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Confidential Draft Submission No. 2 confidentially submitted to the Securities and Exchange Commission on September 21, 2015
This draft registration statement has not been publicly filed with the Securities and Exchange Commission, and all information herein remains strictly confidential.
Registration No. 333-

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	2836	Not Applicable
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

Silviu Itescu
Chief Executive Officer and Executive Director
Level 38
55 Collins Street
Melbourne 3000
Australia
Telephone: +61 (3) 9639-6036
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Mesoblast, Inc.
Level 3
505 5th Avenue
New York, NY 10017
(212) 880-2060
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Jeffrey D. Saper, Esq. **Steven V. Bernard, Esq.** **Megan J. Baier, Esq.** **Wilson Sonsini Goodrich & Rosati, P.C.** **650 Page Mill Road** **Palo Alto, CA 94304**	**Peter T. Howard** **General Counsel and Corporate Executive** **Level 38** **55 Collins Street** **Melbourne 3000** **Australia**	**Ian Davis** **John Steven** **Minter Ellison** **Level 23, Rialto Towers** **525 Collins Street** **Melbourne 3000** **Australia**	**Thomas J. Ivey, Esq.** **Mark J. Leeman, Esq.** **Skadden, Arps, Slate, Meagher & Flom LLP** **525 University Avenue #1400** **Palo Alto, CA 94301**

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)	Amount of Registration Fee
Ordinary shares, no par value		$

(1) 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.
(2) 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.
(3) 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.

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The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 21, 2015

Prospectus

American Depositary Shares
representing ordinary shares

Mesoblast Limited

This is an initial public offering in the United States of American depositary shares, or ADSs, representing ordinary shares of Mesoblast Limited, or Mesoblast. Mesoblast is offering ADSs. Each ADS represents ordinary shares, no par value, deposited with , as depositary. The estimated initial public offering price will be between US$ and US$ per ADS.

Our ordinary shares currently trade on the Australian Securities Exchange under the symbol "MSB." On September 21, 2015 the closing price for our ordinary shares was A$3.39. We intend to apply to list our ADSs on the NASDAQ Global Select Market under the symbol "MESO".

Investing in our ADSs involves a high degree of risk. See "Risk Factors" beginning on page 12.

	Per ADS	Total
Initial public offering price	US$	US$
Underwriting discounts and commissions(1)	US$	US$
Proceeds before expenses, to us	US$	US$

(1) See "Underwriting" for a description of the compensation payable to the underwriters.

We have granted the underwriters the right to purchase up to an additional ADSs from us at the initial public offering price less underwriting discounts and commissions.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the ADSs to purchasers on or about , 2015.

J.P. Morgan **Credit Suisse**

, 2015

mesoblast

the regenerative medicine company

We are a global leader in regenerative medicine

Our proprietary technology platform is based on specialized cells known as mesenchymal lineage adult stem cells, or MLCs. We have leveraged our technology to build what we believe is the most advanced regenerative medicine portfolio in the industry, with the potential to address multiple conditions with significant unmet medical needs.

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You should rely only on the information contained in this prospectus and any related free-writing prospectus that we authorize to be distributed to you. We and the underwriters have not authorized any person to provide you with information different from that contained in this prospectus or any related free-writing prospectus that we authorize to be distributed to you. This prospectus is not an offer to sell, nor is it seeking an offer to buy, these securities in any state where the offer or sale is not permitted. The information in this prospectus speaks only as of the date of this prospectus unless the information specifically indicates that another date applies, regardless of the time of delivery of this prospectus or of any sale of the securities offered hereby.

No action is being taken in any jurisdiction outside the United States to permit a public offering of the ADSs or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of the prospectus applicable to that jurisdiction.

Until , 2015 (the 25th day after the date of this prospectus), all dealers that buy, sell or trade in our ADSs, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to their unsold allotments or subscriptions.

STATISTICAL AND OTHER INDUSTRY AND MARKET DATA

This prospectus includes statistical and other industry and market data that we obtained from industry publications and research, surveys and studies conducted by third parties. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. We are responsible for all of the disclosure contained in this prospectus and we believe these industry publications and third-party research, surveys and studies are reliable.

TRADEMARKS

We own or have rights to trademarks and trade names that we use in connection with the operation of our business, including our corporate name, logos, product names and website names. Other trademarks and trade names appearing in this prospectus are the property of their respective owners. Solely for your convenience, some of the trademarks and trade names referred to in this prospectus are listed without the ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our trademarks and trade names.

CONVENTIONS THAT APPLY TO THIS PROSPECTUS

Except where the context requires otherwise and for purposes of this prospectus only:

- "ADSs" refers to our American depositary shares, each of which represents ordinary shares, and "ADRs" refers to the American depositary receipts that evidence our ADSs.
- "Mesoblast," "we," "us" or "our" refer to Mesoblast Limited and its subsidiaries.
- "A$" or "Australian dollars" refers to the legal currency of Australia.
- "IFRS" refers to the International Financial Reporting Standards as issued by the International Accounting Standards Board, or IASB.
- "GAAP" refers to the Generally Accepted Accounting Principles in the United States.
- "FDA" refers to the United States Food and Drug Administration.
- "NIH" refers to the United States National Institutes of Health.
- "US$" or "U.S. dollars" refers to the legal currency of the United States.
- "U.S." or "United States" refers to the United States of America.

Unless otherwise indicated, the consolidated financial statements and related notes included in this prospectus have been presented in U.S. dollars and also comply with IFRS, which differs in certain significant respects from GAAP. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Certain Differences Between IFRS and GAAP." For us and our subsidiaries that use a functional currency that is not U.S. dollars, the assets and liabilities have been translated at the closing exchange rate, while the income and expenses have been translated at the exchange rate at the transaction date. The resulting exchange differences are recognized in our consolidated statement of comprehensive income. See note 21(d) in the notes to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for more information.

Certain information in this prospectus is expressed in Australian dollars, such as share option exercise prices and transaction values in "Related Party Transactions," among others. The exchange rate as quoted by the Board of Governors of the Federal Reserve System on June 30, 2015 was US$1.00 to A$0.7704. We make no representation that the Australian dollar or U.S. dollar amounts referred to in this prospectus could have been converted into U.S. dollars or Australian dollars, as the case may be, at any particular rate or at all. See "Risk Factors—Risks Related to Ownership of Our ADSs, Our Trading Market and This Offering—We are subject to risk associated with currency fluctuations, and changes in foreign currency exchange rates could impact our results of operations."

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus and is qualified in its entirety by the more detailed information and consolidated financial statements and the related notes thereto included elsewhere in this prospectus. This summary does not contain all the information you should consider before investing in our ADSs. You should read this entire prospectus carefully, including "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements and the related notes thereto included elsewhere in this prospectus, before making an investment decision. Unless the context requires otherwise, references in this prospectus to "Mesoblast," "we," "us" and "our" refer to Mesoblast Limited and its subsidiaries. Clinical milestone event dates in this prospectus refer to calendar year periods.

