto; it being understood that Landlord shall not be deemed to be a party to the Sublease or any such amendment nor be bound by any of the covenants, agreements, terms, provisions or conditions thereof and that neither the execution and delivery of this Consent nor the receipt by Landlord of a copy of the Sublease or of a copy of any such amendment shall be deemed to change any provision of this Consent or to be a consent to, or an approval by Landlord of, any covenant, agreement, term, provision or condition contained in the Sublease or any such amendment.

9. Subtenant shall attempt to obtain and maintain throughout the term of the Sublease, in Subtenant's fire insurance policies covering Subtenant's property in the Sublet Space, and Subtenant's use and occupancy of the Sublet Space, and/or Subtenant's profits (and shall cause any other permitted occupants of the Sublet Space to attempt to obtain and maintain, in similar policies), provisions to the effect that such policies shall not be invalidated should the insured waive, in writing, prior to a loss, any or all right of recovery against any party for loss occasioned by fire or other casualty which is an insured risk under such policies. If at any time the fire insurance carriers issuing such policies shall exact an additional premium for the inclusion of such or similar provisions, Subtenant shall give Landlord and Tenant notice thereof. In such event, if either Landlord or Tenant requests, Subtenant shall require the inclusion of such or similar provisions by

such fire insurance carriers, and Tenant shall reimburse Subtenant for such additional premium for the remainder of the term of the Sublease. As long as such or similar provisions are to be included in such fire insurance policies then in force, Subtenant hereby waives (and agrees to cause any other permitted occupants of the Sublet Space to execute and deliver to Landlord written instruments waiving) any right of recovery against Landlord, Tenant, any lessors under any ground or underlying leases, any other tenants and occupants of the Building, and any servants, employees, agents or contractors of Landlord, Tenant or of any such lessor, or of any such other tenants or occupants, for any loss occasioned by fire or other casualty which is an insured risk under such policies. During any period while the foregoing waiver of right of recovery is in effect, Subtenant, or any other permitted occupant of the Sublet Space, as the case may be, shall look solely to the proceeds of such policies to compensate Subtenant or such other permitted occupants for any loss occasioned by fire or other casualty which is an insured risk under such policies. Landlord agrees that the provisions of Section 9.08 of the Lease shall also apply as between Landlord and Subtenant.

10. Neither the Sublease, this Consent to Sublease, a Memorandum of the Sublease or any other document setting forth any of the information contained therein shall be recorded.

11. Wherever in the Lease Tenant has agreed to indemnify, defend, save and hold Landlord harmless from and against any action, claim or proceeding brought against Landlord by third parties, Subtenant hereby agrees jointly and severally with Tenant to so indemnify, defend, save and hold Landlord harmless with respect to any such claim which arises out of or in connection with Subtenant's use and occupancy of the Sublet Space

12. Landlord represents and warrants to Tenant and Subtenant that Landlord has the authority to execute this Consent as Landlord under the Lease, and no other consents or authorizations are required by Landlord or by any third parties, including any third-party lenders or landlords having any interest in the Building, the real property beneath the Building and/or any portion thereof, in connection with Tenant's and Subtenant's entering into the Sublease and Landlord's consent thereto.

13. This Consent shall be binding upon and shall inure to the benefit of the parties hereto and their respective beneficiaries, successors and assigns. This Consent may be executed in any number of counterparts, each of which shall be deemed an original and which, when taken together, shall constitute a single instrument. The parties hereto agree that any signatures necessary to effectuate this Consent transmitted by facsimile shall be binding and enforceable against, and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns as if such signatures were an original. This Consent shall be governed by and interpreted under the laws of the State of New York. If any provision, clause, word or designation of this Consent is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Consent and the invalidity thereof shall not affect any other provision, clause, word or designation contained herein.

14. The parties agree that the provisions of Section 9.07 of the Lease shall be applicable to any liability that Landlord may have pursuant to this Consent to either Tenant or Subtenant, as the case may be, as shall the provisions of Section 20.01 of the Lease in the event of any transfer of title to the Land (as defined in the Lease) and Building or any lease thereof.

15. Simultaneously herewith, Tenant is paying to Landlord the sum of One Thousand and No/100 Dollars (\$1,000.00), and the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) to Morrison Cohen LLP in connection with Landlord's review of, and consent to, the Sublease.

16. Annexed hereto are Landlord's latest Rules and Regulations for Alterations and Approved Contractors List comprising respectively Exhibits H and C to the Lease, to be deemed to be in replacement for those Schedules annexed to the Lease.

17. Landlord hereby approves of the signage described on Exhibit D to the Sublease.

18. Landlord shall make available for Subtenant's use for supplemental air-conditioning up to fifteen (15) tons of condenser water, and Subtenant shall pay to Landlord an annual fee therefor at the rate per ton set forth in the Lease based on Subtenant's actual usage.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed as of the _____ day of _____, 2011.

FIFTH @ 42nd LLC, Landlord

WITNESS:

By: _____
Name: _____
Title: _____

CIT GROUP, INC., Tenant

WITNESS:

By: _____
Name: _____
Title: _____

MESOBLAST, INC.

WITNESS:

By: _____
Name: _____
Title: _____

Dated

Sublease

Premises: Level 38, 55 Collins Street, Melbourne

Parties

Collins Place Pty Ltd

ACN 084 238 497

Collins Place No. 2 Pty Ltd

ACN 090 537 643

AMP Capital Investors Limited

ACN 001 777 591

Australia and New Zealand Banking Group Limited

ACN 005 357 522

Mesoblast Limited

ACN 109 431 870

Guy Albeck
Norton Rose Fulbright Australia
485 Bourke Street
Melbourne VIC 3000
Tel: +61 (0)3 8686 6844
www.nortonrosefulbright.com
Our ref: 2806706

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Schedule 1 Reference Schedule

Item 1 **Landlord**

Australia and New Zealand Banking Group Limited ACN 005 357 522 of 833 Collins Street, Docklands, Victoria, 3008

Email address for service (clause 23.1)

property.notices@anz.com

Item 2 **Tenant**

Mesoblast Limited ACN 109 431 870 of level 39, 55 Collins Street, Melbourne, Victoria, 3000

Email address for service (clause 23.1)

peter.howard@mesoblast.com

Item 3 **Premises**

Level 38 of the Building comprising an Area of 1035.9 square metres, and being the area shown on the plan attached as Annexure B

Item 4 **Commencement Date and Rent Commencement Date [clause 2.1 and clause 4.1]**

Commencement Date

14 April 2014

Rent Commencement Date

14 April 2014

Item 5 **Termination Date [clause 2.1]**

13 April 2020

Item 6 **Term [clause 2.1]**

Six (6) years

Item 7 **Further Term (clause 3)**

Six (6) years

Last Day for exercise of option

14 June 2019

Item 8 **Rent (clause 4.1)**

\$694,053.00 per annum plus GST

- Item 9 **Index Review Dates [clause 4.4]**
Not applicable
- Item 10 **Market Review Dates [clause 4.5]**
13 April 2020
- Item 11 **Fixed Rent Increase Dates [clause 4.10]**
Each anniversary of the Commencement Date during the Term and Further Term (excluding the commencement date of the Further Term which is a Market Review Date)
Fixed Rent Increase Percentage [clause 4.10]
3.75%
- Item 12 **Use of Premises (clause 7.1)**
Commercial office.
- Item 13 **Hours of use and air conditioning:**
(a) Hours of use (Building Rule 17):
Monday to Friday (excluding Public Holidays)
8.00am to 6.00pm
(b) Hours of air conditioning (Building Rule 25):
Monday to Friday (excluding Public Holidays)
7.30am to 6.00pm
- Item 14 **Amount of Public Risk Insurance [clause 14.1(1)]**
\$20,000,000
- Item 15 **Amount of operating expenses at the Commencement Date [clause 5.4]**
Not applicable
- Item 16 **Tenant's Proportion (clause 5.3):**
2.25% as at the commencement date
- Item 17 **Bank Guarantee amount (clause 18.1)**
An amount equal to 14 month's Rent plus GST as at the second anniversary of the Commencement Date, being \$958,756.50 (including GST).
- Item 18 **Guarantors (clause 19)**
Not applicable

Schedule 2 Special Conditions

1 Special conditions to prevail

The special conditions in this Schedule 2 will prevail to the extent there is any inconsistency between the special conditions and the Lease.

2 Early access

2.1 Access

(1) Despite the Commencement Date, the Tenant may access the Premises from the date which is the latest of:

- (a) the date this Lease is executed by the Tenant and delivered to the Landlord;
- (b) the date on which the Tenant has complied with its insurance obligations under clause 14;
- (c) the date on which the Tenant provides the Bank Guarantee to the Landlord pursuant to clause 18; and
- (d) 15 December 2013,

solely for the purposes of preparing for the Tenant's fitout of the Premises and subject to obtaining the Landlord's consent in accordance with special condition 3.1, undertaking the Tenant's fitout of the Premises.

(2) During any period of access granted under this special condition 2.1, and prior to the Rent Commencement Date:

- (a) the Tenant is not required to pay Rent, but must pay for any costs or charges under clause 6.3; and
- (b) the Tenant is to be provided with reasonable use of the goods lift (or dedicated passenger lift, as the case may be) and loading dock, as determined by the Landlord (acting reasonably).

2.2 Nature of access

Any access to the Premises pursuant to this special condition 2:

- (1) is granted by way of licence only on a personal, non-transferable and non-exclusive basis and otherwise on the terms of this Lease, to the extent they are applicable to a licence and not inconsistent with the provisions of this special condition 2;
- (2) will be solely for the purposes of planning and carrying out the Tenant's fitout of the Premises; and
- (3) will be at the Tenant's sole risk in all respects.

3 Fitout

3.1 Approval

- (1) The Tenant must seek the Landlord's approval to the Tenant's fitout of the Premises and provide to the Landlord with five (5) copies of the plans, design drawings and specifications in respect of the Tenant's fitout of the Premises which must comply with any tenancy fitout guide applicable to the Building and issued by the Landlord to the Tenant.
- (2) The Tenant acknowledges that, subject to any provisions to the contrary in these special conditions, the provisions of clauses 13.1(3)(g), 13.1(4) and 13.1(6) apply to any alterations comprised in the Tenant's proposed fitout works, to the extent applicable.
- (3) Subject to the Landlord obtaining the Head Landlord's and Concurrent Landlord's consent to any structural works, the Landlord will act reasonably and promptly in considering the Tenant's proposed fitout works, provided the Tenant has complied with this special condition 3.

3.2 Approval costs

The Tenant is not required to pay the Landlord's Costs in considering and approving of the Tenant's proposed fitout, except if the Landlord requires advice or input from external consultants, in which case such Costs must be paid to or at the direction of the Landlord on demand.

3.3 Fitout contractors

The Tenant may use its own contractors to perform its fitout works:

- (1) provided those contractors are suitably qualified and experienced, as determined by the Landlord, the Head Landlord and the Concurrent Landlord, acting reasonably;
- (2) unless, depending on the specialised nature of the works to be performed or the impact the works may have on the structure of the Building or Services to the Building, the Landlord, the Head Landlord and Concurrent Landlord, acting reasonably, requires that their preferred contractors are used; and
- (3) except for the engagement of any security contractors, in relation to which the Landlord, the Head Landlord and Concurrent Landlord may require the Tenant to engage the Landlord's, the Head Landlord's or the Concurrent Landlord's security contractors at the Landlord's absolute discretion.

4 Fitout Contribution

4.1 Payment

- (1) The Landlord will provide a contribution to the costs of the Tenant's fitout works in an amount equal to \$886.00 per square metre (plus GST) of the Premises, being \$917,807.40, (plus GST) based on the Area of the Premises being 1035.9 square metres (**Fitout Contribution**).
- (2) The Landlord will nominate those items to which the Fitout Contribution is to apply as soon as reasonably practicable after the Tenant submits its plans, design drawings and specifications for its fitout under special condition 3.1(1), with such items to be nominated in an order of priority determined by the Landlord in its absolute discretion.

- (3) The Fitout Contribution is to be paid by the Landlord:
- (a) directly to the Tenant in respect of the relevant works;
 - (b) in two separate payments, as follows:
 - (i) one payment halfway through completion of the Tenant's fitout; and
 - (ii) the final payment within 14 days of practical completion of the Tenant's fitout; and
 - (c) only upon receipt of certification from a suitably qualified quantity surveyor, project manager or architect that the works to which the relevant part of the Fitout Contribution is to be applied are complete and the corresponding tax invoices received by the Landlord are in order for payment, supported by an itemised schedule breaking down the components of the works, consistent with special condition 4.1(2), to enable the Landlord to procure a depreciation schedule;
- and in any event will not be paid prior to the occurrence of the events listed in special conditions 2.1(1)(a) to 2.1(1)(c) (both inclusive).

5 Ownership

- (1) In respect of any works to which the Fitout Contribution will be applied (**Landlord Owned Works**):
- (a) the Landlord shall own the fitout, property and other items comprised in the Landlord Owned Works;
 - (b) the Landlord appoints the Tenant as its lawful agent and the Tenant must enter into any contract in respect of the Landlord Owned Works as the disclosed agent of the Landlord; and
 - (c) the Landlord is under no obligation to pay the Fitout Contribution (in whole or part) unless the Tenant has complied with special condition 5(1)(b).
- (2) The Tenant will indemnify and keep indemnified the Landlord for any Claim (other than for payment of the Fitout Contribution to the Tenant) in relation to the Landlord's appointment of the Tenant as its lawful agent.
- (3) The Landlord shall not be liable to the Tenant or any other person for any delay, variation or other claim or sum whatsoever in respect of the Landlord Owned Works, even though they are works to which the Fitout Contribution applies, other than the payment of the Fitout Contribution.
- (4) This special condition 5 is without prejudice to the Tenant's obligations in relation to:
- (a) maintenance, repair, make good and insurance in respect of the Premises and items therein; and
 - (b) alterations to, and installation of fixtures and fittings in the Premises,

including but not limited to those obligations set out in clauses 10 and, to the extent not inconsistent with the Tenant's obligations under special condition 3 and this special condition 5, those obligations extend to the Landlord Owned Works.

- (5) Within thirty (30) days of practical completion of the Landlord Owned Works, the Tenant must furnish to the Landlord a costed schedule report:
- (a) prepared by a qualified quantity surveyor;
 - (b) consistent with the items to which the Fitout Contribution is or has been applied; and
 - (c) otherwise to the satisfaction of the Landlord (acting reasonably),

listing those items included in the Landlord Owned Works which will be owned by the Landlord under this special condition 5, and in a form sufficient, as determined by the Landlord, for the Landlord to utilise as a basis for the preparation of a depreciation schedule.

6 Landlord Works

6.1 Works

The Landlord will procure the performance of the following works to the Premises:

- (1) Installation of double glass entry doors on the south-eastern side of the floor of the Building on which the Premises are located, the specifications of which will be determined at the Landlord's discretion (acting reasonably); and
- (2) such works to render the Premises refurbished to a standard consistent with level 31 of the Building as at the date of this Lease (as determined by the Landlord, acting reasonably).

(collectively, the **Landlord Works**).

6.2 Timing

- (1) The Landlord will endeavour to complete the Landlord Works as soon as reasonably practicable after the later of:
 - (a) the date this Lease is executed by the Tenant and delivered to the Landlord;
 - (b) the date on which the Tenant has complied with its insurance obligations under clause 14 and obtained any other necessary insurances in respect of its fitout works reasonably required by the Landlord; and
 - (c) the date on which the Tenant provides the Bank Guarantee to the Landlord pursuant to clause 18.
- (2) The Landlord will:
 - (a) consider, acting reasonably, any material concerns raised by the Tenant in relation to the Landlord Works; and
 - (b) undertake any rectification works it considers are needed to address the Tenant's concerns, provided such concerns are raised by the Tenant prior to commencing its fitout of the Premises.

6.3 Acceptance

Subject to compliance by the Landlord with special conditions 6.1 and 6.2, the Tenant must accept the Premises in their condition on completion of the Landlord Works and may not:

- (1) object;
- (2) claim against the Landlord or the Landlord's Employees;
- (3) rescind or purport to rescind or terminate this Lease;
- (4) withhold or offset any Rent or other monies due to the Landlord under this Lease,

because of or in respect of the condition of the Premises upon completion of the Landlord Works.

7 Condition report

As soon as practicable after completion of the Landlord Works, the Landlord will procure a condition report detailing the condition of the Premises (**Condition Report**):

- (1) prepared by an appropriately qualified and independent consultant of the Landlord's choosing, in consultation with the Tenant;
- (2) the costs of which will be shared by the Landlord and Tenant, with the Tenant's share to be paid to the Landlord by the Tenant within 14 days of a written request by the Landlord;
- (3) which the Landlord and Tenant now agree, except in the case of manifest error, will be conclusive evidence as to the condition of the Premises as at the First Occupancy Date; and
- (4) which the Tenant authorises the Landlord to attach to this Lease as Annexure C to this Lease.

8 Make good

- (1) Despite anything to the contrary in this Lease:
 - (a) if the Tenant either validly exercises its option for the further term under clause 3; and
 - (b) the Landlord does not terminate the lease during the course of that further term,

the Tenant may but is not required to comply with clause 12, both on or before the date the initial Term of this Lease ends and on or before the lease for the further term ends, but must leave the Premises, Landlord's Fittings and Tenant's Fittings in a clean and tidy condition to the satisfaction of the Landlord, acting reasonably.

- (2) If, despite special condition 8(1), the Tenant elects to remove any Tenants Fittings upon expiry of the further term under clause 3:
 - (a) it must immediately make good any damage caused in doing so, including but not limited to patching, repainting and otherwise returning all altered surfaces to their original condition; and
 - (b) the provisions of clauses 12.3 to 12.8 (both inclusive) will apply to such make good works, with the 'Tenant's Works' constituting the works described in special condition 8(2)(a).

9 Car parking

The Tenant:

- (1) acknowledges that it is aware that the Building car park is not operated by the Landlord, but by a separate operator and manager; and
- (2) warrants that the Landlord has made no representations and that the Tenant has relied solely on its own enquiries in relation to the car park, including but not limited to car parking availability or rates.

10 Directory board and lift lobby signage

The Tenant may place its name on the tenancy directory board in the lobby of the Building during the Term, the format and location of which will be at the Landlord's reasonable discretion.

11 After hours air conditioning

The Tenant acknowledges that:

- (1) if it requires air-conditioning outside the hours in Item 13(b) (**After Hours Air-conditioning**) it must submit a prior request to the Manager;
- (2) it must pay the costs of After Hours Air-conditioning to the Landlord on demand, which as at the Commencement Date, will be levied at \$45.00 per hour per floor of the Building; and
- (3) the charges for After Hours Air-conditioning may be increased by the Landlord from time to time.