Overview

We are a global leader in the field of regenerative medicine. We have leveraged our proprietary technology platform, which is based on specialized cells known as mesenchymal lineage adult stem cells, or MLCs, to establish what we believe to be the most advanced regenerative medicine product portfolio in the industry. We have what we believe to be an extensive safety profile for our product candidates, with over 1,340 patients treated. Based on outcomes in Phase 2 trials across multiple indications, we now have five MLC product candidates that are in active Phase 3 trials or are Phase 3-ready.

In September 2015, our licensee JCR Pharmaceuticals Co. Ltd, or JCR, received full approval for the first "allogeneic" cell-based product in Japan, meaning a product containing cells from a single donor expanded and used in many unrelated patients. We believe we are well positioned to have the first industrially-manufactured allogeneic stem cell product approved in the United States.

Our deep understanding of the fundamental mechanisms of action of MLCs and our proprietary manufacturing processes have been leveraged to create a portfolio of independent, non-interchangeable MLC-derived product candidates. Each of our product candidates has its own distinct technical characteristics, target indications, individual reimbursement strategy, separate commercialization potential, and unique partnering opportunities.

We have focused on significantly advanced stages of diseases where specific subpopulations of patients have high unmet medical needs, as this provides potential accelerated development pathway opportunities and the potential for attractive pricing. Our goal is to first gain broad acceptance of our approved products based on our technology as treatment options for these severely ill patients, then expand the applications of such products over time to broader patient populations.

Our lead products have been prioritized into tiers based on stage of development, market opportunity, and expected time to market, and we allocate resources based on such prioritization. Our Tier 1 product candidates are being developed for the treatment of chronic congestive heart failure, or CHF, chronic low back pain, or CLBP, acute graft versus host disease, or aGVHD, a condition where donor cells attack a patient receiving a bone marrow transplant, resulting in tissue damage that is often fatal, and for chronic inflammatory conditions, such as biologic-refractory rheumatoid arthritis, or RA, and diabetic kidney disease, or DKD. Our Tier 2 lead product candidates are being developed for the treatment of acute cardiac ischemia and for the treatment of Crohn's disease, among other indications.

We expect a number of important clinical and commercial milestone events to occur over the next 12 to 24 months for our most advanced product candidates, including:

- By the end of 2015, we expect to announce 6 month results from the first cohort in the Phase 2 trial of our product candidate for RA. Results from the second cohort are expected during the first half of 2016. We believe positive results from this trial would support progression towards Phase 3 and potential partnering discussions.

- During the first quarter 2016, we expect that our licensee JCR will launch TEMCELL® Hs. Inj. (JR-031), or TEMCELL, its MSC-based product for aGVHD in Japan. Under our agreement with JCR, we are entitled to receive milestone payments on product regulatory approvals, escalating double-digit royalties in the twenties and other payments at pre-defined thresholds of cumulative net sales.
- During the first quarter 2016, we expect to announce the outcome of the first interim analysis of safety and efficacy from a Phase 3 trial of our product candidate for Class II/III CHF. This product candidate is partnered on a global basis with Teva Pharmaceutical Industries, Ltd., or Teva.
- During second half 2016, we expect to announce top-line results of a Phase 3 trial of our product candidate for aGVHD. Interim analysis may support BLA filing by the end of 2016.
- During the third quarter 2016, we expect to complete enrollment of the first Phase 3 trial of our product candidate for CLBP. We expect the second Phase 3 trial to be fully enrolled by the first quarter 2017.

Proprietary Platform

Our MLC technology platform enables development of a broad product range based on distinct cell types derived from or that are the progeny of the earliest precursors of the mesenchymal cell lineage in adult tissues. Mesenchymal precursor cells, or MPCs, constitute the earliest known cell type in the MLC lineage in vivo. MPCs can be isolated using monoclonal antibodies and culture-expanded using methods that enable efficient expansion without differentiation. Mesenchymal stem cells, or MSCs, are defined biologically in culture following density gradient separation from other tissue cell types and following culture by plastic adherence. MSCs presumably represent culture-expanded in vitro progeny of the undifferentiated MPCs present in vivo. The different functional characteristics of each cell type enables distinct product development for different targeted diseases.

MLCs are present around blood vessels in all tissues, where they can respond to signals associated with tissue damage. This response includes the secretion by MLCs of a diverse variety of biomolecules that affect various reparative and immunomodulatory mechanisms responsible for maintaining tissue health. Understanding the mechanisms of action by which these biomolecules induce tissue restoration has broad applicability in treating diseases for which current standards of care are inadequate. Our lead MLC product candidates have been developed through proprietary manufacturing processes to optimize expression of certain biomolecules. The expressed biomolecules are those implicated in the mechanisms of action by which the MLC product candidate is thought to modify outcomes for the target condition for which it is being developed.

Scalable Manufacturing

MLCs have two additional, distinct characteristics that, when combined with our proprietary manufacturing processes, enable allogeneic or “off-the-shelf” use of our product candidates. First, we have developed proprietary methods that enable the isolation of MLCs from healthy donors and their large-scale expansion while maintaining their ability to produce key biomolecules associated with tissue health and repair. In addition, unlike other categories of stem cells, MLCs are “immune privileged,” in that they do not express specific cell surface co-stimulatory molecules that would otherwise initiate an immune response when administered to unrelated patients. These characteristics allow us to produce large quantities of off-the-shelf MLC-based product candidates from a few donors for use in thousands of unrelated recipients, with consistent, well-defined therapeutic properties, batch-release criteria and established potency assays, all with accompanying manufacturing and distribution economies-of-scale.

Our Lead Product Candidates

We have developed product candidates to target specific disease states by understanding and capitalizing on the mechanisms of action of our proprietary MLCs, including induction of new tissue growth, new blood vessel network formation, reduction in fibrosis and scarring, and immunomodulation.

A summary of our lead programs, their corresponding stage of development, and strategic collaboration status are captured in the table below.

Tier 1 Programs

Product Candidates	Programs	Collaborator/ Geographic Rights	Stage of Development	Anticipated Milestones
MPC-150-IM	Class II/III CHF	Teva (Global)	• Phase 2 trial completed • Phase 3 trial enrollment ongoing • Enrollment of the patients for first interim analysis completed	• Outcome of first Phase 3 interim analysis for safety and efficacy in first quarter 2016 • Second interim analysis for futility, resizing and possible overwhelming efficacy in first quarter 2017 • Phase 3 trial complete in 2018 with potential to accelerate based on second interim analysis
	End-stage CHF	Teva (Global)	• Phase 2a trial completed • Phase 2b trial enrollment ongoing, funded by the NIH	• Phase 2b trial results expected in middle 2017
MPC-06-ID	CLBP	Proprietary (Global)	• Phase 2 trial completed • Phase 3 trial enrollment ongoing	• Complete enrollment of first Phase 3 trial in third quarter 2016 • Complete enrollment of second Phase 3 trial in first quarter 2017 • Design being finalized for interim analysis in second half 2016
TEMCELL/MLC product candidate	Acute GVHD	JCR (Japan)	• JCR received full approval in September 2015	• Launch in Japan in first quarter 2016
	Acute steroid-refractory GVHD	Proprietary (Global, ex-Japan)	• Enrollment ongoing for U.S. pediatric Phase 3 trial	• U.S. Phase 3 pediatric trial top-line results in second half 2016 • Interim analysis may support BLA filing by end 2016
MPC-300-IV	Rheumatoid arthritis (biologic refractory)	Proprietary (Global)	• Phase 2 trial ongoing • First cohort enrollment completed • Second cohort enrolling	• 6 month data for first cohort by the end of 2015 • Second cohort results in first half 2016
	Diabetic kidney disease	Proprietary (Global)	• Phase 2 trial ongoing, enrollment completed	• Phase 2b/3 trial design ongoing

All time periods refer to calendar year periods.

Tier 2 Programs

Product Candidates	Programs	Collaborator/ Geographic Rights	Stage of Development/ Anticipated Milestones
MPC-25-IC	Acute cardiac ischemia	Teva (Global)	• Phase 2 trial ongoing
MPC-25-Osteo	Spinal fusion	Proprietary (Global)	• Phase 2 trial completed • Phase 3 trial design ongoing
MPC-CBE	Bone marrow transplantation (BMT)	Teva (Global)	• Phase 3 trial ongoing
MSC-100-IV	Crohn’s disease (biologic refractory)	Proprietary (Global)	• Phase 3 trial ongoing

All time periods refer to calendar year periods.
* For product registration purposes, Phase 3 programs may require more than one trial.

MPC-150-1M for Congestive Heart Failure

MPC-150-IM is our Phase 3 product candidate partnered with Teva, which is being developed as a treatment for both advanced and end-stage CHF. With respect to advanced CHF, we have completed a Phase 2 trial in Class II/III CHF where results showed that a single 150 million dose treatment with MPC-150-IM, as compared to control and other dose levels, led to the greatest positive effects on clinical outcomes, including significant improvement in left ventricular volumes, and prevention of any heart failure-related major adverse cardiovascular events, or HF-MACE, over 3 years. The most substantial benefit seen in MPC-150-IM treated patients was in the subset with the greatest contractile deficiency and advanced heart failure. Advanced heart failure patients represent a major unmet clinical need which continues to exist despite recent advances in drug therapy, and where we believe product success would result in highest reimbursement.

Teva recently completed discussions with the FDA, during which important changes to the Phase 3 program for advanced CHF using MPC-150-IM were agreed to. In particular, the total number of subjects to be recruited for the ongoing Phase 3 trial, using a time to first event analysis of HF-MACE as the primary endpoint, will be reduced from approximately 1,730 to 1,165. Additionally, a second interim analysis will be performed in the ongoing Phase 3 trial when 50% of the HF-MACE have occurred. We expect the outcome of the first Phase 3 interim analysis for safety and efficacy in the first quarter of 2016. We expect the second interim analysis for futility, resizing and possible overwhelming efficacy in the first quarter of 2017.

A confirmatory study is planned to be conducted in parallel in a similar patient population of approximately 500 subjects using recurrent HF-MACE as the primary endpoint. The use of recurrent HF-MACE as a primary endpoint in the confirmatory study is supported by a new analysis of the completed Phase 2 trial, where patients treated with MPC-150-IM had no HF-MACE over 36 months of follow-up, compared with 11 recurrent HF-MACE in the control group ($p<0.001$, log rank test). The clinical data from these two studies will be supportive to each other for full product approval. Based on our discussions with the FDA, we believe that positive clinical data from these two studies will be sufficient for product approval.

With respect to end-stage CHF, a Phase 2b trial of MPC-150-IM has been initiated by the Cardiothoracic Surgical Trials Network, or CSTN, and funded by the U.S. National Institutes of Health, or NIH, in 120 patients with end-stage CHF requiring mechanical support by a left ventricular assist device, or LVAD. This trial builds on an earlier Phase 2a clinical trial that demonstrated feasibility and safety, and suggested that a single low-dose injection of our proprietary MLCs improved cardiac function and had an early benefit on survival. Results of this new Phase 2b trial are expected in mid-2017. If we receive BLA approval for MPC-150-IM, we expect to participate in a market for CHF that in the U.S. alone has 5.7 million adult patients and 870,000 new diagnoses per year.

MPC-06-ID for CLBP

MPC-06-ID is our proprietary Phase 3 product candidate for the treatment of CLBP resulting from degenerative disc disease, or DDD. In a Phase 2 study, compared to controls, MPC-06-ID treatment resulted in a significantly greater proportion of patients achieving reduced back pain and improved back function over 24 months of follow-up. Based upon meetings with the FDA, we will conduct two double-blinded Phase 3 trials with approximately 330 patients each, and we expect to complete enrollment for these Phase 3 trials in the third quarter of 2016 and first quarter of 2017, respectively. The first of these trials has been initiated. Because current treatments for CLBP focus only on pain relief rather than addressing the underlying degenerative nature of the disease, we believe MPC-06-ID could fill an unmet treatment gap for the large population of patients with DDD.

MLC Product Candidate for aGVHD

Our third Tier 1 product is an intravenously-delivered MLC product candidate for the treatment of aGVHD following allogeneic bone marrow transplantation, or BMT. JCR, our partner in Japan for aGVHD, received Japanese regulatory approval for TEMCELL in September 2015. During the first quarter 2016, we expect that JCR will launch TEMCELL in Japan. We are developing an MLC product candidate for the treatment of aGVHD

globally, outside Japan. Data from a pediatric Expanded Access Program, or EAP, in the United States, from the first 160 children treated for severe, multi-line refractory aGVHD, showed a significant response and survival benefit. A pediatric Phase 3 trial has commenced and is actively enrolling in the U.S. We expect top-line results from this trial in the second half 2016. Based on our discussions with the FDA, we believe positive data from this trial will be sufficient for conditional approval in the United States, and an additional pediatric or adult Phase 3 trial will be required for full product approval. Interim analysis may support BLA filing by the end of 2016.