12 Additional amendments to clauses

12.1 Definitions

- (1) Clause 1.1(18) is amended to read as follows:

'Cost or Costs means the amount of any cost, charge, expense, outgoing, payment or other expenditure of any nature incurred by or on behalf of the Landlord and whether or not it is:

- (a) *direct;*
- (b) *indirect or consequential;*
- (c) *accrued or paid; or*
- (d) *reasonable or not,*

and includes all direct legal costs (solicitor, Counsel and Court costs) of the Landlord on a full indemnity basis provided that for the purposes of:

- (e) special condition 3.2 and clauses 5.2, 8.2 (1)(f),13.1, 14.1(2) and 15.4(2), paragraphs (b) and (c) of this definition will not apply; and
 - (f) clauses 8.2(1)(f) and 13.1, paragraph (d) of this definition will also not apply;'
- (2) Clauses 1.1(27)(a) and 1.1(27)(b) are deleted and replaced with the words 'Deliberately omitted'.
- (3) Clause 1.1(44) is amended to read as follows:

Tenant's Employees includes the Tenant's employees, contractors, agents, consultants, customers, clients, visitors, subtenants, licensees or others who may be in the Building or on the Land, with or without invitation (other than employees, contractors and agents of the Landlord, Head Landlord and Concurrent Landlord);

12.2 Parties and capacity

Clause 1.3(3)(c) is amended to read as follows:

'all authorisations by any Authority (whether in Australia or not) that are required or will be required in connection with the execution and delivery of, the performance of obligations under or the validity or enforceability of, the Tenant's obligations under this Lease have been obtained or effected and are or will be fully operative and in full force and effect'

12.3 Inconsistency

Clause 1.6 is amended by inserting a new paragraph (b):

'The Landlord confirms that, to the best of its knowledge, nothing in the Head Lease does or will prejudice, undermine or invalidate this Lease.'

12.4 Holding over

Clause 2.2(3)(b) is amended to read as follows:

'the Rent or any part of it then payable for the monthly tenancy may be increased by notice by the Landlord to the Tenant, such increase to apply one month from the date of such notice;'

12.5 Option

Clause 3.1(2) is amended to read as follows:

'is not in breach of this Lease in relation to which the Tenant has received written notice when the Tenant gives that notice and does not breach an essential term of this Lease in relation to which the Tenant receives written notice throughout the period from giving the Tenant's notice to the Termination Date.'

12.6 New lease

Clause 3.2(2) is amended to read as follows:

'necessary to accommodate variations:

- (a) *to this Lease which become effective during the Term; and*
- (b) *any Law.'*

12.7 Market rent review

(1) Clause 4.5(2) is amended to read as follows:

*'Within 15 Business Days after service of the Landlord's notice, the Tenant may serve on the Landlord a notice (**Tenant's notice**) disputing the amount stated in the Landlord's notice, stating the amount which the Tenant considers to be the market rent for the Premises and requiring the market rent to be determined under clauses 4.5(4) to 4.8. Without limiting any other circumstances in this Lease where time is of the essence, time is of the essence in respect of the giving of the Tenant's notice.'*

(2) Clause 4.5(3) is amended to read as follows:

'If the Tenant fails to give the Tenant's notice within the 15 Business Days required by clause 4.5(2), the Rent payable until the next review date will be the amount set out in the Landlord's notice.'

12.8 Valuer's criteria

Clauses 4.7(2)(d), 4.7(2)(e), 4.7(3)(f) and 4.7(4) are deleted and replaced with the words *'deliberately omitted'*.

12.9 Minimum Rent

Clause 4.8 is deleted and replaced with the words *'Deliberately omitted'*.

12.10 Payment of rent pending review

Clause 4.9(1) is amended to read as follows:

'Until the determination of Rent has been made under clause 4.5, the Tenant must continue to pay Rent at the rate payable at the date of the Landlord's notice.'

12.11 Definition of operating expenses

(1) Clause 5.2(4) is amended to read as follows:

'land taxes or taxes in the nature of a tax on land, calculated on a single holding basis;'

(1) A final paragraph is added at the end of clause 5.2 to read as follows:

'but in all cases excluding:

- (a) *expenditure related to items of a capital or structural nature;*
- (b) *costs recoverable under a policy of insurance held by the Landlord; and*
- (c) *costs recoverable from a tenant, licensee or other occupier of the Building'.*

12.12 **Operating expenses**

- (1) Clause 5.4(1) is deleted
- (2) Clause 5.4(2) is amended to read as follows:
'The Tenant must pay the Landlord the Tenant's Proportion of any increase in any operating expenses over the operating expenses year expiring 30 September 2013.'
- (3) Clause 5.4(3) is deleted
- (4) Clause 5.4(5) is amended to read as follows:
"As soon as practicable after the expiration of each operating expenses year, the Landlord must furnish an itemised statement to the Tenant containing particulars of the operating expenses actually incurred by the Landlord and the operating expenses payable by the Tenant"

12.13 **Supply by Landlord**

Clause 5.9 is amended to read as follows:

'If the Landlord supplies a Service to the Premises, excluding any Service that is separately charged as an operating expense, the Tenant must pay the charges relating to the Service within 10 Business Days after being invoiced for it.'

12.14 **Permitted Use**

Clause 7.1 is amended to read as follows:

'The Tenant must:

- (1) *not use, occupy or permit the Premises to be used or occupied for any purpose other than as stated in Item 12; or*
- (2) *subject to clauses 15.7 and 16, not leave the Premises unoccupied for a period exceeding 20 Business Days.'*

12.15 **Compliance with laws and requirements**

Clause 7.4(1)(a) is amended to read as follows

'the Premises, and not contravene any Laws and Requirements concerning the Building, the Common Areas and Land and any of the Tenant's Fittings; and'

12.16 **Assignment and subletting**

- (1) Clause 8.2(1)(h) is amended to read as follows:
'in the case of an assignment, the incoming tenant provides the Landlord with a Bank Guarantee for an amount in no case less than that required of the Tenant as at the date of assignment'.
- (2) Clause 8.2(2)(a) is deleted and replaced with the words *'Deliberately omitted'*.

12.17 Personal Property Securities Act

Clause 9(11) is deleted and replaced with the words '*deliberately omitted*'.

12.18 Repair of premises

Clause 10.1(1) is amended to read as follows:

'The Tenant must keep the Premises, the Tenant's Fittings and the Landlord's Fixtures (to the extent such Landlord's Fixtures are located in and exclusively service the Premises) in good repair and condition having regard to their state of repair and condition as described in the Condition Report (where the relevant Tenant's Fitting or Landlord's Fixture is described in the Condition Report), except for:

- (a) *fair wear and tear (where not excluded or required to be renovated, repaired or made good by this Lease); and*
- (b) *damage covered by insurances taken out by the Landlord in respect of the Premises.'*

12.19 Maintenance and breakages

Clause 10.2(1) is amended to read as follows:

'immediately make good any damage (including any to the Premises, Building or Land) to the extent caused or contributed to by any act, negligence, omission or default of the Tenant or the Tenant's Employees or by its or their use or occupancy of the Premises or by the installation, use or removal of the Tenant's Fittings, including but not limited to immediately repairing or replacing:

- (a) *broken glass with glass of the same quality;*
- (b) *damaged or inoperative electric light bulbs, globes, tubes and other means of illumination and light switches and power points which may become damaged or fail to operate; and*
- (c) *Landlord's Fixtures which are broken or damaged by the Tenant or the Tenant's Employees.'*

12.20 Landlord may enter

Clause 10.4 is amended to read as follows

- (1) *'Subject to the same notice requirements set out in clause 10.3(1), the Landlord and the Landlord's Employees may enter the Premises with workers, agents and other authorised persons and necessary materials and appliances to:*
 - (a) *comply with any Law or Requirement involving the destruction of noxious animals, rodents or other pests;*
 - (b) *carry out any repairs or works required under the provisions of this Lease;*
 - (c) *exercise the Landlord's rights under this Lease; or*
 - (d) *provide any Services to the Tenant.*

- (2) In exercising its powers under this clause 10.4, the Landlord will:
- (a) endeavour to cause as little inconvenience to the Tenant as is reasonably practicable in the circumstances; and
 - (b) make good any damage caused by the Landlord or the Landlord's Employees.'

12.21 Notice of damage or defect in services

- (1) Clause 10.5(1) is amended to read as follows
- 'any damage to, defect or disrepair which the Tenant is aware of or ought to be aware of, in the Premises, Services (to the extent they are supplied under this Lease or available to the Tenant) or the Landlord's Fixtures;'*
- (2) Clause 10.5(3) is amended to read as follows:
- 'any notice received from any Authority in relation to the Premises or this Lease.'*

12.22 Head Landlord's and Concurrent Landlord's entitlements

Clause 10.7 is amended to read as follows:

'The Tenant will at all times permit the Landlord, the Head Landlord and while the Concurrent Lease is in force, the Concurrent Landlord to exercise the Landlord's powers to enter and view the Premises and to carry out repair and other work on the Premises as required or permitted under this Lease and to otherwise exercise or perform its lawful rights or obligations in respect of the Premises.'

12.23 Tenant to redecorate

Clause 11.2 is deleted and replaced with "*deliberately omitted*"

12.24 Tenant to yield up

Clause 12.1(3) is replaced with "*deliberately omitted*"

12.25 New condition

Clause 12.2 is amended to read as follows:

- (1) *'The Tenant must carry out the necessary works and perform those obligations set out in clause 12.1 (collectively, the 'Tenant's Works') to return the relevant part of the Premises to the condition as shown in the Condition Report and otherwise comply with clause 10.1.*
- (2) *'Unless inconsistent with the Condition Report, the Tenant's Works will include replacing with new parts any parts of the Premises which have been lost, are missing or, in the Landlord's reasonable opinion, have been damaged or have deteriorated and need to be replaced.'*

12.26 **Make good payment**

A new clause 12.9 is added to read as follows:

- (1) *The Tenant may elect to pay to the Landlord a sum of money in lieu of complying with its obligations under this clause 12 (**Make Good Payment**), such Make Good Payment to be equal to the estimated cost of compliance with this clause 12, and such:
 - (a) *election to be made by notice by the Tenant to the Landlord within 10 Business Days of the provision of the quotations under clause 12.9(2) and*
 - (b) *estimated cost to be determined in accordance with clause 12.9(2).**
- (2) *The Landlord will, within 10 Business Days of a written request by the Tenant provide to the Tenant two independent quotations from qualified contractors for the estimated costs to comply with clause 12 and the Make Good Payment will automatically be the lower of those two quotations.*
- (3) *The Tenant must pay the Make Good Payment within 10 Business Days of an election under clause 12.9(1)(a).*
- (4) *The written request by the Tenant under clause 12.9(2) must be made by no later than 30 Business Days prior to the expiry or earlier termination of this Lease, failing which the Tenant's right to make an election under this clause 12.9 will automatically end.*

12.27 **Alterations and additions**

Clause 13.1(1) is amended to read as follows:

'The Tenant must not alter or add to the Premises or the Tenant's Fittings, install or alter any partitions or install any heavy article without the Landlord's prior consent, such consent not to be unreasonably withheld if such alteration, addition or installation:

- (1) *will not affect the structure of the Building or Services; and*
- (2) *will cost less than \$10,000,,*

but no consent is required for the addition or installation of goods and equipment of a minor and non-fixed nature that will not affect the structure of the Building or Services'.

12.28 **Alterations**

Clause 13.1(3)(h) is amended to read as follows:

"subject to clause 12.1(2) the Tenant to agree that all or part of the work must remain on the Premises at the termination or expiry of the Lease at no cost to the Landlord; and

12.29 **Tenant's insurances**

Clause 14.3 is amended to read as follows:

"The Tenant must ensure that all policies of insurance effected or required to be effected by the Tenant under this clause 14:

- (a) *is taken out with an independent and reputable insurer approved by the Landlord;*
- (b) *in respect of the public risk policy:
 - (i) *is for an amount, covers risks and contains conditions which are acceptable to the Landlord and its insurer (including cross-liability and waiver of subrogation); and*
 - (ii) *is on an occurrence, not a claims made basis,**

(c) *in respect of the plate glass policy is for an amount, covers risks and contains conditions which are acceptable to the Landlord and its insurer; and*

(a) *notes the interest of the Landlord, Head Landlord and, while the Concurrent Lease is in force, the Concurrent Landlord.*

12.30 **Payment and production of insurance policies**

Clause 14.4(2) is amended to read as follows:

“If requested by the Landlord, the Tenant must produce certificates of currency as evidence of the insurance which the Tenant is required to effect under this clause 14 and the receipt or other evidence of up to date payment of the premium.”

12.31 **Effect on the Head Landlord’s, Concurrent Landlord’s and Landlord’s insurance**

Clause 14.5(1)(d) is amended to read as follows:

‘conflict with any Law or Requirement, the requirements of the Head Landlord’s, the Concurrent Landlord’s or the Landlord’s insurer relating to fire, fire safety or fire prevention or any insurance policy in respect of the Premises or any property in them, provided the Tenant is aware, or ought reasonably be aware of any such requirement’

12.32 **Indemnities**

(1) Clause 14.9(1)(g)(i) is amended to read as follows:

‘which the Indemnified is permitted or required to do to enforce its rights against the Tenant under this Lease; or’

(2) A new clause 14.9(3) is added to read as follows:

‘The indemnities in this clause 14.9 do not apply to:

- (a) *any Claims not arising at, upon or in connection with the Premises except to the extent caused or contributed to by the Tenant or the Tenant’s Employees;*
- (b) *the negligent acts or omissions on the part of the Indemnified the onus of proof of such negligent act or negligent omission being at all times upon the Tenant.’*

12.33 **Failure of service**

Clause 15.5 is amended to read as follows:

“Subject to clause 15.3 the Tenant will have no Claim against the Landlord nor will the Tenant be entitled to terminate this Lease solely because:

- (1) *the Services fail to operate: or*
- (2) *the Landlord shuts down or removes any Services to repair, maintain or replace them or because of the provisions of any Law or Requirement.”*

12.34 Additional rights

(1) Clause 15.6(10) is amended to read as follows:

'change, grant rights in relation to, remove or alter signage of the Building or on the Land, subject to the Tenant's rights under special condition 10'

(2) Clause 15.6(11) is amended to read as follows:

'appoint agents or others (including a Manager) to exercise any of its rights or perform any of its duties under this Lease.'

12.35 Inconsistency between Building Rules and Lease

A new clause 15.13 is added to read as follows:

'Despite any other provision of this Lease (excluding the Building Rules), the provisions of this Lease take priority over the terms of the Building Rules (as varied under this Lease) to the extent of any inconsistency'

12.36 Abatement

Clause 16.2(1) is amended to read as follows:

'If the Premises or means of access to the Premises within the Building are damaged or destroyed so as to render any part of the Premises wholly or substantially:

(a) *unfit for occupation and use by the Tenant; or*

(b) *inaccessible having regard to the nature and location of the Premises and the normal means of access to them;*

*then subject to this clause 16 from the date that the Tenant notifies the Landlord of the damage or destruction (**damage notice**):*

(c) *the Rent;*

(d) *any other money payable by the Tenant; and*

(e) *the covenant to repair and maintain;*

will abate according to the nature and extent of the damage or destruction sustained until the Premises are:

(f) *restored;*

(g) *made fit for the Tenant's occupation and use; or*

(h) *made accessible.'*

12.37 Landlord not obliged to reinstate

Clause 16.6 is amended to read as follows:

'Subject to clause 16.4(3), nothing in this Lease obliges the Landlord to reinstate any part of the Premises or any means of access to them.'

12.38 Forfeiture of Lease

(1) Clause 17.2(1) is amended to read as follows:

‘The Landlord may rescind this Lease by notice to the Tenant or re-entry if the Tenant fails to pay Rent when due provided it has provided notice required under clause 17.2(2).’

(2) Clause 17.2(4)(a) is deleted.

(3) Clause 17.2(5) is amended to read as follows:

‘The time fixed for the purposes of section 146 of the Property Law Act 1958 and this clause 17.2 is 14 days, except in relation to non-payment of Rent in which case the time fixed is 5 Business Days.’

12.39 Landlord default

A new clause 17.9 is added to read as follows:

‘Notwithstanding any other provision of this Lease, the Tenant will not be liable to the Landlord for any default of this Lease by the Landlord, except to the extent caused or contributed to by the Tenant or the Tenant’s Employees.’

12.40 Bank guarantee

(1) Clause 18.1(1)(b) is deleted and replaced with the words *‘deliberately omitted’*.

(2) A new clause 18.4 is added to read as follows:

‘The Landlord will return the Bank Guarantee to the Tenant (or such part of the Bank Guarantee that is not called upon in accordance with this Lease) to the Tenant as soon as reasonably practicable after it is satisfied that the Tenant’s obligations under this Lease have been discharged, but in any event by no later than 6 months after the expiry or earlier termination of this Lease’

Parties **Australia and New Zealand Banking Group Limited** ACN 005 357 522
of 833 Collins Street, Docklands, Victoria, 3008
(Landlord)

Mesoblast Limited ACN 109 431 870
of level 39, 55 Collins Street, Melbourne, Victoria, 3000
(Tenant)

Collins Place Pty Ltd ACN 084 238 497
and
Collins Place No. 2 Pty Ltd ACN 090 537 643
both of Level 24, 33 Alfred Street, Sydney, New South Wales, 2000
(Head Landlord)

AMP Capital Investors Limited ACN 001 777 591
of Level 13, 50 Bridge Street, Sydney, New South Wales, 2000
(Concurrent Landlord)

Introduction

- A** The Head Landlord is the registered proprietor of the Land.
- B** By the Concurrent Lease the Head Landlord leased to the Concurrent Landlord the Land on which the Building is situated.
- C** Under the Head Lease, the Landlord holds a leasehold interest in the Building.
- D** The Head Lease provides that subject to the consent of the Head Landlord being obtained the Landlord may sub-let the Building in whole or in part.
- E** The Head Landlord is the Original Landlord's successor in title.
- F** The Landlord, with the consent of the Head Landlord and Concurrent Landlord, has agreed to grant the Tenant a sub-lease of the Premises on the terms and conditions of this Lease.

1 Definitions and interpretation

1.1 Definitions

In this Lease unless the context otherwise requires:

- (1) **Air Conditioning Equipment** means the plant, piping, electrical installations, ductwork, diffusers and all other equipment used to heat, cool, circulate and extract air throughout the Building;
- (2) **Area** means an area calculated by using the Method of Measurement;
- (3) **Australian Institute** means the Australian Property Institute Incorporated Victorian Division or its successor or other organisation replacing it;

- (4) **Authority** includes any:
- (a) government or semi-government authority in any jurisdiction, whether federal, state, territorial or local;
 - (b) provider of public utility services, whether statutory or not; and
 - (c) other person, authority, instrumentality, statutory corporation or body having jurisdiction, rights, powers, duties or responsibilities over the Premises, the Building or Collins Place or any part of them or anything in relation to them;
- (5) **Bank Guarantee** means an unconditional and irrevocable bank guarantee, without an expiry date, issued by a financial organisation approved by and in favour of the Landlord as security for performance by the Tenant of its obligations under this Lease;
- (6) **Building** means the building situate at 55 Collins Street, Melbourne and being part of Collins Place;
- (7) **Building Plant** means those items or installations of plant and equipment including all pipes wires and conduits associated therewith located in Collins Place and exclusively servicing or exclusively providing facilities to the Building as a whole or any part thereof including the Premises;
- (8) **Building Rules** means the rules for the Building set out in Annexure A to this Lease including any variation or amendment of those rules from time to time in accordance with clause 15.12 hereof;
- (9) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria;
- (10) **Claim** means any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action;
- (11) **Collins Place** means so much of the land remaining untransferred in Certificate of Title Volume 9006 Folio 341, bounded to the north by Collins Street, to the west by Exhibition Street, to the south by Flinders Lane and being situate at 17-65 Collins Street Melbourne together with all improvements including the hotel, theatre, office buildings, retail shops, professional suites, walkways, public lifts, carpark, landscaped areas and recreation areas;
- (12) **Common Areas** means those areas located in the Building (not being areas leased to or otherwise appropriated for the exclusive occupancy of any tenant occupier or the Landlord) set aside or appropriated from time to time being stairways, entrances, landings, passageways, corridors, lobbies, toilets, washrooms, tea rooms and lifts (including all associated fittings, furnishings, floor coverings, window furnishings and rights) intended for common use by the Landlord and/or the other occupants of the Building and their agents and invitees;
- (13) **Common Areas of Collins Place** means those areas in Collins Place (not being or intended to be the subject of any lease or otherwise appropriated or set aside for the exclusive occupancy of any person and not being located in any office building or hotel building in Collins Place) set aside or appropriated from time to time for access and egress purposes and for the amenity and enjoyment of the tenants and occupants of Collins Place and such other persons including the public as the Head Landlord or the Concurrent Landlord permits from time to time or for the housing of Common Plant and including walkways, public lifts and escalators, public entrances, passageways, driveways, plant and machinery rooms, landscaped areas, carparking areas, loading docks, public toilets and recreational areas including all associated fittings, furnishings and floor coverings;

- (14) **Common Plant** means those items or installations of plant and equipment including all associated pipes wires and conduits located in Collins Place servicing or providing facilities for the whole or a substantial part of Collins Place including the Building;
- (15) **Concurrent Lease** means the lease made on 20 May 2004 between the Head Landlord, as landlord, and the Concurrent Landlord, as tenant, under which Collins Place and the Building (among other things) was demised to the Concurrent Landlord;
- (16) **Concurrent Landlord** includes its successors and permitted assigns and while the Concurrent Lease is in force, the reversion immediately expectant upon the determination of the term reserved under the Head Lease;
- (17) **Control** of a corporation includes the direct or indirect power to directly or indirectly:
- (a) direct the management or policies of the corporation; or
 - (b) control the membership of the board of directors,
- whether or not the power has statutory, legal, practical or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise;
- (18) **Cost or Costs** means the amount of any cost, charge, expense, outgoing, payment or other expenditure of any nature incurred by or on behalf of the Landlord and whether or not it is:
- (a) direct;
 - (b) indirect or consequential;
 - (c) accrued or paid; or
 - (d) reasonable or not,
- and includes all direct legal costs (solicitor, Counsel and Court costs) of the Landlord on a full indemnity basis;
- (19) **Default Rate** means the rate 4% per annum higher than the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* from time to time;
- (20) **First Occupancy Date** means the date on which the Tenant or any predecessor in title of the Tenant first occupied the Premises, whether under this Lease or any previous lease or arrangement;
- (21) **GST** means the goods and services tax imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge;
- (22) **GST Amount** means the amount arrived at by multiplying the payment, or the relevant part of a payment if only part of a payment is the consideration, for a Taxable Supply, by the appropriate rate of GST prescribed under the GST Law from time to time;

- (23) **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* and includes any Australian Taxation Office public rulings;
- (24) **Head Lease** means the lease dated 1 November 1983 between a predecessor in title of the Head Landlord as lessor of the one part and the Landlord as lessee of the other part whereby the Building was demised to the Landlord for a term expiring on the 31st day of December 2031;
- (25) **Head Landlord** includes its successors and the reversion immediately expectant upon the determination of the term reserved under the Concurrent Lease;
- (26) **Holding Company** has the meaning given to it in the *Corporations Act 2001*, amended by replacing the words “more than one-half” with “50% or more” wherever they appear;
- (27) **Insolvency Event** means the happening of any of these events in relation to a party (**Defaulting Party**):
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party’s property and is not satisfied, set aside or withdrawn within 7 days after its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (c) the Defaulting Party suspends payment of its debts;
 - (d) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001*;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (iii) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed to any of the property of the Defaulting Party or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 days);
 - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or
 - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
 - (e) where the Defaulting Party is a natural person:
 - (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;

- (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
- (iii) the Defaulting Party commits an act of bankruptcy; or

an event happens analogous to an event specified in clauses 1.1(27)(a) to 1.1(27)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;

- (28) **Land** means the land described in certificates of title volume 9006 folio 341 and volume 10494 folio 396;
- (29) **Landlord** includes its successors and permitted assigns, any person claiming through or under or in trust for the Landlord and the reversion immediately expectant upon the determination of the term reserved under this Lease;
- (30) **Landlord's Employees** means and includes:
 - (a) a Manager; and
 - (b) each, every and any of its officers, employees, agents, consultants, workmen or contractors who may at any time be in or upon the Building (including the premises) or Collins Place;
- (31) **Landlord's Fixtures** includes:
 - (a) all plant and equipment (mechanical or otherwise) including Air Conditioning Equipment, fittings, fixtures, partitions, furniture, furnishings, window coverings, blinds, floor coverings, light fittings and other goods in or comprising any part of the Premises or Common Areas owned or supplied by the Landlord;
 - (b) stop cocks, fire hoses, hydrants, fire prevention aids and other fire fighting equipment and systems located in or comprising any part of the Premises or servicing the Premises or Common Areas owned or supplied by the Landlord;
 - (c) drains, basins, sinks, showers, toilets and urinals in the Building; and
 - (d) entry and exit doors to the Premises;
- (32) **Law** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether Commonwealth, state, territorial or local;
- (33) **Lease** means this sublease and includes all Schedules and Annexures to it;
- (34) **Manager** means a manger appointed by the Landlord to manage and administer this Lease and the Landlord's rights and obligations in connection with the Building and Collins Place;
- (35) **Method of Measurement** means:
 - (a) the method for the measurement of premises substantially similar to the Premises that is selected by the Landlord in its absolute discretion from the methods set out in the Property Council of Australia's Method of Measurement for Lettable Area at the time that the measurement is carried out; or
 - (b) if there is no relevant method referred to in clause 1.1(35)(a), the method or criteria which the Landlord selects as the most appropriate in its absolute discretion;

- (36) **Original Landlord** means AMP Life Limited (formerly Australian Mutual Provident Society).
- (37) **Premises** means those premises described in 0 extending horizontally to the interior surfaces of the exterior walls and windows of the Building or the internal surfaces of those walls windows or partitioning dividing the Premises from the Common Areas as the case may be;
- (38) **Reference Schedule** means Schedule 1 to this Lease;
- (39) **Requirement** means any requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise and regardless of to whom it is addressed or directed and includes the Building Rules;
- (40) **Retail Leases Act** means the *Retail Leases Act 2003*;
- (41) **Services** means:
- (a) any energy source, lighting, gas, fuel, electricity, power, telephone, water, sewerage, ventilation, drainage, air conditioning, hydraulic, elevator and security services or anything of a similar nature to any of them from time to time provided to the Premises or available for use by the Tenant;
 - (b) all fixtures, fittings, appliances, plant and equipment, fire services, sprinkler systems or devices and all other services or systems provided in the Land or the Building or available for the Tenant's use, whether or not they are also Landlord's Fixtures; and
 - (c) any systems or mechanisms from time to time utilised for access to the Land or the Building,
- whether or not they supply or service areas other than the Premises and whether or not they are located wholly or partially on or within Common Areas;
- (42) **Tenant** includes in the case of the Tenant being a natural person his heirs executors administrators and permitted assigns or in the case of the Tenant being a body corporate its successors in title and permitted assigns;
- (43) **Tenant's Fittings** includes all fixtures, fittings, plant, equipment, partitions and goods of all kind which are in or on the Premises during the Term and are supplied, owned or used by the Tenant in the Premises during the Term;
- (44) **Tenant's Employees** includes the Tenant's employees, contractors, agents, consultants, customers, clients, visitors, subtenants, licensees or others who may be in the Building or on the Land, with or without invitation (other than employees of the Landlord, Head Landlord and Concurrent Landlord);
- (45) **Tenant's Proportion** means the percentage in Item 16; and
- (46) **Term** means the term of this Lease being the period set out in Item 6;

(47) **Valuer** means a person who is:

- (a) a fellow or an associate of not less than 5 years' standing of the Australian Institute and active in the market for valuing premises substantially similar to the premises at the time of that person's appointment; and
- (b) has at least 5 years' immediate past experience in valuing premises substantially similar to the Premises.

1.2 Interpretation

In this Lease:

- (1) reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;
 - (f) month or monthly means calendar month or calendar monthly;
 - (g) a right includes a remedy, right or power;
 - (h) clauses, schedules and annexures will be construed as references to clauses of and schedules and annexures to this Lease;
 - (i) an Item is to an item in Schedule 1;
 - (j) a reference to something includes each part of it; and
 - (k) money is to Australian dollars, unless otherwise stated.
- (2) "including" and similar expressions are not words of limitation;
- (3) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (4) headings and any table of contents or index are for convenience only and do not form part of this Lease or affect its interpretation;
- (5) a provision must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Lease or the inclusion of the provision in this Lease;

- (6) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (7) every obligation undertaken by a party to this Lease will be deemed to be and be construed as a covenant by that person.

1.3 **Parties and capacity**

- (1) If a party consists of more than 1 person, this Lease binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) In addition to and despite all other warranties, expressed or implied, in this Lease, the Tenant warrants and covenants that:
 - (a) it is empowered to enter into this Lease and to do all things that will be required by this Lease;
 - (b) all things have been done or will be done as may be necessary to render this Lease legally enforceable in accordance with its terms and fully valid and binding on it; and
 - (c) all authorisations by any Authority (whether in Australia or not) that are required or will be required in connection with the execution and delivery of, the performance of obligations under or the validity or enforceability of, this Lease have been obtained or effected and are or will be fully operative and in full force and effect.

1.4 **Severability**

- (1) As far as possible all provisions of this Lease will be construed so as not to be unenforceable, illegal or void in any respect.
- (2) If any provision of this Lease is unenforceable, illegal or void, that provision must, as far as possible, be read down to the extent necessary to ensure that it is not unenforceable, illegal, or void and so as to give it a valid operation of a partial character.
- (3) If any provision or part of this Lease cannot be read down, or if any provision in this Lease is unenforceable, illegal or void or makes this Lease or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Lease remains in force.

1.5 **Whole agreement**

- (1) This Lease:
 - (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease; and
 - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.
- (2) Each party has entered into this Lease without relying on any information or advice given or statement made (whether negligently or not) by any other party or any person purporting to represent that party.

1.6 Inconsistency

As between the Head Landlord, Concurrent Landlord and Landlord, to the extent that there is an inconsistency between a provision of this Lease and a provision in the Head Lease, the provision of the Head Lease prevails.

1.7 Organisations

(1) Where:

- (a) there is a reference to an Authority; and
- (b) the Authority is reconstituted, reconstructed, privatised, ceases to exist or is replaced or its powers or functions are transferred to another entity;

the reference must be read as being to the reconstituted, reconstructed or privatised entity or an entity established or constituted in replacement of or which succeeds to the relevant powers and functions of or which serves substantially the same purposes or has substantially the same objects as the Authority.

(2) Reference to the president of an Authority will, in the absence of a president, be read as reference to the senior officer for the time being of the Authority or any other person fulfilling the duties of president.

1.8 Areas and measurement

Unless the context otherwise requires, where all or any part of the Premises, Land or Building is to be calculated or measured for the purposes of this Lease, those calculations and measurements must be in accordance with the Method of Measurement.

1.9 Landlord's consent

Unless otherwise stated, if the Landlord's consent or approval is required it:

- (1) may be granted or withheld at the Landlord's absolute discretion;
- (2) may be granted or withheld subject to any conditions that the Landlord considers necessary or appropriate; and
- (3) is not effective unless it is in writing.

1.10 Written notices

If a provision of this Lease requires a notice to be given by a party, it must be in writing.

1.11 Prohibitions and restrictions

Where the Tenant is either prohibited by this Lease from doing something, or is not permitted to do something under this Lease, that prohibition or restriction extends to:

- (1) prohibiting the Tenant from consenting to any other person or entity to do anything that the Tenant is prohibited from doing;
- (2) restricting the Tenant from in any way consenting to any other person or entity to do anything that the Tenant is not permitted to do; and
- (3) prohibiting and restricting the Tenant from doing that thing in Common Areas.

1.12 No caveat

The Tenant must not lodge a caveat on title to the Land, or allow a caveat lodged by a person claiming through the Tenant to remain on title to the Land.

1.13 Exclusion of statutory provisions

To the extent permitted by Law:

- (1) the covenants, powers and provisions if any implied in leases by virtue of any Law or Requirement (including those in section 144(1) of the *Property Law Act 1958*) are excluded and expressly negated; and
- (2) the application to this Lease of any Law, Requirement or moratorium that directly or indirectly:
 - (a) extends or reduces the Term;
 - (b) reduces or postpones the payment of any Rent;
 - (c) lessens or affects in favour of the Tenant any obligation under this Lease;
 - (d) delays, prevents or prejudicially affects the exercise by the Landlord of any right, power or remedy under this Lease or the recovery of any Rent or penalty; or
 - (e) otherwise affects the operation of any of the covenants, terms and conditions of this Lease,is excluded from this Lease and may not be enforced by the Tenant against the Landlord.

1.14 Tenant's covenants bind servants, agents etc

Where in this Lease it is provided that the Tenant:

- (1) covenants promises undertakes or agrees to perform or observe some act or thing; or
- (2) to refrain from doing or carrying out some act or thing,

such covenant promise undertaking or agreement shall be read and construed as including a provision that the Tenant must:

- (3) procure that the Tenant's Employees perform or observe such act or thing; or
 - (4) refrain from so doing or carrying out such act or thing
- respectively.

2 Term and holding over

2.1 Term

- (1) With the consent of the Head Landlord and Concurrent Landlord, the Landlord grants to the Tenant and the Tenant takes a lease of the Premises for the Term commencing on the Commencement Date and ending on the Termination Date on the terms of this Lease.

- (2) The grant is subject to all registered and unregistered encumbrances, covenants, restrictions or reservations affecting the Premises and any other encumbrance, right, reservation or restriction contemplated by this Lease.
- (3) Subject to this Lease and the Building Rules, the Tenant may use the Common Areas for the purpose for which they are intended.

2.2 Holding over

- (1) The Tenant must only occupy the Premises after the Termination Date:
 - (a) having first obtained the prior written consent of the Landlord to do so; or
 - (b) under a lease arising from the valid exercise of an option to renew.
- (2) The Landlord must notify the Head Landlord and the Concurrent Landlord if the Landlord approves the Tenant to occupy the Premises after the Termination Date pursuant to clause 2.2(1)(a).
- (3) If the Tenant continues to occupy the Premises after the Termination Date with the written consent of the Landlord (except under a lease arising from the valid exercise of an option to renew):
 - (a) the Tenant will occupy the Premises as a monthly tenant at rental equal to one-twelfth of the Rent at the Termination Date, payable monthly in advance and with the first of the monthly payments to be made on the day following the Termination Date;
 - (b) the Rent or any part of it then payable for the monthly tenancy may be increased by notice by the Landlord to the Tenant;
 - (c) without limiting any other right of the Landlord, the monthly tenancy can be terminated at any time by either the Landlord or the Tenant giving 1 months' notice to the other, expiring on any date;and otherwise the tenancy will continue on the terms and conditions of this Lease, as they apply to the monthly tenancy but any Bank Guarantee or security deposit will not be reduced and the Landlord may require other changes in its absolute discretion as a condition of giving its consent to the continued occupation.
- (4) The Head Landlord and the Concurrent Landlord can require the Landlord to terminate the monthly tenancy under clause 2.2(3)(c) at any time.

3 Further Term(s)

3.1 Option

If Item 7 contains a proposed further term or terms, the Landlord is only obliged to grant a further lease of the Premises to the Tenant if the Tenant:

- (1) gives notice to the Landlord stating that the Tenant wants a new lease of the Premises for the next option term specified in Item 7 within the period:
 - (a) from and including the day that is 12 months before the Termination Date; and
 - (b) the day that is 10 months before the Termination Date,

- (2) with the last day in which the Tenant may give such a notice specified in Item 7, is not in breach of this Lease, both when the Tenant gives that notice and throughout the period from giving the notice to the Termination Date;
- (3) has not been in breach of this Lease on two or more occasions in relation to which the Tenant has received notice from the Landlord during the Term nor breached an essential term of this lease as set out in 17.1; and
- (4) delivers to the Landlord before the Termination Date all replacement securities required under clause 18.1(1)(b) to secure the Tenant's obligations under the new lease.

3.2 New lease

Any further lease referred to in clause 3.1 will be on the same terms and conditions as this Lease, but subject to those variations that the Head Landlord, Concurrent Landlord and Landlord considers are:

- (1) required under clause 3.3;
- (2) necessary to accommodate variations in:
 - (a) the standard form of lease then used by the Landlord;
 - (b) management of the Premises and the method of charging or collecting operating expenses;
 - (c) the design or structure of the Premises or Services;
 - (d) any variations to this Lease which become effective during the Term; and
 - (e) any Law or Requirement.

3.3 Terms of further lease

- (1) In a further lease, Schedule 1 will be completed as follows:

Item 4 Commencement Date: The day after the Termination Date of this Lease.

Item 5 Termination Date: The last day of the term of the next further lease in Item 7.

Item 6 Term: The term of the next further lease in Item 7.

Item 7 Option to Renew: If the particulars of more than one further lease are specified in Item 7, the particulars of the further lease first specified will be deleted.

Item 8 Rent: An amount to be agreed between the Landlord and the Tenant and, failing agreement 3 months before the Term expires, an amount to be determined by following the procedure set out in clause 4.5 to clause 4.9.

Item 9 Index Review Dates: Not applicable.

Item 10 Market Review Dates: Not applicable

Item 11 Fixed Rent Increase Dates: Each anniversary of the Commencement Date.

- (2) The Landlord will make other changes to Schedule 1 that may be necessary to reflect the exercise of the option in accordance with this Lease.

3.4 **Omission of this clause**

This clause 3 will be omitted from any further lease that is created by the exercise of the last option to renew.

3.5 **Parties to sign further lease**

Without limiting clause 3.1, the Landlord, the Tenant and the Guarantor must sign the further lease within a reasonable time after service on the Landlord of a notice under clause 3.1(1).

4 Rent and rent reviews

4.1 **Rent**

- (1) The Tenant must pay the Rent to the Landlord:
 - (a) without demand;
 - (b) without any deduction, counterclaim or right of set-off; and
 - (c) by equal monthly instalments, and proportionately for any part of a month, in advance and on the first day of each month.
- (2) The first instalment of Rent must be paid on the later of the Commencement Date or the Rent Commencement Date.

4.2 **Payment method**

- (1) All Rent and other amounts due under this Lease must be paid by direct transfer to the bank account notified to the Tenant by the Landlord from time to time and in the absence of any such notification, to the place and in the manner directed by the Landlord from time to time.
- (2) Despite clause 4.2(1), the Tenant must, if requested by the Landlord to do so, establish a direct debit arrangement with the Tenant's bank to pay all amounts due under this Lease on their due date to the bank account notified to the Tenant by the Landlord from time to time.