MPC-300-IV for Chronic Inflammatory Conditions

MPC-300-IV, our fourth Tier 1 product, is an intravenously-delivered immunomodulatory product candidate for the treatment of chronic inflammatory conditions, including biologic-refractory rheumatoid arthritis and diabetic kidney disease. A Phase 2 trial of MPC-300-IV is ongoing in patients with biologic-refractory rheumatoid arthritis, where the first dose cohort has completed recruitment, the second dose cohort is actively enrolling, and where 6 month results for the first cohort are expected by the end of 2015 and results from the second cohort are expected during the first half of 2016. A Phase 2 trial of MPC-300-IV in insufficiently controlled type 2 diabetes patients showed a dose-dependent response on improvement in HbA1c, or hemoglobin A1c, the primary measure of glycemic control for diabetes, which may be consistent with an immunomodulatory effect on disease pathogenesis. In addition, a Phase 2 trial of MPC-300-IV in patients with diabetic kidney disease has completed recruitment and six months of follow-up, and we announced the three month primary endpoint as well as six month results in June 2015.

Competitive Strengths

We hold a leadership position in regenerative medicine and believe we have more product candidates in late stage clinical trials than any other stem cell based regenerative medicine company. The key strengths underpinning our leadership position include:

- ***Disruptive technology platform.*** Our proprietary MLC platform allows us to develop product candidates that have the potential to significantly improve the treatment of a number of serious and debilitating conditions. Unlike other stem cell technologies, MLCs are adult, allogeneic, "off-the-shelf" therapies that can be developed from a small number of donors and administered to many patients, with batch-to-batch consistency, commercial scale capabilities and predictable therapeutic properties, without any material immune response in patients.
- ***Broad portfolio of distinct and advanced product candidates.*** We have advanced a significant number of clinical product candidates that target a wide range of diseases, including five Phase 3 or Phase 3-ready product candidates, and potentially the first allogeneic industrially manufactured product candidate to be approved in the United States, all backed by an extensive patient safety data file.
- ***Target markets with high unmet needs where technology shows greatest prospects.*** Our strategy is to develop product candidates that target the significantly advanced stages of certain diseases where specific sub-populations have high unmet medical needs. As a result, we will potentially benefit from accelerated development pathways and attractive pricing, as well as the opportunity to expand over time into broader patient populations with less severe stages of a targeted disease.
- ***Scalable manufacturing capabilities.*** We have developed proprietary manufacturing processes that we expect will enable production at commercial scale with reproducibility and batch-to-batch consistency. To further support our efforts, we have established a strategic alliance with Lonza, a global leader in biopharmaceutical manufacturing, and we are currently manufacturing in their state-of-the-art facility in Singapore on an exclusive basis for cell therapies.
- ***Intellectual property leadership.*** We have a large patent portfolio of issued and pending claims covering compositions of matter and methods of use for MLCs, as well as for elements of our

manufacturing processes. As of August 31, 2015, we had 72 patent families, including 661 patents or patent applications. We believe our intellectual property position provides us with substantial competitive advantages for the commercial development of regenerative medicine products.

- ***Strategic alliances.*** We have established strategic relationships that provide clinical development, manufacturing and commercial capabilities, as well as financial support to advance our product candidates. These alliances include Teva, Lonza and JCR. We will evaluate and, where appropriate, enter into additional collaborations with industry leading biopharmaceutical and other organizations to further advance our product candidate portfolio and to gain access to product development and funding support.
- ***Experienced management team.*** Our CEO, Dr. Silviu Itescu, is a pioneer in the study and clinical development of stem cell therapeutics, and a globally recognized leader in the field of regenerative medicine. Our broader management team, through prior employment at leading drug development companies and regulatory agencies, has substantial experience in the clinical development, manufacturing, regulatory management and commercialization of biopharmaceuticals.

Risk Factors

Our business and the successful execution of our strategies are subject to certain risks and uncertainties related to our business and our industry, regulation of our business and our corporate structure, doing business in Australia and ownership of our ADSs, our trading market and this offering. The risks and uncertainties related to our business and our industry include, but are not limited to:

- We have never generated any revenue from product sales and may never be profitable.
- Our product candidates are based on our novel MLC technology, which makes it difficult to predict the time and cost of product development and subsequently obtaining regulatory approval. To date, no industrially manufactured stem cell products have been approved in the United States.
- We may encounter substantial delays in our clinical studies or we may fail to demonstrate safety and efficacy, particularly in multi-national clinical trials, to the satisfaction of applicable regulatory agencies.
- We have incurred net operating losses and as of June 30, 2015, have an accumulated deficit of US$264.0 million since our inception. We anticipate that we will continue to incur substantial operating losses for the foreseeable future. It is possible that we may never achieve or sustain profitability.
- Even if this offering is successful, we will require substantial additional financing to achieve our goals, and our failure to obtain this necessary capital when needed could force us to delay, limit, reduce or terminate our product development or commercialization efforts.
- We may find it difficult to enroll patients in our clinical trials, especially for indications such as aGVHD which has a limited patient population. As such, this could delay or prevent development of our product candidates.
- Ethical and other concerns surrounding the use of embryonic stem cell-based therapy may negatively affect regulatory approval or public perception of our non-embryonic stem cell product candidates, which could reduce demand for our products or depress our share price.
- We are substantially dependent on the expertise of Teva and JCR to develop and commercialize our product candidates in certain indications. If we fail to maintain our current strategic relationships with Teva and JCR, our business, commercialization prospects and financial condition may be materially adversely affected.

- We rely on Lonza as our sole supplier and manufacturer of certain of our product candidates. Our business could be harmed if significant quantities of our product candidates cannot be manufactured at acceptable quality levels or costs.
- We may not be able to adequately protect our proprietary technology.

See "Risk Factors" and "Forward-Looking Statements" for a more detailed discussion of these and other risks and uncertainties that we may face.

Our Corporate Information

We were formed in 2004 as an Australian company. In December 2004 we completed an initial public offering of our ordinary shares and listing of these shares on the Australian Securities Exchange, or the ASX, under the symbol "MSB." In 2005, our ADSs began to be quoted on the Over-The-Counter Market under the symbol "MBLTY." In 2010, we acquired Angioblast Systems, Inc., a Delaware corporation created by our founder and Chief Executive Officer, Dr. Silviu Itescu, and previously owned in part by Mesoblast Limited, focusing on the development of therapeutic products based on MPCs for certain applications. In October 2013, we acquired the culture-expanded, or cells cultured with media that provides nutrients to allow them to divide and replicate, mesenchymal stem cell, or MSC, assets of Osiris Therapeutics, Inc.

Our principal executive offices are located at Level 38, 55 Collins Street, Melbourne 3000, Australia. Our telephone number at this address is +61 (3) 9639-6036. Our office in the United States is located at Level 3, 505 Fifth Avenue, New York, NY 10017. Our telephone number at this address is (212) 880-2060. Our website is *www.mesoblast.com*. Information contained on our website is not part of this prospectus. Our agent for service of process in the United States is our wholly-owned subsidiary, Mesoblast, Inc., a Delaware corporation, located at Level 3, 505 5th Ave, New York, NY 10017.