4.3 **Rent review definitions**

In this clause 4:

- (1) **fixed rent increase date** means each of the dates (if any) stated in Item 11;
- (2) **index number** means the Consumer Price Index (All Groups) for Melbourne published from time to time by the Australian Bureau of Statistics and if the Australian Bureau of Statistics updates the reference base of the index number, the index number must be appropriately adjusted so as to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Bureau of Statistics;

- (3) **index review date** means each of the dates (if any) stated in Item 9;
- (4) **market review date** means each of the dates (if any) stated in Item 10;
- (5) **quarter** means a 3 month period; and
- (6) **review date** means a fixed rent increase date, an index review date or a market review date, as the context requires.

4.4 **CPI rent review**

If Item 9 has been completed by inserting index review dates, the following provisions apply.

- (1) The Rent must be reviewed on each index review date to an amount represented by A in the following formula:

$$A = \frac{B \times D}{C}$$

- Where B = the index number released for the quarter ending immediately prior to the relevant index review date;
- C = the index number released for the quarter ending immediately prior to the later of the Commencement Date or the last review date; and
- D = the Rent payable immediately prior to the index review date.

- (2) If the Consumer Price Index (All Groups) for Melbourne is suspended or discontinued:
 - (a) the words “index number” will mean the price index substituted by the Australian Bureau of Statistics; or
 - (b) if no price index is substituted, the words “index number” will mean an index which the parties agree most closely reflects changes in the cost of living; and
 - (c) if the parties cannot agree on a substitute index within 10 Business Days after a party notifies the other that the Consumer Price Index (All Groups) for Melbourne has been suspended or discontinued and that no price index has been substituted, the president of the Australian Institute, at the request of either party, may appoint an expert to determine a substitute index which most closely reflects changes in the cost of living and the words “index number” will mean that index.
- (3) If the Consumer Price Index (All Groups) for Melbourne is suspended or discontinued the Tenant must pay Rent payable at the relevant index review date pending the determination of a substitute index or an increase of Rent in accordance with this clause 4.4.
- (4) If the Consumer Price Index (All Groups) for Melbourne is suspended or discontinued and the expert appointed under clause 4.4(2) is unable to determine a substitute index within 20 Business Days after being appointed, the method of adjustment of Rent in relation to an index number will cease and the Rent will be increased by 6% per annum on each index review date.

4.5 Market rent review

If Item 10 has been completed by inserting market review dates, then subject to clause 4.8 the Rent may be reviewed on each market review date to an amount determined in accordance with the following procedure.

- (1) The Landlord may vary the Rent to an amount which it considers to be the market rent for the Premises at the market review date by notice to the Tenant (**Landlord's notice**) at any time within 9 months before and 9 months after the market review date.
- (2) Within 10 Business Days after service of the Landlord's notice, the Tenant may serve on the Landlord a notice (**Tenant's notice**) disputing the amount stated in the Landlord's notice, stating the amount which the Tenant considers to be the market rent for the Premises and requiring the market rent to be determined under clauses 4.5(4) to 4.8. Without limiting any other circumstances in this Lease where time is of the essence, time is of the essence in respect of the giving of the Tenant's notice.
- (3) If the Tenant fails to give the Tenant's notice within the 10 Business Days required by clause 4.5(2), the Rent payable until the next review date will be the amount set out in the Landlord's notice.
- (4) Within 10 Business Days of service of the Tenant's notice, the Landlord and the Tenant either personally or by their representatives must meet and attempt to agree the market rent payable for the Premises at the relevant market review date.
- (5) If the Landlord and the Tenant have not agreed on the market rent for the Premises within 15 Business Days after service of the Tenant's notice,
 - (a) the dispute must be referred for determination by a Valuer, to be appointed by agreement between the Landlord and Tenant;
 - (b) if the Landlord and Tenant cannot agree on the Valuer within 20 Business Days after service of the Tenant's notice, the Valuer will be nominated by the president of the Australian Institute at the request of either the Landlord or the Tenant;
 - (c) the appointed Valuer must give notice of acceptance of appointment to the Landlord and the Tenant;
 - (d) the Valuer must as a condition of accepting the appointment agree to make a written determination of the market rent:
 - (i) within 20 Business Days of appointment or as soon as possible after that date;
 - (ii) in accordance with this clause 4.5 and clause 4.7; and
 - (iii) that sets out reasons for that determination;
 - (e) the Valuer must make a determination of the market rent as at the market review date, acting as an expert and not as an arbitrator;

- (f) the Valuer's determination will be final and binding on the Landlord and the Tenant;
- (g) the Valuer's Costs must be paid by the Landlord and the Tenant equally; and
- (h) either party may pay the Valuer's Costs and recover one-half of the amount paid from the other party.

4.6 Landlord's and tenant's submissions

- (1) A Valuer who accepts appointment under clause 4.5 may confer with the Landlord and the Tenant and may require either party to supply information which the Valuer considers relevant to the determination.
- (2) Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other party.
- (3) Either party may supply the Valuer with other information which it considers relevant and, if it does so, must make a copy of that information available to the other party.
- (4) Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer must treat the information as confidential and must not use that information other than for the purposes of clause 4.5.
- (5) The Landlord and the Tenant may make written submissions to the Valuer in relation to the market rent within 15 Business Days of receipt of written notice of the Valuer's acceptance of that person's appointment.
- (6) A party making a written submission must at the same time make a copy of it available to the other party.

4.7 Valuer's criteria

- (1) In determining the market rent as at a market review date and subject to clauses 4.7(2) and 4.7(3), the Valuer may take into account any matters the Valuer considers relevant including taking into account or disregarding any written submissions received from the Landlord or the Tenant.
- (2) The Valuer must determine the market rent as at a market review date on a floor by floor basis and disregard:
 - (a) any goodwill attributable to the Premises by reason of the trade, business or activity carried on by the Tenant and the value of the Tenant's Fittings;
 - (b) any state of disrepair of the Premises;
 - (c) any money received under any sublease, subtenancy agreement or occupational arrangement in respect of the Premises (whether approved or not);
 - (d) any inducement provided or to be provided to the Tenant in connection with the granting of this Lease;
 - (e) any inducement then being provided or to be provided to any other tenant in relation to the taking of a lease of any other premises;

- (f) the elapsed part of the Term as at the market review date (if any); and
 - (g) anything (including part of a submission received from the Landlord or the Tenant) which is not consistent with the matters to be disregarded or taken into account under this clause 4.7.
- (3) In determining the market rent as at a market review date, the Valuer must:
- (a) have regard to the provisions of this Lease;
 - (b) have regard to the remaining Term and any option for renewal;
 - (c) have regard to the rent and operating expenses paid or payable in respect of other premises of a quality, nature, size and location substantially similar to the Premises;
 - (d) assume that the Premises are being used for the highest and best use permitted by the relevant Laws and the provisions of this Lease;
 - (e) assume that the Tenant has observed and performed all of the provisions of this Lease; and
 - (f) assume that it is the Landlord's and the Tenant's express requirement that no reduction or adjustment will be made to the market rent on account of any inducement provided or to be provided to the Tenant to secure it as a tenant of the Premises or to any other tenant in relation to the taking of a lease of any other premises whether or not those premises are substantially similar to the Premises.
- (4) In this clause 4.7, **inducement** includes any inducement or incentive provided by the Landlord in respect of the Tenant's entry into this Lease or any renewal of this Lease and includes any payment of money, transfer of property or goods, fit-out of premises or provision of services, assumption of obligation, rent moratorium or reduction, loan or gift.

4.8 **Minimum rent**

Regardless of any other provision of this Lease:

- (1) if the Rent is being reviewed to market, the Rent from the market review date will be the greater of:
 - (a) the amount determined under clause 4.5; and
 - (b) the Rent payable prior to that review date.

4.9 **Payment of rent pending review**

- (1) Until the determination of Rent has been made under clause 4.5, the Tenant must pay Rent at the rate of 90% of the amount stated in the Landlord's notice or the Rent payable at the date of the Landlord's notice, whichever is the greater.
- (2) Any variation in Rent as the result of review under clauses 4.4 or 4.5 will take effect on and from the review date.
- (3) Within 10 Business Days of the determination, the Landlord must refund any overpaid Rent or the Tenant must pay any shortfall.

4.10 Fixed rent increase

- (1) If Item 11 has been completed by inserting fixed rent increase dates the Rent will be reviewed in accordance with clause 4.10(2).
- (2) The Rent will be increased on each fixed rent increase date to an amount represented by R in the following formula:

$$R = PR + (PR \times A)$$

Where:

- (a) PR is the Rent payable immediately prior to the fixed rent increase date; and
- (b) A is the percentage stated at Item 11.

5 Operating expenses

5.1 Operating expenses year

The term **operating expenses year** means each period of 12 months ending on 30 September in each year, even if all or any part of that 12 month period falls outside the Term.

5.2 Definition of operating expenses

The term **operating expenses** means the total of all amounts payable by the Landlord or for which the Landlord may be or become liable in connection with the Premises relating to:

- (1) the Building or in or about the conduct management and maintenance of the Building (including the Premises) as an 'A Grade' commercial building; and
- (2) Collins Place and the conduct of cleaning, maintenance and management of the Common Areas of Collins Place and the Common Plant, and including:
- (3) rates, taxes, charges, assessments, levies, duties, impositions and fees (excluding income and capital gains taxes payable by the Landlord) payable to any Authority or body in connection with the Land or the Premises or their use or occupation including but not limited to:
 - (a) for any Services;
 - (b) for waste and general garbage removal (including any excess);
 - (c) for or in lieu of car parking; and
 - (d) for the provision, reticulation or discharge of water including excess water, sewerage and/or drainage and other waste (including water and sewerage usage charges and meter rents);
- (4) land taxes or taxes in the nature of a tax on land, calculated on an actual assessment basis;

- (5) insurance premiums and other amounts payable in respect of insurances effected by the Landlord in connection with the Premises, the Building, the Building Plant and Common Plant and their use or occupancy including:
- (a) industrial special risks for the Premises or any part of them for the full reinstatement and replacement value, including the following risks:
 - (i) fire;
 - (ii) flood;
 - (iii) lightning;
 - (iv) storm and tempest;
 - (v) explosion;
 - (vi) riots and civil commotion;
 - (vii) strikes;
 - (viii) malicious damage;
 - (ix) earthquake;
 - (x) impact by vehicles;
 - (xi) impact by aircraft and articles dropped from them;
 - (xii) internal flood water;
 - (b) loss of rent or other money under this Lease arising from damage to or destruction of the Premises, the Building or any part of them or arising from diminution or loss of any means of access or other similar cause;
 - (c) public liability for an amount of \$20,000,000.00 for any one claim; and
 - (d) such other insurable risks as the Landlord reasonably considers appropriate from time to time, acting reasonably including the Costs of complying with any Law or Requirement where no occupier of the Building is obliged to do so;
- (6) charges for and costs in relation to supply of water sewerage and drainage services to and the removal of all waste and other garbage from the Building and the Common Areas of Collins Place.
- (7) all fees and expenses payable in connection with the insurances and their renewal (including all broker fees, valuation fees, risk assessment fees and duties);
- (8) Costs of repairs, maintenance, and redecorating to and of the Building (excluding maintenance of a structural nature and maintenance, repairs, cleaning and redecorating to be undertaken by another occupier of the Building) including Costs of operating, supplying, maintaining and repairing the Services including all amounts payable under any maintenance contract for the maintenance of such Services;
- (9) Costs of the Landlord to repair, maintain, service and run the Landlord's Fixtures and Common Areas (except to the extent that another occupier of the Building is required to do so) including the Cost of any materials and any maintenance contract for the maintenance of such Landlord's Fixtures;

- (10) Costs incurred in providing lighting, fuel and power to the Premises, the Building and the Common Areas;
- (11) Costs for the control of pest, vermin, insect or other similar infestation;
- (12) A management fee to cover the Landlord's cost of managing the Building;
- (13) Costs of window cleaning, annual carpet shampooing and the provision of toilet supplies (where not required to be undertaken by another occupier of the Building or by the Tenant under clause 10.2);
- (14) Any audit fees or charges incurred by the Landlord, the Head Landlord or the Concurrent Landlord in relation to any statement or calculation of operating expenses,
- (15) Costs of providing and maintaining security including the access control, monitoring of and responding to security issues and caretaking services;
- (16) Costs of repairing, maintaining, servicing and running the Air Conditioning Equipment;
- (17) Costs of repairing, maintaining, servicing and running the Common Plant and Building, including without limitation, any lifts and escalators; and
- (18) all other Costs properly incurred by the Landlord in the management, operation, control and maintenance of the Premises and the Building (including the Common Areas) excluding expenditure related to items of a capital nature and commission or fees payable to any letting agent.

5.3 Apportionment of operating expenses

- (1) Where an operating expenses year relates to any period before or after the Term, operating expenses will be deemed to accrue and be apportioned from day to day.
- (2) Where an operating expense relates to an Area including but greater than the Premises but not to the whole of the Building (and is not generated specifically by the Tenant's use), the Tenant is liable for the proportion of the operating expense calculated by dividing the Area of the Premises by the Area to which the operating expense relates.
- (3) Where an operating expense relates to the whole of the Building, the Tenant is liable for the Tenant's Proportion of that operating expense.

5.4 Statement of operating expenses

- (1) The Tenant acknowledges that the amounts in Item 15 are the actual amounts of operating expenses paid by the Landlord in the operating expenses year immediately preceding the Commencement Date.
- (2) The Tenant must pay the Landlord:
 - (a) any increase in any operating expense over the amount set out in Item 15; and
 - (b) any operating expense that is not included in the amount set out in Item 15.

- (3) The Tenant is not entitled to any reduction, rebate or off-set if any operating expense is less than an amount set out in Item 15.
- (4) The Landlord may determine the operating expenses payable by the Tenant in respect of each operating expenses year or any part of an operating expenses year that does not coincide with the Term.
- (5) As soon as practicable after the expiration of each operating expenses year, the Landlord must furnish an itemised statement to the Tenant containing particulars of the operating expenses payable by the Tenant.
- (6) Unless either party notifies the other of a manifest error in the notice within 30 days of service, the statement will be conclusive evidence of its contents.

5.5 Payment by the tenant of operating expenses

The Tenant must pay the operating expenses determined under clause 5.4 to the Landlord within 30 days after service of the statement referred to in clause 5.4.

5.6 Payment by tenant on account

- (1) Notwithstanding clause 5.5, the Landlord may notify the Tenant of the Landlord's estimate of the operating expenses payable by the Tenant for any period not exceeding 1 year in advance of the estimate.
- (2) During the period covered by the Landlord's estimate, the Tenant must pay to the Landlord the amount of the estimate by equal monthly instalments in advance on the same days and in the same manner as the Tenant is required to pay Rent.
- (3) The Landlord may from time to time during the period covered by the Landlord's estimate by notice to the Tenant adjust the estimate to take account of changes in any of the operating expenses or to correct any omission or mistake in any previous estimate.
- (4) Any necessary adjustment between the amount paid on account of operating expenses and the actual operating expenses must be calculated and paid within 20 Business Days after receipt of the statement referred to in clause 5.4

5.7 Varying use or area

If any part of the Building or the Land is used for purposes other than the Permitted Use, the Landlord (acting reasonably) may in its absolute discretion by notice to the Tenant vary the Tenant's Proportion of any operating expense to reflect the appropriate proportion of an operating expense applicable to that part of the Building or Land.

5.8 Change in area

The Landlord may by notice to the Tenant change the Tenant's Proportion to reflect the correct proportion of the Tenant's occupation of the Building, calculated by dividing the Area of the Premises by the Area of the Building.

5.9 Supply by Landlord

If the Landlord supplies a Service to the Premises the Tenant must pay the charges relating to the Service within 10 Business Days after being invoiced for it.

6 Utilities and services

6.1 Source of light and power

The Tenant must only use light, power or heat generated by electrical current or gas supplied through meters except in the case of failure of supply when the Tenant may only use other safe sources of energy.

6.2 No alterations to electrical installations

- (1) The Tenant must not make any alterations or additions to the electrical installations or wiring in or around the Premises without the Landlord's prior consent.
- (2) The Tenant must not install any electrical equipment which overloads the cables, switchboards or sub-boards through which electricity is conveyed to the Premises.

6.3 Direct charges

By the due date the Tenant must pay to the charging Authority:

- (1) charges for electricity, gas and water consumed in the Premises;
- (2) charges for any telephone, internet or other telecommunication service connected to the Premises; and
- (3) other charges and impositions imposed by any Authority for the supply of any other Service to the Premises or arising out of the Tenant's use or occupation of the Premises.

6.4 Heating or cooling devices

The Tenant must not use or install any heating or cooling device or machine which in the Landlord's opinion may interfere with the efficient running of the Air Conditioning Equipment or increase its running costs.

6.5 Access to equipment

The Tenant must not interfere with or obstruct access to the Air Conditioning Equipment or fire alarm or prevention system installed in the Building.

7 Use of the Premises

7.1 Permitted use

The Tenant must:

- (1) not use, occupy or permit the Premises to be used or occupied for any purpose other than as stated in Item 12;
- (2) occupy the Premises and use the Premises on the days and during the hours set out in Item 13, but only for the purpose specified in Item 12;
- (3) only use, occupy or permit the Premises to be used or occupied for the purpose stated in Item 12 outside the hours set out in Item 13 if it complies with this Lease, including clause 15.4.

7.2 Restrictions on use

Without limiting any other obligation or restriction in this Lease, the Tenant must and represents and warrants to the Landlord that it must:

- (1) not use the Premises for:
 - (a) the sale or hire of goods by retail or the retail provision of services; or
 - (b) the carrying on of any specified business or specified kind of business that, for the purposes of the Retail Leases Act, is a business to which that Act applies;
- (2) conduct the Tenant's business in the Premises as permitted under this Lease;
- (3) not use the Premises as a residence;
- (4) not keep any animals or birds in the Premises;
- (5) at its expense, keep the Premises free and clean of pests, insects and vermin and in default the Landlord may employ pest exterminators to carry out any pest extermination at the Tenant's expense, payable to the Landlord on demand;
- (6) not carry on any noxious or offensive act, trade, business, occupation or calling in the Premises;
- (7) not cause annoyance, nuisance, grievance, damage or disturbance to occupiers of adjacent or other premises;
- (8) not hold any auction, bankrupt or fire sale on the Premises;
- (9) not make any disturbing or irritating noises including installing or using any appliance, engine or machine which causes or may be likely to cause noise or vibration outside the Premises; and
- (10) not prepare or cook or permit to be prepared or cooked any food except in areas provided and approved by the Landlord for that purpose.

7.3 No warranty as to use

- (1) The Landlord gives no warranty as to the suitability of the Premises for any purpose or the use to which the Premises may be put and the Tenant has not relied on any representation or warranty as to the suitability of the Premises for any purpose or the use to which the Premises may be put to enter into this Lease.
- (2) The Tenant:
 - (a) accepts this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises under any Law or Requirement;
 - (b) must, at its expense, comply with all Laws and Requirements and obtain and comply with the consents or approvals of any Authority which may be necessary or appropriate for the Tenant's business; and
 - (c) must not by any act or omission cause or permit any consent or approval referred to in clause 7.3(2)(b) to lapse or be revoked.

7.4 **Compliance with laws and requirements**

- (1) At its expense, the Tenant must comply with and observe all Laws and Requirements concerning:
 - (a) the Premises, Building, the Common Areas and Land and any of the Tenant's Fittings; and
 - (b) the use or occupation of the Premises including any which arise as a result of the gender or number of persons in the Premises; whether or not the Law or Requirement is addressed to, or required to be complied with by, the Landlord or the Tenant or both or by any other person.
- (2) If any Law or Requirement is notified to or served upon the Tenant, it must immediately provide a complete copy to the Landlord.
- (3) The Tenant must obtain the Landlord's consent before complying with any Law or Requirement under clause 7.4(1).
- (4) The Tenant must comply with the Building Rules and the Tenant acknowledges that the Landlord may vary the Building Rules in its discretion by notice to the Tenant.
- (5) The Tenant must provide its annual essential services compliance certificate in relation to the Tenant's Fittings to the Landlord within 10 Business Days of a request by the Landlord, together with evidence of thermal imaging of the tenancy switchboard for the Premises and certification that any required repairs have been completed or addressed to the Landlord's reasonable satisfaction.

7.5 **Landlord's rights if tenant fails to comply**

The Landlord may:

- (1) without prejudice to any of its other rights in respect of non-compliance, elect to either wholly or partially comply with any Law, Building Rule or Requirement under clause 7.4 at the Tenant's expense; and
- (2) if it exercises any rights under clause 7.5(1), elect to have the balance of any Law, Building Rule or Requirement complied with by the Tenant.

7.6 **No smoking**

The Tenant must not smoke and must ensure its employees servants agents, clients, customers and contractors do not smoke:

- (1) anywhere on or in the Building including the Premises and the Common Areas; and
- (2) anywhere within such of the Common Areas of Collins Place which have been or from time to time are designated non-smoking areas by the Head Landlord or the Concurrent Landlord (and the display of "no smoking" signs or symbols in the relevant area shall be conclusive evidence of the designation of that area as a non-smoking area),

and the Tenant indemnifies the Landlord, the Head Landlord and the Concurrent Landlord against all Claims arising from any breach of the provisions of this clause 7.6.

7.7 **Cleaning services**

- (1) If the Landlord, the Head Landlord or the Concurrent Landlord provide a service for the routine cleaning of premises in the Building during the Term:
- (a) the Tenant is required to use such service for the cleaning of the Premises and must permit the appointed cleaning contractors to have access to the Premises at all reasonable times for the purpose of carrying out routine cleaning; and
 - (b) the Landlord, the Head Landlord and the Concurrent Landlord will not be in any way responsible to the Tenant for any damage to the Tenant's Fittings, property or effects caused by any cleaning contractor so appointed;
 - (c) the Tenant must pay the charges imposed by such contractor for providing a cleaning service for the Premises:
 - (i) in an amount representing the Tenant's Proportion of the overall cleaning charges if such contractor cleans all the premises in the Building; or
 - (ii) in an amount representing that part of the overall cleaning charges in the same proportion the Area of the Premises bears to the Area the subject of the overall cleaning charges, if such contractor cleans other (but not all) premises in the Building; and directly to, and at frequencies nominated by the Landlord, or as the Landlord otherwise directs from time to time in its absolute discretion.
- (2) If the Landlord, the Head Landlord or the Concurrent Landlord provide a service for the routine cleaning of either or both of the Common Areas and the Common Areas of Collins Place, the Tenant must pay the charges imposed by such contractor for providing those cleaning services:
- (a) in the case of cleaning services to the Common Areas only, an amount represented by the Tenant's Proportion; and
 - (b) in the case of cleaning services to the Common Areas of Collins Place, an amount represented by the proportion the Area of the Premises bears to the Area of all premises which benefit (directly or indirectly) from those cleaning services;
- directly to, and at frequencies nominated by the Landlord, or as the Landlord otherwise directs from time to time in its absolute discretion.
- (3) A statement signed on behalf of the Landlord by a Manager or other duly authorised officer of the Landlord as to the amount of any cleaning charges or any Area under this clause 7.7 is:
- (a) conclusive evidence of the contents of that statement; and
 - (b) binding on the Tenant and from the date such a statement is given to it,
- except in the case of manifest error (the burden in proving being the sole responsibility of the Tenant).

7.8 Security

- (1) The Tenant must not use any security systems, consultants or personnel, including but not limited to those which relate to access control of the Premises, other than the Landlord's nominated systems, providers or personnel without the Landlord's prior written consent, which may be withheld or granted conditionally at the Landlord's absolute discretion.
- (2) The Tenant acknowledges that nothing in this clause 7.8 renders the Landlord responsible for any Claim in connection with any failure of the security systems, consultants or personnel adopted or engaged by the Tenant in relation to the Premises.

8 Dealings

8.1 No dealing with Premises

Subject to clause 8.2, the Tenant must not:

- (1) assign, transfer, mortgage, charge or otherwise deal with this Lease or its interest in the Premises;
- (2) effect or permit a change in Control of the Tenant or the Tenant's Holding Company (unless the Tenant is a company which is listed on the Australian Stock Exchange); or
- (3) sublet, part with possession of or grant any licence affecting the Premises.

8.2 Assignment and subletting

- (1) The Landlord will not unreasonably withhold its consent to an assignment or subletting of the whole or part of the Premises if the Tenant first makes a written application to the Landlord for consent and the following conditions have been satisfied:
 - (a) the Tenant is not in default under this Lease, other than a default which has been waived in writing by the Landlord or remedied by the Tenant;
 - (b) the Tenant proves to the Landlord's reasonable satisfaction that the incoming tenant is:
 - (i) respectable, responsible and solvent;
 - (ii) in the reasonable opinion of the Landlord, of equal or greater financial standing as the Tenant (and the Tenant must provide to the Landlord such financial statements in relation to the incoming tenant as reasonably required by the Landlord to form such an opinion); and
 - (iii) capable of adequately carrying on the business permitted, and complying with the Tenant's obligations, under this Lease;
 - (c) if the incoming tenant is a company other than a company (or a wholly owned subsidiary of a company) whose shares are listed on the Australian Securities Exchange or any other recognised stock exchange, the obligations of the incoming tenant are guaranteed by a guarantor in a form and on terms in each case acceptable to the Landlord;

- (d) the Tenant obtains, at its expense, from the incoming tenant and any incoming guarantor an executed deed in a form reasonably required by the Landlord, requiring among other things:
 - (i) the incoming tenant and incoming guarantor to perform and observe the Tenant's obligations under this Lease;
 - (ii) the Tenant to release the Landlord from its obligations under this Lease before the transfer or assignment; and
 - (iii) that the Tenant not be released from its obligations under this Lease, regardless of the transfer or assignment;
 - (e) in the case of a sublease and without limiting any other provision of this clause 8.2:
 - (i) the Tenant proves to the Landlord's satisfaction that the incoming subtenant is obliged to pay a rent at least equal to the current market rent for the Premises; and
 - (ii) the proposed sublease contains provisions required by the Landlord including provisions under which the proposed subtenant covenants to comply with this Lease and agrees to not cause the Tenant to be in breach of this Lease;
 - (f) the Tenant pays the Landlord's Costs of and incidental to the Landlord considering whether or not to give its consent (including any costs in procuring the consent of the Head Landlord and Concurrent Landlord);
 - (g) the Landlord has obtained any consents that it has agreed to endeavour to obtain on conditions that are satisfactory to the Landlord (in its absolute discretion); and
 - (h) in the case of an assignment, the incoming tenant provides the Landlord with a Bank Guarantee for an amount determined by the Landlord (being in no case less than that required of the Tenant as at the date of assignment).
- (2) Despite any other provision of this Lease, the Landlord may withhold its consent in its absolute discretion:
- (a) to an assignment or sublease of part of the Premises only, (where that part of the Premises is less than the Area let on one whole floor of the Building);
 - (b) if the transfer of all or part of an interest will bring the Lease or Premises under the Retail Leases Act; or
 - (c) if the Landlord cannot for any reason obtain satisfactory consent to the proposed transfer of interest from the Head Landlord, the Concurrent Landlord, a mortgagee or other necessary party.

8.3 Change in ownership or control

If there is a proposed change in Control of the Tenant or the Tenant's Holding Company and the Tenant is a company which is not listed on the Australian Stock Exchange, then:

- (1) that proposed change in Control is treated as a proposed assignment of this Lease to an incoming tenant;

- (2) the person or entity proposed to acquire Control is treated as an incoming tenant; and
- (3) clause 8.1 applies.

9 Personal Property Securities Act

- (1) In this clause 9:
 - (a) **PPS Law** means:
 - (i) the PPSA and any regulations made under the PPSA, as amended from time to time; and
 - (ii) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the *Corporations Act 2001* (Cth); and
 - (b) **PPSA** means the Personal Property Securities Act 2009 (Cth).
- (2) A term defined in the PPS Law has the same meaning when used in this clause.
- (3) The Tenant agrees and acknowledges:
 - (a) the Landlord may be entitled to register any relevant interest under this Lease as a security interest (at the Landlord's discretion) on the register established under the PPS Law; and
 - (b) the Landlord has provided consideration for that security interest, by delivery of its promises under this Lease.
- (4) The Landlord may, by notice to the Tenant at any time, require the Tenant to take all steps, provide information (including serial numbers) or do any other thing that the Landlord considers necessary or desirable to:
 - (a) ensure that this lease (or any related document or any security interest arising under it) is enforceable against the Tenant or any third party;
 - (b) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Landlord under this Lease (or any related document); or
 - (c) overcome any defect or adverse effect arising from the PPS Law on the Landlord's security position or the rights or obligations of the Landlord under or in connection with this Lease or any encumbrance or document contemplated by this Lease.
- (5) The Tenant must comply with the requirements of a notice under clause 9(4) within the time stated in the notice at the cost of the Tenant.
- (6) Subject to clauses 9(4) and 9(5), but despite any other clause of this Lease which permits the disclosure of such information, the parties agree that neither of them will disclose any information of the kind mentioned in section 275(1) of the PPSA. The Tenant waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information. This clause 9(6) survives the termination of this Lease.

- (7) To the extent that Chapter 4 of PPSA would otherwise apply to enforcement by the Landlord of any security interest under this Lease, the parties agree that the following provisions of the PPSA are excluded: sections 95, 118(1)(b), 121(4), 129(2) & (3), 130(1), 132(3)(d), 132(4), 134(1), 135 and 157 of the PPSA.
- (8) If the Landlord seizes any collateral, the Landlord may delay a decision to dispose of or retain any of the collateral seized by the Landlord for as long as the Landlord considers reasonable in the circumstances, in accordance with section 125(3)(a) of the PPSA.
- (9) The Tenant agrees that it will not either redeem the collateral under section 142 of the PPSA or reinstate the security agreement under section 143 of the PPSA.
- (10) The Tenant agrees to perfect and maintain continuous perfection of any security interests under the PPS Act that it may at any time hold, including purchase money security interests if failure to do so could materially adversely affect:
 - (a) the Tenant's business; or
 - (b) in the opinion of the Landlord, the Landlord's security position under this Lease (or any related document) including the Landlord's security position relative to other secured parties in relation to the security position of the Landlord under this Lease (or any related document).
- (11) In addition to any power granted by the Tenant in favour of the Landlord otherwise in this Lease, the Tenant irrevocably appoints the Landlord and each authorised officer of the Landlord, as its attorney with the right at any time to:
 - (a) comply with the obligations of the Tenant under this clause and the PPS Law; and
 - (b) do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Landlord in relation to this clause and the PPS Law.

10 Maintenance and repair

10.1 Repair of Premises

- (1) The Tenant must keep the Premises, the Tenant's Fittings and the Landlord's Fixtures in good repair and condition having regard to their state of repair and condition as at the First Occupancy Date except for:
 - (a) fair wear and tear (where not excluded or required to be renovated, repaired or made good by this Lease); and
 - (b) damage covered by insurances taken out by the Landlord in respect of the Premises.
- (2) The exception in clause 10.1(1)(b) does not apply if any insurer under any policy effected by the Landlord refuses indemnity or to the extent that the sum payable under the policy is reduced because of any act, negligence, omission or default of the Tenant or the Tenant's Employees.

- (3) Nothing in clause 10.1(1) imposes any obligation on the Tenant in respect of any major structural maintenance, replacement, renovation or repair unless it is required because of:
- (a) any act, negligence, omission or default of the Tenant or the Tenant's Employees;
 - (b) the Tenant's use or occupancy of or the number of persons in the Premises;
 - (c) the installation, use or removal of the Tenant's Fittings or any other work, materials, machinery or other item carried out or installed by the Tenant; or
 - (d) other provisions of this Lease.

10.2 Maintenance and breakages

The Tenant must:

- (1) immediately make good any damage (including any to the Premises, Building or Land) caused or contributed to by any act, negligence, omission or default of the Tenant or the Tenant's Employees or by its or their use or occupancy of the Premises or by the installation, use or removal of the Tenant's Fittings, including but not limited to immediately repairing or replacing:
 - (a) broken glass with glass of the same quality;
 - (b) damaged or inoperative electric light bulbs, globes, tubes and other means of illumination and light switches and power points which may become damaged or fail to operate; and
 - (c) Landlord's Fixtures which are broken or damaged by the Tenant or the Tenant's Employees.
- (2) indemnify the Landlord, the Head Landlord and, while the Concurrent Lease is still in force, the Concurrent Landlord, from and against all loss and damage to the Premises, the Building and any Services caused by the negligent use or misuse of them by the Tenant or any of the Tenant's Employees.

10.3 Landlord's right to inspect and repair

- (1) Except in the case of emergency (when no notice will be required), after giving the Tenant 1 Business Days' notice, the Landlord and the Landlord's Employees may enter the Premises and view their condition.
- (2) The Landlord may serve a notice on the Tenant requiring it to undertake any repair which is the Tenant's obligation, within a reasonable time.
- (3) Without limiting any other right of the Landlord, if the Tenant does not make the repairs to the Landlord's satisfaction, the Landlord and the Landlord's Employees may (but is or are not obliged to) enter any part of the Premises and make the repairs and the Landlord's Cost of doing so must be paid by the Tenant on demand.
- (4) In exercising its powers under this clause 10.3, the Landlord must endeavour to cause as little inconvenience to the Tenant as is practicable in the circumstances.

10.4 Landlord may enter

- (1) Subject to the same notice requirements set out in clause 10.3(1), the Landlord and the Landlord's Employees may enter the Premises with workers, agents and other authorised persons and necessary materials and appliances to:
 - (a) comply with any Law or Requirement involving the destruction of noxious animals, rodents or other pests;
 - (b) carry out any repairs, alterations, renovations, extensions or works;
 - (c) exercise the Landlord's rights under this Lease; or
 - (d) provide any Services to the Tenant.
- (2) In exercising its powers under this clause 10.4, the Landlord will endeavour to cause as little inconvenience to the Tenant as is reasonably practicable in the circumstances.

10.5 Notice of damage or defect in services

The Tenant must promptly give the Landlord notice of:

- (1) any damage to, defect or disrepair in the Premises, Services or the Landlord's Fixtures;
- (2) any circumstances likely to cause any danger risk or hazard to the Premises or to any person; and
- (3) any notice received from any Authority.

10.6 Principal contractor

- (1) The Tenant accepts the Landlord's nomination as principal contractor for the purposes of the *Occupational Health and Safety Regulations 2007 (Vic)* in relation to any works carried out by or on behalf of the Tenant at the Premises.
- (2) The Tenant warrants to the Landlord that it will comply with all Laws and Requirements when discharging its obligations and responsibilities as principal contractor.

10.7 Head Landlord's and Concurrent Landlord's entitlements

The Tenant will at all times permit the Landlord, the Head Landlord and while the Concurrent Lease is in force, the Concurrent Landlord to exercise the Landlord's powers to enter and view the Premises and to carry out repair, renovations, maintenance and other work on the Premises and to otherwise exercise or perform its lawful rights or obligations in respect of the Premises.

11 Redecoration and restoration

11.1 Definition of redecorate

The term **redecorate** includes:

- (1) washing down the exterior and interior of the Premises;

- (2) treatment as previously treated of all internal surfaces of the Premises to a specification previously approved by the Landlord; and
- (3) replacing carpet and curtains.

11.2 **Tenant to redecorate**

Without limiting any other obligation of the Tenant (including under clause 12), the Tenant must redecorate the Premises in accordance with all Laws, Building Rules and Requirements and to reasonable standards determined by the Landlord:

- (1) during the 6 month period prior to the end of the Term; and
- (2) during the 6 month period before the Tenant vacates the Premises, if the Tenant has not redecorated the Premises in the 6 month period before that occurs.

11.3 **Landlord's approval required**

- (1) The Tenant must obtain the Landlord's approval prior to carrying out any redecoration.
- (2) The Landlord may specify the type and colour of paint, materials, carpets, window furnishings and treatments to be used in connection with the redecoration.

11.4 **Failure to redecorate**

- (1) If the Tenant fails to redecorate the Premises as required by this Lease, then without limiting any right of the Landlord, the Landlord may (but is not obliged to) redecorate the Premises at the Tenant's expense.
- (2) The Landlord will be entitled to recover from the Tenant on demand:
 - (a) the Cost of redecoration; and
 - (b) if Landlord redecorates the Premises (as soon as reasonably practicable after the Tenant vacates), a sum equal to the Rent and any other money being paid by the Tenant at the time it vacated the Premises calculated from the date it vacated the Premises to the date the Landlord completes the redecoration.

12 **Expiry or termination of term**

12.1 **Tenant to yield up**

On or before the date this Lease ends, the Tenant must:

- (1) deliver the Premises and the Services to the Landlord in good repair, order and condition and otherwise as required by clause 10.1;
- (2) remove all the Tenant's Fittings and any signs or advertisements affixed by the Tenant from the Premises, unless:
 - (a) the Landlord has stated as a condition of giving approval to works that they may not be removed; or
 - (b) they are part of structural work done by the Tenant and the Landlord has not given the Tenant a notice requiring the Tenant to remove those Tenant's Fittings;

- (3) have redecorated the Premises as required by clause 11.2;
- (4) return all altered surfaces to their original condition, fair wear and tear excepted;
- (5) ensure any carpet in the Premises is left clean and undamaged to the Landlord's reasonable satisfaction, fair wear and tear excepted;
- (6) restore the electrical Services to standard pattern for open plan occupation of the Premises;
- (7) clean lighting boxes and diffusers and replace tubes and diffusers as necessary;
- (8) remove any partitions and restore Air Conditioning Equipment ducting to the standard pattern and balance the Air Conditioning Equipment;
- (9) restore the fire services to standard pattern for open plan occupation of the Premises at the time the Tenant vacates the Premises;
- (10) remove, clean and then replace any window furnishings after cleaning all glass and sills; and
- (11) prepare all painted surfaces and walls and apply an undercoat and 2 top coats of good quality paint.

12.2 **New condition**

- (1) The Tenant must carry out the necessary works and perform those obligations set out in clause 12.1 (collectively, the '**Tenant's Works**' to return the relevant part of the Premises to an open plan and new condition, regardless of their condition at the Commencement Date.
- (2) For the purposes of clause 12.2(1), '**new condition**' means replacing with new parts any parts of the Premises which have been lost, are missing or, in the Landlord's reasonable opinion, have been damaged or have deteriorated and need to be replaced.

12.3 **Tenant not to cause damage**

- (1) The Tenant must not damage the Premises or the Building in performing the Tenant's Works.
- (2) If the Tenant does so then without limiting any other right of the Landlord, it must repair any damage and leave the Premises and Building clean.
- (3) If the Tenant fails to comply with clause 12.3(2), then without limiting any right of the Landlord, the Landlord may (but is not obliged to) repair and clean the Premises and the Building and recover the costs of doing so from the Tenant on demand.