Implications of Being a Foreign Private Issuer

We qualify as a "foreign private issuer" as defined in Section 405 of the Securities Act of 1933, as amended. As a foreign private issuer, we are exempt from certain rules under the Exchange Act that impose disclosure requirements as well as procedural requirements for proxy solicitations under Section 14 of the Exchange Act. In addition, our officers, directors and principal shareholders are exempt from the reporting and "short-swing" profit recovery provisions of Section 16 of the Exchange Act. Moreover, we are not required to file periodic reports and financial statements with the SEC as frequently or as promptly as a company that files as a domestic issuer whose securities are registered under the Exchange Act, nor are we generally required to comply with the SEC's Regulation FD, which restricts the selective disclosure of material non-public information. We intend to take advantage of these exemptions as a foreign private issuer. We also qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, but we do not intend to take advantage of the benefits and exemptions available to us as such.

THE OFFERING	
ADSs offered by us	ADSs
ADSs to be outstanding immediately after this offering	ADSs
Ordinary shares to be outstanding immediately after this offering	ordinary shares
Over-allotment option	We have granted the underwriters an option, which is exercisable within 30 days from the date of this prospectus, to purchase up to additional ADSs from us at the public offering price less the underwriting discount to cover over-allotments, if any.
The ADSs	Each ADS represents ordinary shares, no par value. The ADSs are evidenced by ADRs issued by the depositary. The depositary will be the holder of the ordinary shares underlying the ADSs and you will have the rights of an ADS holder as provided in the deposit agreement among us, the depositary and owners and beneficial owners of ADSs from time to time. You may surrender your ADSs to the depositary to withdraw the ordinary shares underlying your ADSs. The depositary will charge you a fee for such an exchange. We may amend or terminate the deposit agreement for any reason without your consent. If an amendment becomes effective, you will be bound by the deposit agreement as amended if you continue to hold your ADSs.
Use of proceeds	We anticipate that the net proceeds from this offering will be approximately US$, or approximately US$ if the underwriters exercise their option to purchase additional ADSs in full, at an assumed initial public offering price of US$ per ADS (the midpoint of the price range set forth on the cover page of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We currently intend to use the net proceeds from this offering as follows: • approximately $ million to support commercial manufacturing requirements for our Tier 1 and Tier 2 product candidates, through development and implementation of our proprietary manufacturing processes and expansion of our manufacturing capabilities and resources, including, but not limited to, finalizing the development and implementation of the 3D bioreactor-based manufacturing of our products, finalizing the development of our proprietary fetal bovine serum, or FBS, -free media, and expansion of the scale of manufacturing to support commercial production of our products at our collaborator Lonza;

	• approximately $ million to fund the costs of Phase 2b/3 clinical development of MPC-300-IV for biologic-refractory rheumatoid arthritis and diabetic kidney disease; and • the remainder for general and administrative expenses (including personnel-related costs), working capital and other general corporate purposes, including funding general corporate overhead and the costs of operating as a public company, and general research and development expenses associated with our technology platform and earlier stage product development costs. See "Use of Proceeds."
Depositary	
Risk factors	See "Risk Factors" and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in the ADSs.
Lock-up	We have agreed for a period of 180 days after the date of this prospectus not to sell, transfer or otherwise dispose of any of our ordinary shares, ADSs or similar securities, subject to certain exceptions. Furthermore, each of our directors, our chief executive officer, our chief financial officer and Cephalon, Inc. have agreed to a similar 180-day lock-up. See "Underwriting."
Listing	We have applied to list our ADSs on the NASDAQ Global Select Market.
Proposed trading symbol	"MESO".

The number of ordinary shares to be outstanding following the offering is based on 336,997,729 fully paid ordinary shares outstanding at June 30, 2015, and excludes:

- the exercise of employee options outstanding at June 30, 2015 to purchase 18,369,078 fully paid ordinary shares issuable upon at a weighted average exercise price of A$5.25 per ordinary share;

and includes:

- an aggregate of 3,500,000 ordinary shares at a weighted average exercise price of A$6.78 held in trust as part of our loan funded share plan, or LFSP.

Pursuant to our LFSP, we make limited recourse, interest free loans to non-executive employees to purchase our ordinary shares. We generally issue new ordinary shares (rather than purchasing such shares in the open market) and place such shares in a trust to be held on behalf of the employee. The trustee holds the corresponding ordinary shares on behalf of the employee until the employee chooses to settle the loan pertaining to such shares and all vesting conditions have been satisfied, at which point ownership of such shares is fully transferred to the employee. See "Remuneration—Non-CEO Executive Remuneration—Australian Loan Funded Share Plan (LFSP)."

Except as otherwise indicated, all information contained in this prospectus assumes:

- no exercise of options after June 30, 2015; and
- no exercise by the underwriters of their right to purchase up to an additional ADSs from us to cover over-allotments.

SUMMARY CONSOLIDATED FINANCIAL AND OPERATING DATA

The following summary consolidated financial data presented below as of and for the years ended June 30, 2015, 2014 and 2013 has been derived from our audited consolidated financial statements included elsewhere in this prospectus. Historical results are not necessarily indicative of results to be expected in the future. The summary consolidated financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes thereto included elsewhere in this prospectus.

Our financial statements are presented in U.S. dollars and have been prepared in accordance with IFRS.

	Year Ended June 30,		
	US$ 2015	**US$ 2014**	**US$ 2013**
	(in thousands except per share information)		
Consolidated Income Statement Data:			
Revenue:			
Commercialization revenue	15,004	15,004	18,685
Milestone revenue	2,000	—	—
Interest revenue	2,757	8,386	10,616
Revenue from continuing operations	19,761	23,390	29,301
Other income:			
Foreign exchange gains	10,478	—	—
Research & development tax incentive	4,418	7,775	5,495
Other revenue	407	—	—
Rental income	96	—	—
Release of excess provision for services	—	2,344	—
Other income	15,399	10,119	5,495
Total revenue from continuing operations	35,160	33,509	34,796
Expenses from continuing operations:			
Research and development	(62,649)	(50,929)	(48,513)
Manufacturing commercialization	(23,783)	(25,434)	(23,082)
Management and administration	(29,636)	(24,403)	(22,899)
Finance costs	(8,506)	(4,078)	—
Other expenses	(6,830)	(4,195)	(952)
Total expenses from continuing operations	(131,404)	(109,039)	(95,446)
Loss before income tax	(96,244)	(75,530)	(60,650)
Income tax expense	—	(4)	(1,470)
Loss attributable to the owners of Mesoblast Limited	(96,244)	(75,534)	(62,120)
Losses per share from continuing operations attributable to the ordinary equity holders of Mesoblast Limited:	**Cents**	**Cents**	**Cents**
Basic—losses per share(1)	(29.99)	(23.65)	(21.02)
Diluted—losses per share(1)	(29.99)	(23.65)	(21.02)

(1) Please refer to Note 20 to our consolidated financial statements included elsewhere in this prospectus for a calculation of basic and diluted losses per share.