12.4 **Tenant's expense**

The Tenant must carry out the Tenant's Works at its expense to reasonable trade standards approved by the Landlord.

12.5 **Failure to do Tenant's Works**

Without limiting the Tenant's obligations to complete the Tenant's Works, if the Tenant does not complete the Tenant's Works to the Landlord's reasonable satisfaction prior to

vacating the Premises, it will be deemed to be holding over from day-to-day as a tenant under this Lease the Tenant's Works are completed to the Landlord's reasonable satisfaction.

12.6 Landlord may carry out the Tenant's Works

- (1) If the Tenant does not carry out the Tenant's Works, the Landlord will be entitled to complete them at the Tenant's expense and the Costs of doing so must be paid by the Tenant on demand.
- (2) A certificate signed by the Manager giving reasonable details of the Tenant's Works completed by the Landlord and the Costs will be conclusive evidence of the Tenant's Works and Costs, except in the case of manifest error (the burden in proving being the sole responsibility of the Tenant).

12.7 Failure by Tenant to remove Tenant's Fittings

- (1) In consideration for the Landlord paying the Tenant \$1.00, receipt of which is acknowledged by the Tenant, the Tenant grants the Landlord an option for the Landlord or its nominee to purchase the Tenant's Fittings (unless owned by the Landlord pursuant to this Lease).
- (2) The option in clause 12.7(1) is an irrevocable offer by the Tenant to sell the Tenant's Fittings (unless owned by the Landlord pursuant to this Lease) to the Landlord.
 - (a) The option in clause 12.7(1) may be exercised by the Landlord by notice to the Tenant at any time after the Tenant fails to remove the Tenant's Fittings as required by clause 12.1(2).
 - (b) Subject to clause 9, the Tenant warrants to the Landlord that the Tenant's Fittings:
 - (i) are not, unless expressed to the contrary in this Lease, as at the date of this Lease subject to any rights of any third party;
 - (ii) will not throughout this Lease be subject to any rights of any third party and if they are, then the Tenant must obtain the consent of that third party to the option in clause 12.7(1) on the conditions set out in this Lease; and
 - (iii) will be transferred to the Landlord or its nominee on exercise of the option in clause 12.7(1), free from any encumbrances.
 - (c) Without limiting the option in clause 12.7(1), if the Tenant fails to remove the Tenant's Fittings as required by clause 12.1(2), then without limiting any right of the Landlord, the Landlord may (but is not obliged to) remove and store the Tenant's Fittings at the Tenant's risk and expense.

12.8 Tenant to indemnify and pay Landlord's costs

The Tenant:

- (1) is responsible for and indemnifies the Landlord against the removal and storage of the Tenant's Fittings and against all Claims by any person claiming an interest in the Tenant's Fittings by reason of the Landlord's actions under clause 12.4; and
- (2) must pay the Landlord, as a liquidated debt payable on demand, any Costs incurred by the Landlord in exercising its rights under clause 12.4 less any money received on disposal of the Tenant's Fittings.

13 Alterations

13.1 Alterations and additions

- (1) The Tenant must not alter or add to the Premises or the Tenant's Fittings, install or alter any partitions or install any heavy article without the Landlord's prior consent.
- (2) The Tenant must submit plans and specifications of any proposed alteration, addition or installation to the Premises or the Tenant's Fittings for the Landlord's consent.
- (3) Without limiting any other provision of this Lease, as a condition of its approval the Landlord may require:
 - (a) the Tenant to engage the Landlord's nominated consultants or consultants approved by the Landlord to ensure that alterations and additions are of a suitable design, style and quality to complement the Premises and the Building if the Tenant wishes to make structural alterations or additions to the Premises;
 - (b) the Tenant to use only the drawings, plans and specifications prepared by those consultants after first having them approved by the Landlord's consultants;
 - (c) the Tenant to provide its drawings, plans and specifications in both soft and hard formats or as otherwise reasonably required by the Landlord;
 - (d) the Tenant to pay the Costs of the Landlord's consultants approving the plans and specifications referred to in clause 13.1(2) on demand and, if the Landlord pays those Costs, it may recover them from the Tenant as a debt;
 - (e) any proposed work to be supervised by a person nominated by the Landlord and the Costs of supervision must be paid by the Tenant on demand;
 - (f) any proposed work to be carried out by contractors or tradespersons nominated or otherwise approved by the Landlord;
 - (g) the Tenant to obtain, at its expense, from any Authority all approvals or permits necessary to enable the proposed work to be lawfully executed and, if requested by the Landlord, the Tenant must produce a copy of any approval and permit;
 - (h) the Tenant to agree that all or part of the work must remain on the Premises at the termination or expiry of this Lease at no cost to the Landlord; and
 - (i) the Tenant to reimburse the Landlord for Costs incurred by it as a result of the alteration or addition including the Cost of installation, operation (including changing the operation of) or removal of any Air Conditioning Equipment, other equipment, fixture, fitting or machinery on demand.
- (4) The Tenant must promptly provide the Landlord with a complete set of "as built" drawings and commissioning data for the work carried out under this clause 13.1 in a format required under clause 13.1(3)(c), together with all operating manuals and the benefit of all guarantees or warranties that may apply.

- (5) If any alteration or addition includes partitions, the partitions remain the Tenant's property and the Tenant must maintain and insure them.
- (6) Any proposed work to be carried out under this clause 13.1 must be carried out at times and in a manner that:
 - (a) causes no cost, loss, damage, expense or liability to any other occupier of the Building or Land; and
 - (b) minimises any disturbance or inconvenience to any other occupier.

13.2 Installation of equipment

Without the Landlord's prior consent, the Tenant must not:

- (1) install any water, gas or electrical fixtures, equipment or appliances or any apparatus for air conditioning, heating, cooling, ventilating or illuminating the Premises, Building or Land; or
- (2) mark, paint, drill, deface or damage any part of the Premises, Building or Land.

13.3 Reinstatement

- (1) If the Tenant breaches clause 13.1 or 13.2, the Landlord may give the Tenant a notice requiring it to reinstate the Premises, Building or Land as required by this Lease in other circumstances, including without limitation to the extent required by clause 12.1, 12.2(1) and clause 11.2.
- (2) If the Tenant fails to comply with a notice given under clause 13.3(1), then without limiting any right of the Landlord, the Landlord may (but is not obliged to) undertake the necessary work and the Costs of doing the work and all Rent and other Costs during the period of the work will be recoverable from the Tenant on demand.

14 Insurances and indemnities

14.1 Public risk and plate glass insurance

The Tenant must keep current:

- (1) a public risk insurance policy for an amount in respect of any single event of not less than the amount in Item 14 or a greater sum if nominated by the Landlord;
- (2) an insurance policy covering any windows, doors, plate glass and display showcases forming part of or in the Premises for the full insurable reinstatement Cost;
- (3) an insurance policy covering the Tenant's Fittings for the full insurable reinstatement cost; and
- (4) any other insurance required by Law or a Requirement or which the Landlord (acting reasonably) considers prudent for the Tenant to take out.

14.2 Landlord may insure

- (1) If the Tenant fails to maintain the insurances required by this clause 14, then without limiting any right of the Landlord, the Landlord may (but is not obliged to) effect and maintain those insurances.
- (2) The Costs in effecting and maintaining the insurances under clause 14.2(1) must be paid by the Tenant.

14.3 Tenant's insurances

The Tenant must ensure that all policies of insurance effected or required to be effected by the Tenant under this clause 14:

- (1) are taken out with an independent and reputable insurer approved by the Landlord;
- (2) are for an amount, cover risks and contain conditions which are acceptable to the Landlord and its insurer (including a cross-liability and waiver of subrogation);
- (3) are on an occurrence, not a claims made, basis;
- (4) have no exclusions, endorsements or alterations unless first approved by the Landlord; and
- (5) note the interests of:
 - (a) the Landlord the Head Landlord and, while the Concurrent Lease is in force, the Concurrent Landlord; and
 - (b) any other person nominated by the Landlord for their respective rights and interests.

14.4 Payment and production of insurance policies

- (1) The Tenant must promptly pay all premiums and other money payable in respect of its insurances.
- (2) If requested by the Landlord, the Tenant must produce policies of insurance which the Tenant is required to effect under this clause 14 and the receipt or other evidence of up to date payment of the premium.

14.5 Effect on the Head Landlord's, Concurrent Landlord's and Landlord's insurance

- (1) Without the Landlord's prior consent, the Tenant must not do or omit to do anything to or upon the Premises which may:
 - (a) increase the rate of any insurance on the Premises or any property on the Premises;
 - (b) permit an insurer to decline or reduce a claim;
 - (c) vitiate or render void or voidable, reduce or prejudice any insurance on the Premises or any property in the Premises; or
 - (d) conflict with any Law or Requirement, the requirements of the Head Landlord's, the Concurrent Landlord's or the Landlord's insurer relating to fire, fire safety or fire prevention or any insurance policy in respect of the Premises or any property in them,and the Tenant must immediately notify the Landlord if anything happens in contravention of this clause.

- (2) The Tenant must pay to the Landlord all extra insurance Costs on account of the extra risk caused by the Tenant's use or occupation of the Premises or anything done by the Tenant in breach of clause 14.5(1).
- (3) The Landlord's acceptance of any extra insurance Costs will not constitute a waiver of any breach of this clause 14.5 by the Tenant.
- (4) The Tenant must pay the proceeds of any insurance claim (which the insurer does not require for replacement or reinstatement) into a separate account in the names of the Landlord, the Tenant and any other person nominated by the Landlord with any surplus after settlement of claims to be shared equally between them.

14.6 **Inflammable substances and fire regulations**

The Tenant must not store inflammable, volatile or explosive substances (whether liquid, gas or solid) on the Premises or do anything that may create a hazard.

14.7 **Tenant's risk**

- (1) All property at the Premises is at the Tenant's sole risk.
- (2) The Tenant occupies and uses the Premises and accesses the Land and Building at the Tenant's risk.
- (3) The Landlord, the Landlord's Employees, the Head Landlord and while the Concurrent Lease is in force, the Concurrent Landlord, are not liable for any Claim by the Tenant, the Tenant's Employees or any person which may arise from:
 - (a) any fault in the construction or state of repair of the Premises or any part of it or the Landlord's Fixtures;
 - (b) any defect in the Services, the Landlord's Fixtures, the Building Plant or the Common Plant; or
 - (c) the flow, overflow, leakage, condensation or breakdown of any water, air conditioning, gas, oil or other source of energy or fuel from or in any part of the Premises;or from any other cause except as to the extent caused by the negligence of the Landlord, the Landlord's Employees, the Head Landlord and while the Concurrent Lease is in force, the Concurrent Landlord.

14.8 **Release**

To the full extent permitted by Law, the Tenant releases the Landlord, the Head Landlord, and while the Concurrent Lease is in force, the Concurrent Landlord (**Indemnified**), and each of their employees and agents from and Costs incurred in relation to:

- (1) liability for any Claim in respect of or arising from:
 - (a) any property in the Premises, Land or Building;
 - (b) damage or injury to any person or property on the Premises, Land or Building; or
 - (c) any of the circumstances set out in clause 14.9;other than to the extent that the Claim results from the negligence of the Indemnified;

- (2) a Service being interrupted, not being available or not working or not doing so properly;
- (3) the Landlord's Fixtures not working or not doing so properly;
- (4) the Premises, Land or Building not complying with any Law or Requirement.

14.9 Indemnities

- (1) The Tenant is responsible for and indemnifies the Indemnified against all Claims arising during or after the Term, in connection with or arising directly or indirectly from, and Costs incurred in connection with:
 - (a) any cause relating to the Premises, Land or Building, any property or any person inside or outside the Premises, Land or Building, including any loss, damage or injury to property or person or death, occasioned or contributed to by any act, neglect or default of the Tenant or the Tenant's Employees or the use or occupation of the Premises or use of the Land or Building by or on the part of the Tenant or the Tenant's Employees, except to the extent caused by the negligence of the Indemnified or any of their employees or agents;
 - (b) the negligent or careless use or neglect of the Services and facilities in or of the Premises, Land or Building or the Landlord's Fixtures by the Tenant, the Tenant's Employees, any other person in the Premises, Land or Building as a result of the Tenant's use or occupation (including any sub-lessee, licensee or invitee) or claiming by, through or under the Tenant or any trespasser while in the Premises, Land or Building;
 - (c) the overflow or leakage of water from any source including the Services or the Landlord's Fixtures, whether originating outside or within the Premises, Land or Building;
 - (d) the Tenant's failure to give notice to the Landlord of any defect in the Services;
 - (e) any person exercising or purporting to or attempting to exercise a right or remedy in relation to this Lease after the Tenant has defaulted under this Lease;
 - (f) for any matter for which the Tenant is responsible;
 - (g) the Indemnified doing anything:
 - (i) which the Indemnified is permitted or required to do under this lease; or
 - (ii) which the Tenant must do under this Lease but has not done or which the Landlord considers the Tenant has not done properly;
 - (h) the Tenant's breach of this Lease (including if this Lease is terminated for breach, the Landlord's loss of the benefit of the Tenant performing its obligations under this Lease); and
 - (i) damage to plate and other glass caused or contributed to by any act or omission by the Tenant or the Tenant's Employees.
- (2) Amounts due under the indemnity in clause 14.9(1) must be paid by the Tenant to the Landlord on demand.

15 Landlord's covenants and additional rights

15.1 Quiet enjoyment

If the Tenant performs and observes all its obligations under this Lease and subject to the Head Landlord's, Concurrent Landlord's and Landlord's rights, the Tenant may:

- (1) use the Premises without interruption or disturbance from the Landlord or any person claiming by, through or under the Landlord; and
- (2) use in common with the Landlord and other tenants and occupiers of the Building and all other persons authorised or permitted by the Landlord, the Common Areas for the purposes for which they were provided

15.2 Person other than landlord becoming entitled to rents

- (1) If any person other than the Landlord becomes entitled to receive the Rent, that person will have the benefit of all covenants by the Tenant under this Lease.
- (2) If required by and at the reasonable expense of the Landlord, the Tenant must enter into a deed in favour of that other person agreeing to be bound by this Lease as if that other person was named in this Lease as Landlord.

15.3 Services to be provided by landlord

The Landlord will use reasonable endeavours to ensure that the Services are operational and functional during the hours and days in Item 13.

15.4 Services outside hours

- (1) The Landlord is not obliged to make any Service available outside the hours and days in Item 13.
- (2) If at the Tenant's request the Landlord makes any Service available to the Land, the Building or the Premises outside the hours in Item 13, then the Tenant must pay the Costs of making the Service available within 5 Business Days of the request.

15.5 Failure of services

The Tenant will have no Claim against the Landlord nor will the Tenant be entitled to terminate this Lease solely because:

- (1) the Services fail to operate; or
- (2) the Landlord shuts down or removes any Services to repair, maintain or replace them or because of the provisions of any Law or Requirement.

15.6 Additional rights

The Landlord may in addition to any express rights and to the full extent permitted by law:

- (1) do anything to comply with any Law or Requirement of any Authority;
- (2) exclude or remove any person from the Building or Premises;
- (3) carry out works (including alterations or redevelopment) in the Building or in the Premises or limit access to or close the Common Areas if the Landlord takes reasonable steps other than in emergencies to minimise interference with the Tenant's business;
- (4) enter the Premises at reasonable times on reasonable notice to determine if the Tenant is complying with its obligations under this Lease and to do anything that the Landlord may or must do under this Lease;
- (5) if it decides there is an emergency, enter the Premises at any time without notice and stop the Tenant from entering the Premises;
- (6) install and use a public address system throughout the Common Areas and the Premises;
- (7) change, restrict or modify the direction, volume and flow of pedestrian and vehicular access or traffic into, through or out of the Building or the Common Areas;
- (8) after giving the Tenant reasonable notice, do anything which the Tenant should have done under this Lease but which it has not done or which the Landlord considers it has not done properly;
- (9) grant any rights of use or occupation in connection with the Building to any other person;
- (10) change, grant rights in relation to, remove or alter signage of the Building or on the Land; and
- (11) appoint agents or others (including a Manager) to exercise any of its rights or perform any of its duties under this Lease, on the condition that communications from the Landlord prevail over communications from others if they are inconsistent.

15.7 Building Shutdowns

- (1) The Tenant:
 - (a) acknowledges that the Landlord will carry out temporary shutdowns of the Building from time to time during the Term, generally in accordance with a predetermined schedule or schedules issued by the Landlord in accordance with this clause 15.7 in order to ensure the safe and efficient operation of the Building, and plant, equipment and services therein (**Building Shutdown**);
 - (b) must cooperate with the Landlord, its Manager and any consultants, and not object to or disrupt any planned Building Shutdowns;
 - (c) may not have access to the Building or the Premises during any Building Shutdown;

- (d) subject to the Landlord complying with clause 15.7(2), will not:
 - (i) object;
 - (ii) claim against the Landlord or its Manager;
 - (iii) rescind or purport to rescind or terminate this Lease;
 - (iv) withhold or offset any Rent or other monies due to the Landlord under this Lease, by reason of or in connection with any Building Shutdown.
- (2) The Landlord will:
 - (a) give the Tenant no less than 7 days' prior notice of any Building Shutdown;
 - (b) use reasonable endeavours to coordinate with the Tenant to agree to mutually acceptable dates to perform a Building Shutdown and use reasonable endeavours to ensure that such dates are either Saturdays, Sundays or public holidays; and
 - (c) provide the Tenant with any information relating to the Building Shutdown which is reasonably requested by the Tenant, including the key activities which are proposed to be conducted during the Building Shutdown.
- (3) For the avoidance of doubt, nothing in this clause 15.7:
 - (a) prevents or restricts the Landlord from performing a Building Shutdown at any time when urgent or emergency works in the Building are required, in which case it may, acting reasonably, perform a Building Shutdown without notice; or
 - (b) allows the Tenant to prevent or restrict a Building Shutdown.

15.8 **Landlord to meet obligations**

The Landlord will comply with the provisions of the Head Lease.

15.9 **Rates, taxes etc.**

The Landlord will pay to the relevant Authority or pay or reimburse to the Head Landlord or the Concurrent Landlord as the case may require pursuant to the provisions of the Head Lease all rates, taxes and charges of a similar nature incurred in respect of the Building, subject to any right of recovery or reimbursement from the Tenant under this Lease.

15.10 **Public risk insurance**

The Landlord will maintain throughout the Term public risk insurance cover in respect of the Building subject always to any right or claims against the Tenant pursuant to clause 14.5.

15.11 **Building Rules**

The Tenant will, and will ensure the Tenant's Employees, at all times observe and perform the Building Rules, as varied under clause 15.12 to be construed as being incorporated in and forming part of this Lease.

15.12 Variation of building rules

- (1) Subject to the consent of the Head Landlord under the Head Lease and, while the Concurrent Lease is in force, the Concurrent Landlord (which consent must not be withheld if the Head Landlord is required to consent under the terms of the Head Lease), the Landlord may as it sees fit to vary the Building Rules as the Landlord considers necessary or desirable
- (2) A statement signed on behalf of the Landlord by a Manager or other duly authorised officer of the Landlord as to the Building Rules or any amendments to the Building Rules is:
 - (a) conclusive evidence that such Building Rules or amendments are for the time being in force and made pursuant to the terms of this Lease; and
 - (b) binding on the Tenant and from the date such a statement is given to it.