	As of June 30,			
	Actual		As adjusted(1)	
	US$ 2015	US$ 2014	US$ 2015	US$ 2014
	(in thousands)			
Consolidated Balance Sheet Data:				
Cash and cash equivalents	110,701	185,003		
Total current assets	122,460	191,931		
Total assets	781,766	847,153		
Total current liabilities	48,407	40,199		
Total liabilities	313,779	308,594		
Total equity	467,987	538,559		

(1) The unaudited as adjusted consolidated balance sheet data has been adjusted to reflect the issuance and sale of ordinary shares in the form of ADSs by us in this offering and our receipt of the estimated net proceeds from such issuance and sale in this offering, each based on an assumed initial public offering price of US$ per ADS (the midpoint of the price range set forth on the cover page of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

RISK FACTORS

You should carefully consider the risks described below and all other information contained in this prospectus before making an investment decision. If any of the following risks actually occur, our business, financial condition and results of operations could be materially and adversely affected. In that event, the trading price of our ADSs could decline, and you may lose part or all of your investment. This prospectus also contains forward-looking information that involves risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of many factors, including the risks described below and elsewhere in this prospectus.

Risks Related to Our Financial Position and Capital Requirements

We have incurred operating losses since our inception and anticipate that we will continue to incur substantial operating losses for the foreseeable future. We may never achieve or sustain profitability.

We are a clinical-stage biotechnology company and we have not yet generated significant revenues. We have incurred net losses during most of our fiscal periods since our inception. As of June 30, 2015, we had a comprehensive loss of US$122.0 million. Our net loss for the year ended June 30, 2015 was US$96.2 million. As of June 30, 2015, we have an accumulated deficit of US$264.0 million since our inception. We do not know whether or when we will become profitable. To date, we have not generated any revenues from the sale of products. Our losses have resulted principally from costs incurred in our manufacturing and clinical development activities.

We anticipate that our expenses will increase in the future as we move toward commercialization, including the scaling up of our manufacturing activities. Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. To achieve and maintain profitability, we must successfully develop our product candidates, obtain regulatory approval, and manufacture, market and sell those products for which we obtain regulatory approval. If we obtain regulatory approval to market a product candidate, our future revenue will depend upon the size of any markets in which our product candidates may receive approval, and our ability to achieve sufficient market acceptance, pricing, reimbursement from third-party payors, and adequate market share for our product candidates in those markets. We may not succeed in these activities, and we may never generate revenue from product sales that is significant enough to achieve profitability. Our failure to become or remain profitable would depress our market value and could impair our ability to raise capital, expand our business, discover or develop other product candidates or continue our operations. A decline in the value of our company could cause you to lose part or all of your investment.

We have never generated any revenue from product sales and may never be profitable.

Our ability to generate revenue and achieve profitability depends on our ability, either alone or with strategic collaboration partners, to successfully complete the development of, and obtain the regulatory approvals necessary to commercialize, our product candidates. We do not anticipate generating revenues from product sales for the foreseeable future, and we may never generate product sales. Our ability to generate future revenues from product sales depends heavily on our success in a number of areas, including:

- completing research and preclinical and clinical development of our product candidates;
- seeking and obtaining regulatory and marketing approvals for product candidates for which we complete clinical studies;
- establishing and maintaining supply and manufacturing relationships with third parties that can provide adequate (in amount and quality) products and services to support clinical development and the market demand for our product candidates, if approved;
- launching and commercializing product candidates for which we obtain regulatory and marketing approval, either by collaborating with a partner or, if launched independently, by establishing a sales force, marketing and distribution infrastructure;

- obtaining market acceptance of our product candidates and stem cell therapy as a viable treatment option;
- addressing any competing technological and market developments;
- obtaining and sustaining an adequate level of reimbursement from payors;
- identifying and validating new stem cell therapy product candidates;
- negotiating favorable terms in any collaboration, licensing or other arrangements into which we may enter;
- maintaining, protecting and expanding our portfolio of intellectual property rights, including patents, trade secrets and know-how;
- attracting, hiring and retaining qualified personnel; and
- implementing additional internal systems and infrastructure, as needed.

Even if one or more of the product candidates that we develop is approved for commercial sale, we anticipate incurring significant costs associated with commercializing any approved product candidate. Our expenses could increase beyond expectations if we are required by the FDA, the European Medicines Agency, or the EMA, or other regulatory agencies, domestic or foreign, to perform clinical and other studies in addition to those that we currently anticipate. Even if we are able to generate revenues from the sale of any approved products, we may not become profitable and may need to obtain additional funding to continue operations.

Even if this offering is successful, we will require substantial additional financing to achieve our goals, and our failure to obtain this necessary capital when needed could force us to delay, limit, reduce or terminate our product development or commercialization efforts.

Our operations have consumed substantial amounts of cash since inception. As of June 30, 2015, our cash and cash equivalents were US$110.7 million. We expect to continue to incur significant expenses and increasing operating losses for the foreseeable future in connection with our planned research, development and product commercialization efforts. In addition, even if this offering is successful, we will require additional financing to achieve our goals and our failure to do so could adversely affect our commercialization efforts. We anticipate that our expenses will increase if and as we:

- continue the research and clinical development of our product candidates, including MPC-150-IM (Class II-IV CHF), MPC-06-ID (CLBP), MSC-100-IV (aGVHD) and MPC-300-IV (inflammatory conditions) product candidates;
- initiate and advance our product candidates into larger and more expensive clinical studies, including a Phase 3 clinical trial for our MPC-25-Osteo (spinal fusion) product candidate;
- seek to identify, assess, acquire, and/or develop other product candidates and technologies;
- seek regulatory and marketing approvals in multiple jurisdictions for our product candidates that successfully complete clinical studies;
- establish collaborations with third parties for the development and commercialization of our product candidates, or otherwise build and maintain a sales, marketing and distribution infrastructure to commercialize any products for which we may obtain marketing approval;
- further develop and implement our proprietary manufacturing processes in both planar technology and our bioreactor programs and expand our manufacturing capabilities and resources for commercial production;
- seek coverage and reimbursement from third-party payors, including government and private payors for future products;

- make milestone or other payments under our agreements pursuant to which we have licensed or acquired rights to intellectual property and technology;
- seek to maintain, protect and expand our intellectual property portfolio; and
- seek to attract and retain skilled personnel.

If we were to experience any delays or encounter issues with any of the above, including clinical holds, failed studies, inconclusive or complex results, safety or efficacy issues, or other regulatory challenges that require longer follow-up of existing studies, additional studies, or additional supportive studies in order to pursue marketing approval, it could further increase the costs associated with the above. Further, the net operating losses we incur may fluctuate significantly from quarter to quarter and year to year, such that a period-to-period comparison of our results of operations may not be a good indication of our future performance.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest may be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a shareholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take certain actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaborations, strategic collaborations or partnerships, or marketing, distribution or licensing arrangements with third parties, we may be required to do so at an earlier stage than would otherwise be ideal and/or may have to limit valuable rights to our intellectual property, technologies, product candidates or future revenue streams, or grant licenses or other rights on terms that are not favorable to us. Furthermore, any additional fundraising efforts may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our product candidates.

Risks Related to Clinical Development and Regulatory Review and Approval of Our Product Candidates

Our product candidates are based on our novel MLC technology, which makes it difficult to accurately and reliably predict the time and cost of product development and subsequently obtaining regulatory approval. At the moment, no industrially manufactured stem cell products have been approved in the United States.

We have not commercially marketed, distributed or sold any products. The success of our business depends on our ability to develop and commercialize our lead product candidates. We have concentrated our product research and development efforts on our MLC platform, a novel type of stem cell therapy. Our future success depends on the successful development of this therapeutic approach. There can be no assurance that any development problems we experience in the future related to our MLC platform will not cause significant delays or unanticipated costs, or that such development problems can be solved. We may also experience delays in developing sustainable, reproducible and scalable manufacturing processes or transferring these processes to collaborators, which may prevent us from completing our clinical studies or commercializing our products on a timely or profitable basis, if at all.

In addition, the clinical study requirements of the FDA, the EMA and other regulatory agencies and the criteria these regulators use to determine the safety and efficacy of a product candidate vary substantially according to the type, complexity, novelty and intended use and market of the potential product candidates. The regulatory approval process for novel product candidates such as ours can be more expensive and take longer than other, better known or extensively studied pharmaceutical or other product candidates to develop. In addition, adverse developments in clinical trials of cell therapy products conducted by others may cause the FDA or other regulatory bodies to change the requirements for approval of any of our product candidates. At the moment, no other industrially manufactured stem cell products have been approved in the United States, which makes it difficult to determine how long it will take or how much it will cost to obtain regulatory approvals for our product candidates in either the United States or elsewhere.

We may fail to demonstrate safety and efficacy to the satisfaction of applicable regulatory agencies.

We have never obtained regulatory approval for a product. We must conduct extensive testing of our product candidates to demonstrate their safety and efficacy, including both preclinical animal testing and human

clinical trials, before we can obtain regulatory approval to market and sell them. Conducting such testing is a lengthy, time-consuming, and expensive process and there is a high rate of failure. Our current and completed preclinical and clinical results for our product candidates are not necessarily predictive of the results of our ongoing or future clinical trials. Promising results in preclinical studies of a product candidate may not be predictive of similar results in humans during clinical trials, and successful results from early human clinical trials of a product candidate may not be replicated in later and larger human clinical trials or in clinical trials for different indications. If the results of our or our collaborators' ongoing or future clinical trials are negative or inconclusive with respect to the efficacy of our product candidates or if we or they do not meet the clinical endpoints with statistical significance or if there are safety concerns or adverse events associated with our product candidates, we or our collaborator may be prevented or delayed in obtaining marketing approval for our product candidates.

We may encounter substantial delays in our clinical studies.

We cannot guarantee that any preclinical testing or clinical trials will be conducted as planned or completed on schedule, if at all. As a result, we may not achieve the expected clinical milestones outlined in this prospectus. A failure can occur at any stage of testing. Events that may prevent successful or timely commencement, enrollment or completion of clinical development include:

- delays in raising, or inability to raise, sufficient capital to fund the planned trials;
- delays by us or our collaborators in reaching a consensus with regulatory agencies on trial design;
- changes in trial design;
- inability to identify, recruit and train suitable clinical investigators;
- inability to add new clinical trial sites;
- delays in reaching agreement on acceptable terms for the performance of the trials with prospective clinical research organizations, or CROs, and clinical trial sites;
- delays in obtaining required Institutional Review Board, or IRB, approval at each clinical trial site;
- delays in recruiting suitable clinical sites and patients (i.e., subjects) to participate in clinical trials;
- imposition of a clinical hold by regulatory agencies for any reason, including negative clinical results, safety concerns or as a result of an inspection of manufacturing or clinical operations or trial sites;
- failure by CROs, other third parties or us or our collaborators to adhere to clinical trial requirements;
- failure to perform in accordance with the FDA's current Good Clinical Practices, or cGCP, or applicable regulatory guidelines in other countries;
- delays in the testing, validation, manufacturing and delivery of the product candidates to the clinical sites;
- delays caused by patients not completing participation in a trial or not returning for post-treatment follow-up;
- delays caused by clinical trial sites not completing a trial;
- failure to demonstrate adequate efficacy;
- occurrence of serious adverse events in clinical trials that are associated with the product candidates that are viewed to outweigh its potential benefits;
- changes in regulatory requirements and guidance that require amending or submitting new clinical protocols; or
- disagreements between us and the FDA or other regulatory agencies interpreting the data from our clinical trials.

Delays, including delays caused by the above factors, can be costly and could negatively affect our or our collaborators' ability to complete clinical trials for our product candidates. If we or our collaborators are not able to successfully complete clinical trials or are not able to do so in a timely and cost-effective manner, we will not be able to obtain regulatory approval and/or will not be able to commercialize our product candidates and our commercial partnering opportunities will be harmed.

We may find it difficult to enroll patients in our clinical trials, especially for indications such as aGVHD which are designated as orphan or niche markets, which could delay or prevent development of our product candidates.

Identifying and qualifying patients to participate in clinical trials of our product candidates is critical to our success. The timing of our clinical trials depends on the speed at which we can recruit patients to participate in testing our product candidates as well as completion of required follow-up periods. In general, if patients are unwilling to participate in our stem cell therapy trials because of negative publicity from adverse events in the biotechnology or stem cell industries or for other reasons, including competitive clinical trials for similar patient populations, the timeline for recruiting patients, conducting trials and obtaining regulatory approval for our product candidates may be delayed. More specifically, certain of our product candidates, including MSC-100-IV for aGVHD, target indications with relatively small patient populations, which can prolong the clinical trial timeline for the regulatory process if sufficient patients cannot be enrolled in a timely manner. As a result, we or our collaborators generally will have to run multi-site and potentially multi-national trials, which can be time consuming, expensive and require close coordination and supervision. If we have difficulty enrolling a sufficient number of patients or otherwise conducting clinical trials as planned, we or our collaborators may need to delay, limit or terminate ongoing or planned clinical trials, any of which would have an adverse effect on our business.

In addition, our planned clinical trials targeting more prevalent indications, such as our product candidates for CLBP, MPC-06-ID, and CHF, MPC-150-IM, may require the recruitment of several thousand patients. If there are delays in accumulating the required number of trial subjects or, in trials where clinical events are a primary endpoint, there may be delays in completing the trial. These delays could result in increased costs, delays in advancing development of our product candidates, including delays in testing the effectiveness, or even termination of the clinical trials altogether.