16 Damage and destruction

16.1 Definitions

In this clause 16:

- (1) **reinstatement notice** means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the reinstatement works; and
- (2) **reinstatement works** means the work necessary to:
 - (a) reinstate the Building; or
 - (b) make the Premises fit for occupation and use or accessible by the Tenant.

16.2 Abatement

- (1) If the Premises are damaged or destroyed so as to render any part of the Premises wholly or substantially:
 - (a) unfit for occupation and use by the Tenant; or
 - (b) inaccessible having regard to the nature and location of the Premises and the normal means of access to them;then subject to this clause 16 from the date that the Tenant notifies the Landlord of the damage or destruction (**damage notice**):
 - (c) the Rent;
 - (d) any other money payable by the Tenant; and
 - (e) the covenant to repair and maintain;will abate according to the nature and extent of the damage or destruction sustained until the Premises are:
 - (f) restored;
 - (g) made fit for the Tenant's occupation and use; or
 - (h) made accessible.

- (2) The Landlord must notify the Tenant of the extent of the abatement as soon as reasonably possible after receipt of the damage notice.
- (3) The Tenant must notify the landlord of any disagreement with or dispute about the extent of the abatement within 5 Business Days after receipt of the Landlord's notice (time is of the essence in respect of the giving of the damage notice and the Tenant's notice under this clause 16.2(3)).
- (4) There is no disagreement or dispute about the extent of the abatement if the Landlord does not receive a notice under clause 16.2(3).
- (5) If there is a disagreement or dispute about the extent of the abatement, then:
 - (a) within 5 Business Days of service of the Tenant's notice under clause 16.2(3), the Landlord and the Tenant either personally or by their representatives must meet and attempt to agree the extent of the abatement;
 - (b) if the Landlord and the Tenant have not agreed on the extent of the abatement within 5 Business Days after service of the Tenant's notice:
 - (i) the dispute must be referred for determination by a Valuer to be nominated by the president of the Australian Institute at the request of either the Landlord or the Tenant;
 - (ii) the appointed Valuer must give notice of acceptance of appointment to the Landlord and the Tenant;
 - (iii) the Valuer must as a condition of accepting the appointment agree to make a written determination of the extent of the abatement:
 - (A) within 30 Business Days of appointment;
 - (B) in accordance with this clause 16; and
 - (C) that sets out reasons for that determination;
 - (c) the Valuer must make a determination of the abatement as at the date of the damage or destruction, acting as an expert and not as an arbitrator;
 - (d) the Valuer's determination will be final and binding on the Landlord and the Tenant;
 - (e) the Valuer's Costs must be paid by the Landlord and the Tenant equally; and
 - (f) either Party may pay the Valuer's Costs and recover one-half of the amount paid from the other party.
- (6) Until the determination of abatement has been made under clause 16.2(5), the Tenant must comply with the Landlord's notice under clause 16.2(2).
- (7) Within 10 Business Days after the determination, the Landlord must refund any overpayment or the Tenant must pay any shortfall.

16.3 Termination

- (1) The Landlord may terminate this Lease by notice to the Tenant within 3 months after a damage notice has been received.
- (2) Either party may terminate this Lease by notice to the other unless the Landlord:
 - (a) within 3 months after receiving the damage notice, gives the Tenant a reinstatement notice; and
 - (b) subsequently diligently proceeds within a reasonable time to commence the reinstatement works.
- (3) The Landlord may decide whether or not to carry out any reinstatement works in its absolute discretion.

16.4 Tenant may terminate

- (1) If the Landlord gives a reinstatement notice to the Tenant and fails to commence the reinstatement works within a reasonable time, the Tenant may give the Landlord notice of the Tenant's intention to terminate this Lease (**termination notice**).
- (2) If the Landlord does not commence the reinstatement works within a reasonable time after receipt of the termination notice, the Tenant may end this Lease by giving not less than 1 months' notice to the Landlord and, at the expiration of that period, this Lease ends.
- (3) If the Landlord commences reinstatement works, it must use its reasonable endeavours to complete the reinstatement works within a reasonable time.

16.5 Exceptions

Clauses 16.2, 16.3 and 16.4 will not apply where:

- (1) the damage or destruction was caused or contributed to, or arises from any act, negligence or default of the Tenant or the Tenant's Employees; or
- (2) an insurer under any policy effected by the Landlord refuses indemnity or refuses or reduces the sum payable under the policy because of any act, negligence or default of the Tenant or the Tenant's Employees.

16.6 Landlord not obliged to reinstate

16.7 Nothing in this Lease obliges the Landlord to reinstate any part of the Premises or any means of access to them. **Proceeds of insurance and release**

If the Premises are damaged or destroyed and the Lease ends under this clause 16:

- (1) no liability will attach to either party because this Lease ends under this clause 16 but the Lease ending will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision of this Lease;
- (2) the Tenant's right and interest is immediately surrendered to the Landlord; and
- (3) the Tenant will have no interest in any insurance proceeds (other than in respect of any policies for public risk and Tenant's Fittings effected by it under clause 14.1).

17 Default and termination

17.1 Essential terms of this lease

- (1) The following are essential terms of this Lease:
 - (a) each obligation of the Tenant to pay money;
 - (b) each obligation of the Tenant under clause 7;
 - (c) each obligation of the Tenant under clause 8;
 - (d) each obligation of the Tenant under clause 9;
 - (e) each obligation of the Tenant under clause 10;
 - (f) each obligation of the Tenant under clause 11;
 - (g) each obligation of the Tenant under clause 12;
 - (h) each obligation of the Tenant under clause 13;
 - (i) each obligation of the Tenant under clause 14;
 - (j) each obligation of the Tenant under clause 18; and
 - (k) the Tenant to not be subject to an Insolvency Event.
- (2) Other obligations of the Tenant under this Lease may also be essential terms.

17.2 Forfeiture of lease

- (1) The Landlord may rescind this Lease by notice to the Tenant or re-entry if the Tenant fails to pay Rent when due.
- (2) If the Tenant fails to comply with any provision of this Lease, the Landlord may give the Tenant notice specifying the breach and requiring the Tenant, within the time fixed by clause 17.2(5), to:
 - (a) remedy the breach; and
 - (b) make compensation in money for the breach.
- (3) The Landlord may rescind this Lease by notice to the Tenant or re-entry if the Tenant fails within the time fixed by clause 17.2(5) to remedy a breach the subject of a notice under clause 17.2(2), if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the Landlord, for the breach.
- (4) In the case of non-payment of Rent:
 - (a) the Tenant is not entitled to notice under clause 17.2(2); and
 - (b) the Landlord may rescind this Lease:
 - (i) under clause 17.2(1); or
 - (ii) if the Landlord elects to give notice under clause 17.2(2), under clause 17.2(3), in its absolute discretion.
- (5) The time fixed for the purposes of section 146 of the *Property Law Act 1958* and this clause 17.2 is 14 days.

17.3 Costs

Without notice to the Tenant, any Costs incurred by the Landlord in remedying a default may be treated by the Landlord as a liquidated debt payable by the Tenant on demand.

17.4 Waiver

- (1) No waiver by the Landlord will be effective unless it is in writing.
- (2) The Landlord's failure to notify the Tenant of any default or to otherwise act on any default by the Tenant must not be construed as waiving the default.
- (3) No custom or practice which evolves between the parties will constitute a waiver or lessen the Landlord's right to insist upon the Tenant's strict performance or observance of any provision of this Lease or to exercise any of the Landlord's other rights.
- (4) Regardless of the Landlord's knowledge at the time, a demand by it for Rent or other money payable under this Lease or the subsequent acceptance of Rent or other money will not constitute a waiver of any earlier default by the Tenant.
- (5) No single or partial exercise of any right, power or remedy will preclude any other or further exercise of that or any other right, power or remedy.
- (6) No attempt by the Landlord to mitigate its loss or acceptance of any amount paid by the Tenant will be a waiver of any breach of or the Landlord's rights under this Lease.

17.5 Tender after termination

In the absence of any election by the Landlord, any money tendered by the Tenant after termination of this Lease and accepted by the Landlord will be applied:

- (1) firstly, on account of any unpaid Rent and other money due under this Lease at the date of termination; and
- (2) secondly, on account of the Costs in relation to the termination.

17.6 Interest on overdue money

- (1) The Tenant must pay interest to the Landlord at the Default Rate on any Rent, Costs or other money not paid when due to the Landlord.
- (2) Interest will:
 - (a) accrue from day to day and be calculated daily;
 - (b) be capitalised on the last day of each month;
 - (c) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months; and
 - (d) be computed from the date for payment of the Rent, Costs or other money, or in the case of an amount by way of reimbursement or indemnity the date of the outlay or loss, until payment.

- (3) Any Costs, loss or damage for the unexpired residue of the Term suffered by the Landlord as a result of the Tenant's repudiation may be recovered as damages at any time.
- (4) The Landlord's entitlement to recover damages from the Tenant or any other person will not be limited or affected by any of the following:
 - (a) if the Tenant abandons or vacates the Premises;
 - (b) if the Landlord elects to re-enter the Premises or terminate this Lease;
 - (c) if the Landlord accepts the Tenant's repudiation; or
 - (d) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

17.7 Landlord to mitigate damages

- (1) The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages.
- (2) The Landlord's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of Law.

17.8 Calculation of damages

Following repudiation by the Tenant if the Landlord terminates this Lease then, without prejudice to any other right or remedy, the Landlord may recover the difference between the aggregate of Rent and other money payable by the Tenant for the unexpired residue of the Term less any amount the Landlord obtains by observing clause 17.7.

18 Security

18.1 Bank guarantee

This clause 18.1 applies if Item 17 of Schedule 1 has been completed by inserting the amount of a Bank Guarantee.

- (1) The Tenant must:
 - (a) on or before executing this Lease, arrange for the issue of a Bank Guarantee for the amount stated in Item 17 of Schedule 1;
 - (b) at each rent review date under clause 4 or at the later determination of each rent review, provide a replacement or additional Bank Guarantee so that the total amount guaranteed bears to the Rent payable from each rent review date the same proportion as the amount stated in Item 17 bears to the Rent as at the Commencement Date;
 - (c) ensure that any Bank Guarantee is kept current and enforceable and does not have an expiry date; and
 - (d) if the Landlord makes demand on any Bank Guarantee, provide a replacement Bank Guarantee for the amount demanded by the Landlord.

- 18.2 Any Bank Guarantee provided under this Lease is additional security for the performance of the Tenant's obligations under this Lease.
- 18.3 The Landlord may apply the Bank Guarantee or any part of it to remedy or partly remedy any default by or breach of the Tenant's obligations under this Lease.

19 Personal guarantee

This clause 19 applies if Item 18 has been completed by inserting details of Guarantor.

19.1 Guarantee and indemnity

In consideration of the Landlord granting this Lease to the Tenant at the Guarantor's request, the Guarantor guarantees to the Landlord:

- (1) the payment by the Tenant of the Rent and other money agreed to be paid; and
- (2) prompt performance and observance of all of the Tenant's covenants and obligations contained or implied in this Lease.

19.2 Indemnity

The Guarantor indemnifies the Landlord against all Claims which the Landlord may suffer or incur in connection with any breach or default by the Tenant under this Lease or any extension or renewal of the Term.

19.3 Liability of Guarantor

The Landlord's rights and the Guarantor's liability under clauses 19.3 and 19.4 will not be prejudiced or affected by:

- (1) the granting of any time, credit, forbearance, indulgence or concession by the Landlord to the Tenant or any Guarantor;
- (2) any absolute or partial release of the Tenant or any Guarantor or any compromise with the Tenant or any Guarantor;
- (3) any variation of this Lease, extension or renewal of the Term, holding over or continued occupation of the Premises by the Tenant;
- (4) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by the Landlord;
- (5) any assignment of this Lease or sublease of any part of the Premises;
- (6) the termination of this Lease;
- (7) the fact that the Rent or any other money may not be recoverable, may cease to be recoverable or may never have been recoverable or that any transaction affecting the Rent or the obligations contained in this Lease is or was wholly or partially void, voidable or unenforceable;
- (8) any failure to sue or agreement not to sue or any dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by the Landlord with respect to the Rent, other money payable or the obligations under this Lease;
- (9) any fact, circumstance, legal disability or incapacity which would otherwise release the Tenant or any Guarantor from its obligations;

- (10) non-execution of this Lease by one or more of the persons named as Guarantor or the unenforceability of this guarantee and indemnity against one or more of the Guarantors; or
- (11) the exercise or purported exercise by the Landlord of its right of re entry.

19.4 Irrevocable

This guarantee and indemnity is irrevocable and will remain in force until the Tenant has performed and observed all its obligations under this Lease.

19.5 Guarantor liable regardless of any law

The Guarantor's liability will not be discharged by any payment to the Landlord which is later avoided by any Law. If that happens the Landlord, the Tenant and the Guarantor will be restored to their respective rights as if the payment had not been made.

19.6 Indemnity on disclaimer

If a liquidator disclaims this Lease, the Guarantor indemnifies the Landlord against any resulting Claims by the Landlord for the residue of the Term.

19.7 Guarantor not prove in liquidation

- (1) The Guarantor will not prove or claim in any liquidation, composition, arrangement or assignment for the benefit of creditors until the Landlord has received 100 cents in the dollar of all money payable to it by the Tenant.
- (2) The Guarantor will hold any proof, claim or dividend received by it on trust for the Landlord.

19.8 Guarantee to continue

- (1) If this Lease is transferred or assigned, the benefit of this guarantee and indemnity will extend to the transferee or assignee and continue concurrently for the benefit of the Landlord regardless of the transfer or assignment unless the Landlord releases the Guarantor in writing.
- (2) This guarantee and indemnity covers the period while the Tenant occupies or is entitled to occupy the Premises as Tenant or holds an equitable interest over the Premises under an agreement for lease or as a periodical Tenant.
- (3) Without limiting clause 19.8(2) if registration of this Lease is required to legally create a leasehold estate, then until this Lease is registered it will operate from the commencement date as an agreement for lease.
- (4) This guarantee and indemnity will apply whether this Lease is construed as an agreement for lease, a periodical tenancy or otherwise.
- (5) This guarantee and indemnity will extend to the lease, agreement for lease or periodical tenancy created by the Tenant's exercise of any option for renewal.

19.9 Trustee as guarantor

- (1) If the Tenant acts as trustee of a trust, the Tenant enters into this guarantee and indemnity personally and in its capacity as trustee of that trust.

- (2) The Tenant must cause any successor of the Tenant and any person who becomes a trustee of the trust jointly with the Tenant to execute all documents required by the Landlord to ensure that this guarantee and indemnity is binding on them.
- (3) The Tenant warrants to the Landlord that:
- (a) it is the sole trustee of the trust and no action has been taken to remove or replace it;
 - (b) it has power under the trust deed to execute and perform its obligations under this guarantee and indemnity;
 - (c) all necessary action has been taken to authorise the execution and performance of this guarantee and indemnity under the trust deed and the constitution of the Tenant;
 - (d) this guarantee and indemnity is executed and all transactions relating to this Lease are or will be entered into as part of the due and proper administration of the trust and are or will be for the benefit of the beneficiaries;
 - (e) it is not in default under the trust deed;
 - (f) no vesting date for the trust fund has been determined;
 - (g) it has complied with all fiduciary obligations directly or indirectly imposed on it;
 - (h) it has a right to be indemnified out of the assets of the trust in respect of all of its obligations and liabilities incurred by it under this guarantee and indemnity; and
 - (i) each of the warranties contained in this clause 19.9(3) will remain true as long as this guarantee and indemnity remains in force.
- (4) Except with the prior written consent of the Landlord, the Tenant must:
- (a) ensure that the trust deed is not varied, terminated or revoked;
 - (b) not retire as trustee of the trust or appoint any new or additional trustee;
 - (c) not default in its duties as trustee of the trust;
 - (d) not exercise any power to appoint new beneficiaries or class of beneficiaries;
 - (e) not vest or distribute or advance any capital of the trust to any beneficiary;
 - (f) not sell any of the property of the trust except in the ordinary course of the ordinary conduct of its business; and
 - (g) not do anything which effects or facilitates the resettlement of the trust funds.

19.10 General warranty of capacity

In addition to and despite all other warranties, express or implied, in this guarantee and indemnity, the Tenant warrants and covenants that:

- (1) it is empowered to enter into this guarantee and indemnity and to do all things that will be required by this Lease;
- (2) all things have been done or will be done as may be necessary to render this guarantee and indemnity legally enforceable in accordance with its terms and fully valid and binding on it; and
- (3) all authorisations by any Authority (whether in Australia or not) that are required or will be required in connection with the execution and delivery of, the performance of obligations under or the validity or enforceability of, this guarantee and indemnity have been obtained or effected and are or will be fully operative and in full force and effect.

19.11 Representations and warranties

- (1) The Tenant warrants that it has relied only upon its own enquiries and investigations in relation to all matters referred to in this Lease and not on any representation or warranty by or on behalf of the Landlord.

20 Head and Concurrent Lease and Collins Place

20.1 Closure of Collins Place

Despite anything to the contrary in this Lease the Landlord, the Head Landlord or, while the Concurrent Lease is in force, the Concurrent Landlord, may:

- (1) close off Collins Place or any access ways on, to or around Collins Place for one period of 24 hours continuously during each calendar year for the purpose of preventing from arising any prescriptive public or private right of way to or across or through any part of Collins Place; and
- (2) from time to time temporarily to close off any part or parts of the Common Areas or the Common Areas of Collins Place for the purpose of maintenance, provided:
 - (a) such closure is effected for no longer than is reasonably necessary; and
 - (b) such closure is effected in a manner and at such times as the Landlord, the Head Landlord or the Concurrent Landlord considers causes as little inconvenience as is reasonably practicable; and
 - (c) where the Landlord, the Head Landlord or the Concurrent Landlord considers reasonably practicable allow the Tenant an alternative route or routes for access to the Premises during such period or periods of closure.
- (3) The Tenant must comply with all requirements of the Landlord, the Head Landlord and the Concurrent Landlord in connection with any alternative route or routes of access granted under clause 20.1(2)(c).

20.2 Head Landlord's consent

Any consent given by the Head Landlord pursuant to this Lease is without prejudice to, and will not diminish any right or entitlement of the Head Landlord nor will such consent diminish any obligation of the Landlord in its capacity as the tenant under the Head Lease.

20.3 **Concurrent Landlord's consent**

Any consent given by the Concurrent Landlord pursuant to this Lease is without prejudice to and will not diminish any right or entitlement of the Concurrent Landlord nor will such consent diminish any obligation of the Landlord in its capacity as the tenant under the Head Lease. If the Landlord's consent is required to anything under this Lease and the Concurrent Landlord's consent to that thing is required to be obtained by virtue of the Head Lease or the Concurrent Lease, the Landlord is not required to consent to that thing under this Lease unless and until the Concurrent Landlord has consented to that thing.

20.4 **Confidentiality of Head Lease**

It is acknowledged and agreed by the Tenant that no provision contained in this Lease implies any right for the Tenant to peruse the Head Lease the intention being that the Tenant will only be entitled to do so with the consent of both the Landlord and the Head Landlord.

20.5 **Confidentiality of Concurrent Lease**

It is acknowledged and agreed by the Tenant that no provision contained in this Lease implies any right for the Tenant to peruse the Concurrent Lease the intention being that the Tenant shall only be entitled to do so with the consent of both the Head Landlord and the Concurrent Landlord.

21 Limitation of liability

21.1 Any liability of AMP arising under or in connection with this Lease is limited to the extent that AMP is able to be indemnified for that liability out of the assets of the Trust under the Trust Constitution. The Landlord and the Tenant acknowledge and agree that they may enforce their rights against AMP with respect to the non-observance of AMP's obligations under this Lease only to the extent necessary to enforce the Landlord's or the Tenant's rights, powers and remedies against AMP in respect of the assets of the Trust by subrogation or otherwise.

21.2 Despite anything in clause 21.1, AMP is liable to the extent that a liability under this Lease arises out of AMP's own fraud, gross negligence or breach of trust which disentitles it from an indemnity out of the assets of the Trust in relation to the relevant liability.

21.3 In this clause 21:

- (1) **AMP** means the Concurrent Landlord in its capacity as responsible entity for the Trust and trustee of the assets of the Trust;
- (2) **Trust** means the "AMP Capital Wholesale Office Fund" governed by the Trust Constitution; and
- (3) **Trust Constitution** means the constitution governing the Trust dated 23 April 2004, declared by the Concurrent Landlord.

22 GST

(1) Words used in this clause 22 which have a particular meaning in the GST Law have the same meaning in this clause, unless the context otherwise requires.

(2) Regardless of any other provision of this Lease, if GST or a similar value added tax is imposed on any supply made to the Tenant under or in accordance with this Lease, the amount the Tenant must pay for that supply is increased by the amount of that GST or value added tax.

- (3) If the whole or any part of a payment is for a Taxable Supply for which the Landlord is liable to GST:
 - (a) the GST Amount in respect of the payment must be paid to the Landlord as an additional amount, either concurrently with the payment or as otherwise agreed in writing; and
 - (b) the Landlord will provide the Tenant with a tax invoice.
- (4) Despite any other provision of this Lease, if a payment of any money due under this Lease (including any contribution to operating expenses) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.
- (5) If the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, that part of the supply is to be treated as a separate supply.
- (6) Any reference to GST payable by the Tenant includes any corresponding GST payable by the representative member of any GST group of which the Tenant is a member.

23 Miscellaneous

23.1 Notices

- (1) In this Lease, reference to notice means notice in writing.
- (2) Any notice or other writing is validly served on the Landlord only if both of the following are satisfied:
 - (a) either:
 - (i) it is sent by email to the email address for service of notices in Item 1, or to such other email address as nominated to the Tenant from time to time by the Landlord; or
 - (ii) it is delivered by hand to the address in Item 1, or by such other means and to such other address as nominated to the Tenant from time to time by the Landlord; and
 - (b) it is validly signed by the Tenant or by an attorney, director, company secretary, authorised officer or solicitor of the Tenant.
- (3) Any notice or other writing is validly served on the Tenant only if both of the following are satisfied:
 - (a) either:
 - (i) it is sent by email to the email address for service of notices in Item 2, or to such other email address as nominated to the Landlord from time to time by the Tenant; or
 - (ii) It is delivered by hand to the address in Item 2, or by such other means and to such other address as nominated to the Landlord from time to time by the Tenant; and
 - (b) it is validly signed by the Landlord, its Manager, its authorised agent, or an attorney, director, company secretary, authorised officer or solicitor of the Landlord.

- (4) Any notice is deemed to be served 24 hours after it is sent. If this period expires on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is deemed to be served on the next Business Day.
- (5) Despite any other provision of this Lease, a notice will be deemed not to have been served if both of the following are satisfied:
 - (a) it is sent by email to the address for service of notices in Item 1 or Item 2 (as the case may be); and
 - (b) if, within 24 hours of being sent, the sender receives a notification from either the sender's mail server or the recipient's mail server indicating that the message has not been sent and/or received.

23.2 **Costs and stamp duty**

- (1) The Landlord and the Tenant will bear their own costs in relation to the preparation, negotiation, execution and stamping of this Lease and counterparts.
- (2) The Landlord must pay the costs of the Head Landlord and Concurrent Landlord in relation to the negotiation, preparation and execution of:
 - (a) this Lease and counterparts submitted with it together with the costs of and in relation to the giving of their consent to this Lease; and
 - (b) any variation or surrender of this Lease.
- (3) The Tenant shall pay all stamp duty assessed upon this Lease and any renewal of this Lease.

23.3 **Confidentiality**

- (1) The parties acknowledge that the existence and terms of, and the identity of the parties to, this Lease are strictly confidential (**Confidential Information**).
- (2) Except as stated in this Lease, each party must not and must not permit any of its officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than its professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.
- (3) This clause 23.3:
 - (a) operates for the benefit of all parties; and
 - (b) continues despite the termination of this Lease,
 - (c) does not bind the Landlord when dealing with the Landlord's financial, accounting, legal, sale or leasing representatives or agents.

23.4 **Arbitration**

In the event of any dispute hereunder being referred to arbitration in accordance with and subject to the provisions of the Commercial Arbitration Act 2011 (Vic) then the parties agree that each of them shall be entitled to be represented by a duly qualified legal practitioner and the venue for any such arbitration shall be Melbourne, Victoria.

23.5 **Variation**

- (1) The terms and conditions of this Lease may be changed only in writing signed by the Head Landlord, Concurrent Landlord, Landlord and Tenant.
- (2) The Landlord and Tenant must not, without the prior written consent of the Head Landlord and the Concurrent Landlord, vary the terms and conditions of this Lease.

Executed as a deed.

Landlord's execution

EXECUTED by AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED A.C.N. 005 357 522 by being SIGNED, SEALED and DELIVERED by its Attorney

Print Name
under Power of Attorney dated 18 November 2002 a certified copy of which is filed in the Permanent Order Book Number 277 at Page 19 in the presence of:

Attorney signature
who hereby certifies he is a

Attorney position (e.g. Manager)
for the time being of
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED in Victoria

Signature of Witness

Tenant's execution

Executed by Mesoblast Limited ACN 109 431 870 in accordance with section 127 of the Corporations Act 2001:

Director/company secretary

Director

Name of director/company secretary (BLOCK LETTERS)

Name of director (BLOCK LETTERS)

APAC-#21368015-v8 Level 38, 55 Collins Street Melbourne

Mesoblast Limited

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Head Landlords' execution

EXECUTED by)
)
and)
)
as attorneys for **COLLINS PLACE PTY LTD**)
(ACN 084 238 497) in the presence of:)
)

(Signature of) Witness

Name of Witness (Block Letters)

Address of witness

Occupation of witness

EXECUTED by)
)
and)
)
as attorneys for **COLLINS PLACE NO. 2**)
PTY LTD (ACN 090 537 643) in the presence)
of:)

(Signature of) Witness

Name of Witness (Block Letters)

Address of witness

Occupation of witness

By executing this Deed the attorneys
state that neither attorney has
received notice of revocation of the
power of attorney

By executing this Deed the
attorneys state that neither attorney
has received notice of revocation of
the power of attorney

Concurrent Landlord's execution

EXECUTED by)
)
and)
)
as attorneys for **AMP CAPITAL INVESTORS**)
LIMITED (ABN 59 001 777 591) in the)
presence of:)

(Signature of) Witness

By executing this Deed the
attorneys state that neither attorney
has received notice of revocation of
the power of attorney

Name of Witness (Block Letters)

Address of witness

Occupation of witness

APAC-#21368015-v8

Level 38, 55 Collins Street Melbourne

Mesoblast Limited

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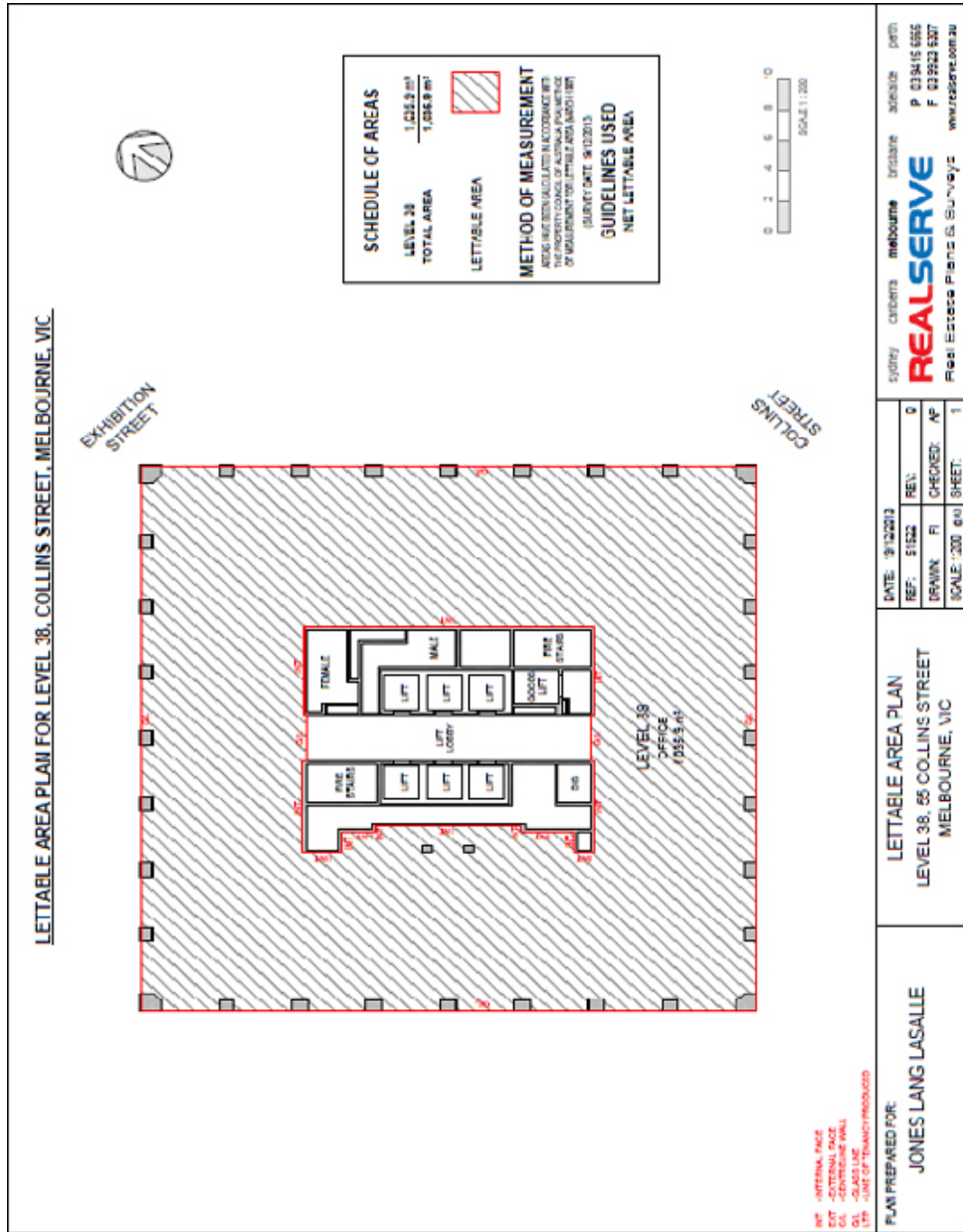
Annexure A
Building Rules

Referred to in the Lease to be observed by the Tenant.

- 1 The Landlord's appointed building supervisor (**Supervisor**) will have the day-by-day care supervision overseeing and control of the Building including the Common Areas. The Tenant and the Tenant's Employees must comply with all lawful and proper requirements of the Supervisor and neither the Tenant nor the Tenant's Employees may at any time interfere with or impede the Supervisor in the performance of its duties and responsibilities.
- 2 The footpath, entrances, passages, halls, lifts, escalators, and staircases in the Building must not be obstructed by the Tenant or the Tenant's Employees and must only be used for ingress to or egress from the Premises.
- 3 The Tenant may not in any way cover or obstruct the air conditioning ducts and outlets or sky lights and windows which reflect or admit light into any part of the Building.
- 4 The water closets and other water supply apparatus must only be used for the purpose for which they were constructed and no tea leaves, sweeping rubbish, rags ashes or other substance shall be placed in them. The cost of making good or replacing any damage resulting to such apparatus or otherwise from such misuse by the Tenant or any of the Tenant's Employees will be borne by the Tenant. If the person responsible for such damage cannot be determined the Tenant on the floor concerned must bear the cost of repairs and if more than one proportionately according to the area occupied by each of them on that floor.
- 5 No sign advertisement or notice may be inscribed painted affixed or displayed on any part of the outside or inside of the Premises or of the Building except with the consent in writing of the Landlord and then only of such colour size and style and in such places upon or in the Building as is approved by the Landlord. Signs on glass doors and on the directory tablet will be painted or affixed for the Tenant by the Landlord at the cost of the Tenant. The name Collins Place or such other name given from time to time to the complex of which the Building forms part, may not be incorporated in any business name or used for any promotional purposes in connection with the Premises without the prior written consent of the Landlord.
- 6 No window blind screen curtain or awning may be erected on or around the Premises without the Landlord's prior written consent.
- 7 The Tenant must not do nor permit any thing to be done in the Building nor bring nor keep anything in the Building to obstruct or interfere with the rights of other tenants or in any other way injure or annoy them or which may create a fire hazard or which may contravene any fire safety regulations or measures implemented by the Landlord or the provisions of any insurance policy in respect of the Building or any part of it or conflict with any of the rules regulations ordinances and by-laws of any authorities having jurisdiction over the Building or supplying any Services to the Building.
- 8 No heavy materials or articles may be placed or stored on any of the floors of the Building without the consent in writing of the Landlord and the Landlord is entitled to prescribe the right and proper position of such items and all damage done to the Building or any part of it by taking in or removing the same or during the time it is in the building shall be made good and paid by the Tenant. Before any safe or any other heavy article is moved into or out of or within the Building at least twenty-four hours notice in writing of the intention to move such safe or article must be given by the Tenant to the Supervisor who will supervise the move.

- 9 The Tenant must keep the Premises in a good state of preservation and cleanliness and must not allow any accumulation of useless property or rubbish on or around the Premises.
- 10 The Landlord may during the last 12 months previous to the expiration of the Lease, bring prospective tenants and occupiers into the Premises and to place the usual "to be let" or "to let" notice which may not be removed by the Tenant.
- 11 All keys passes or other means of entry to the Building held by the Tenant must be surrendered to the Landlord on the termination of the Lease and the Tenant must not cause any duplicate to be made without the Landlord's prior written consent.
- 12 The Tenant and the Tenant's Employees must not make, or permit any improper or unseemly noises to be made in the Building or interfere in any way with other tenants or persons in the Building or mark or otherwise defile the building.
- 13 No television or radio mast or antenna may be affixed to any part of the Building and no musical instrument, radio, television set, amplifier or other sound producing equipment may be used or operated in the Premises or in a part of the Building without the prior written consent of the Landlord and any consent so given may be withdrawn at any time without notice if the Landlord considers it to be in the interests of the other tenants and occupiers of the Building so to do.
- 14 Nothing shall be thrown by the Tenant or the Tenant's Employees out of the windows or doors or in the lift wells or passages or other areas of the Building.
- 15 No animals or birds may be kept in or about the Building.
- 16 No nails screws or hooks may be driven into any part of the Building or the Landlord's partitions or other fittings without the Landlord's prior written consent.
- 17 The Tenant may use and enter the Building on all days and at all hours provided that on Saturdays Sundays and Public Holidays and except for the hours set out in Item 13 of Schedule 1 on any other day the Tenant must observe and comply with reasonable arrangements made for the security of the whole Building and pay any charges for air-conditioning services supplied to the Premises at the Tenant's request.
- 18 Doors to the Building are secured outside the hours prescribed in Item 13 of Schedule 1 preventing access to all persons other than those issued with a security key card.
- 19 The Tenant will be given 1 security key card per employee of the Tenant (assuming a single person occupies the Premises under the lease per 12 square metres). Additional cards can be given upon request at a charge of \$40 per card plus GST. These charges are subject to change, but not more than once in any calendar year. The Tenant must, prior to the issue of any security key cards, provide the Landlord or its Manager with a list of names of all employees of the Tenant occupying the Premises and update such list as and when the Tenant's relevant employees change or as otherwise requested by the Landlord. The Tenant must return all security key cards to the Landlord or its Manager on or prior to the expiry or earlier determination of this Lease.
- 20 The working hours and use of the lifts and other services is regulated by and be under the control of the Landlord and the Landlord is not responsible for any inconvenience loss damage or harm arising out of any stoppages to the lifts. The Tenant may only use the passenger lifts for passengers and must not except with the prior written consent of the Landlord or the Supervisor use them for the carriage of goods. The delivery of goods and supplies to or from the Premises must be undertaken in a manner directed by the Landlord or the Supervisor.
- 21 The Tenant must notify the Landlord in writing of any accident to or defect in any of the Services in or connected to the Building

- 22 If any fire flooding explosion or other sudden peril or emergency occurs to the knowledge of the Tenant, the Tenant must immediately give notice or warning to the Supervisor or the Landlord.
- 23 The Tenant must inform the Landlord of the existence of any defective damaged or broken electric light fittings bulbs tubes and globes in the Premises and the Landlord will arrange any necessary repair and replacement the cost of which shall be paid by the Tenant to the Landlord on demand.
- 24 The Tenant may not prepare nor cook food in other than any areas which may be provided and which are approved by the Landlord for this purpose. The Tenant must not install in the Premises any machine for entertainment, vending or dispensing food, refreshments or merchandise without the prior written consent of the Landlord and any consent so given may be withdrawn at any time without notice if the Landlord considers it to be in the interests of the other tenants and occupiers of the building so to do.
- 25 The Air Conditioning Equipment and other Services supplied to the Building or provided by the Landlord must not be operated on Saturdays Sundays or Public Holidays but otherwise will as far as practicable be operated between the hours set out in Item 13 of Schedule 1. The Landlord is not responsible for any inconvenience, loss damage in connection with the non-operation or unacceptable operation of the Air Conditioning Equipment or other Services at any time.
- 26 The Tenant will be required to keep the sun protection devices (if any) installed for the purpose of reflecting solar heat in the proper operational position (as determined by the Landlord from time to time) to ensure the designed performance of the Air Conditioning Equipment.
- 27 The Tenant will provide to the Supervisor full details of the name, private address and telephone number of a responsible officer to use for emergency conditions related to the Premises. Such details must be kept current at all times.
- 28 The Landlord reserves the right to vary these Building Rules and to make such other and further Building Rules as in its judgement may from time to time be necessary or desirable for the safety, care and cleanliness of the Building and for the preservation of good order and for the comfort and safety of the tenants, occupiers, customers and visitors of the Building. Such varied or new Building Rules take effect immediately upon notice to the Tenant.
- 29 The Tenant must observe all Building Rules made or varied from time to time by the Landlord in relation to the use and operation of the loading dock within Collins Place.



Subsidiaries of Mesoblast Limited

<u>Legal Entity</u>	<u>Jurisdiction of Organization</u>
Mesoblast Australia Pty Ltd	Australia
Mesoblast Employee Share Trust	Australia
Mesoblast International Sarl	Switzerland
Mesoblast International Sarl Singapore Branch	Singapore
Mesoblast UK Limited	United Kingdom
Mesoblast, Inc.	United States