Patient enrollment and completion of clinical trials are affected by factors including:

- size of the patient population, particularly in orphan diseases;
- severity of the disease under investigation;
- design of the trial protocol;
- eligibility criteria for the particular trial;
- perceived risks and benefits of the product candidate being tested;
- proximity and availability of clinical trial sites for prospective patients;
- availability of competing therapies and clinical trials;
- efforts to facilitate timely enrollment in clinical trials;
- patient referral practices of physicians;
- ability to monitor patients adequately during and after treatment; and
- the degree of treatment effect in event-driven trials.

Once enrolled, patients may choose to discontinue their participation at any time during the trial, for any reason. Participants also may be terminated from the study at the initiative of the investigator, for example if they experience serious adverse clinical events or do not follow the study directions. If we are unable to maintain an adequate number of patients in our clinical trials, we may be required to delay or terminate an ongoing clinical trial, which would have an adverse effect on our business.

We may participate in multinational clinical trials, which present additional and unique risks.

We plan to seek initial marketing approval for our product candidates in the United States and in select non-U.S. jurisdictions such as Canada. Conducting trials on a multinational basis requires collaboration with foreign medical institutions and healthcare providers. Our ability to successfully initiate, enroll and complete a clinical trial in multiple countries is subject to numerous risks unique to conducting business internationally, including:

- difficulty in establishing or managing relationships with physicians and CROs;
- different standards for conducting clinical trials and resulting patients;
- our inability to locate qualified local consultants, physicians and partners;
- the potential burden of complying with a variety of foreign laws, medical standards and regulatory requirements, including the regulation of pharmaceutical and biotechnology products and treatments; and
- differing genotypes, average body weights and other patient profiles within and across countries from our donor profile may impact the optimal dosing or may otherwise impact the results of our clinical trials.

Serious adverse events or other safety risks could require us to abandon development and preclude, delay or limit approval of our product candidates, or limit the scope of any approved indication or market acceptance.

Participants in clinical trials of our investigational stem cell products may experience adverse reactions or other undesirable side effects. While some of these can be anticipated, others may be unexpected. We cannot predict the frequency, duration, or severity of adverse reactions or undesirable side effects that may occur during clinical investigation of our product candidates. If any of our product candidates, prior to or after any approval for commercial sale, cause adverse events or are associated with other safety risks, a number of potentially significant negative consequences could result, including:

- regulatory authorities may suspend (e.g., through a clinical hold) or terminate clinical trials;
- regulatory authorities may deny regulatory approval of our product candidates;
- regulators may restrict the indications or patient populations for which a product candidate is approved;
- regulatory authorities may require certain labeling statements, such as warnings or contraindications or limitations on the indications for use, and/or impose restrictions on distribution in the form of a risk evaluation and mitigation strategy, or REMS, in connection with approval, if any;
- regulatory authorities may withdraw their approval, require more onerous labeling statements or impose a more restrictive REMS than any product that is approved;
- we may be required to change the way the product is administered or conduct additional clinical trials;
- patient recruitment into our clinical trials may suffer;
- our relationships with our collaborators may suffer;
- we could be required to provide compensation to subjects for their injuries, e.g., if we are sued and found to be liable or if required by the laws of the relevant jurisdiction or by the policies of the clinical site; or
- our reputation may suffer.

There can be no assurance that adverse events associated with our product candidates will not be observed, even where no prior adverse events have occurred. As is typical in clinical development, we have a program of ongoing toxicology studies in animals for our other clinical-stage product candidates and cannot provide assurance that the findings from such studies or any ongoing or future clinical trials will not adversely affect our clinical development activities.

We may voluntarily suspend or terminate our clinical trials if at any time we believe that they present an unacceptable risk to participants or if preliminary data demonstrate that our product candidates are unlikely to receive regulatory approval or unlikely to be successfully commercialized. In addition, regulatory agencies, IRBs or data safety monitoring boards may at any time recommend the temporary or permanent discontinuation of our clinical trials or request that we cease using investigators in the clinical trials if they believe that the clinical trials are not being conducted in accordance with applicable regulatory requirements, or that they present an unacceptable safety risk to participants. If we elect or are forced to suspend or terminate a clinical trial for any of our product candidates, the commercial prospects for that product as well as our other product candidates may be harmed and our ability to generate product revenue from these product candidates may be delayed or eliminated. Furthermore, any of these events could prevent us or our collaborators from achieving or maintaining market acceptance of the affected product and could substantially increase the costs of commercializing our product candidates and impair our ability to generate revenue from the commercialization of these product candidates either by us or by our collaborators.

Several of our product candidates treat patients who are extremely ill, and patient deaths that occur in our clinical trials could negatively impact our business even if they are not shown to be related to our product candidates.

We are developing MPC-150-IM, which will focus on Class II-IV CHF, MSC-100-IV, which will focus on steroid-refractory aGVHD, and MPC-CBE, which will focus on bone marrow transplants after high dose chemotherapy. The patients who receive our product candidates are very ill due to their underlying diseases.

Generally, patients remain at high risk following their treatment with our product candidates and may more easily acquire infections or other common complications during the treatment period, which can be serious and life threatening. As a result, it is likely that we will observe severe adverse outcomes during our Phase 3 trials for these product candidates, including patient death. If a significant number of study subject deaths were to occur, regardless of whether such deaths are attributable to our product candidates, our ability to obtain regulatory approval for the applicable product candidate may be adversely impacted and our business could be materially harmed.

The requirements to obtain regulatory approval of the FDA and regulators in other jurisdictions can be costly, time-consuming, and unpredictable. If we or our collaborators are unable to obtain timely regulatory approval for our product candidates, our business may be substantially harmed.

The regulatory approval process is expensive and the time and resources required to obtain approval from the FDA or other regulatory authorities in other jurisdictions to sell any product candidate is uncertain and approval may take years. Whether regulatory approval will be granted is unpredictable and depends upon numerous factors, including the discretion of the regulatory authorities. For example, governing legislation, approval policies, regulations, regulatory policies, or the type and amount of preclinical and clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions. It is possible that none of our existing or future product candidates will ever obtain regulatory approval, even if we expend substantial time and resources seeking such approval.

Further, regulatory requirements governing stem cell therapy products in particular have changed frequently and may continue to change in the future. For example, in November 2014, Japan's parliament enacted new legislation to promote the safe and accelerated development of treatments using stem cells. The new Pharmaceuticals, Medical Devices and Other Therapeutic Products Act, or PMD Act, establishes a framework for expedited approval in Japan for certain regenerative medical products. As this is a new regulation, it is not clear yet what impact it will have on the operation of our business. Any regulatory review committees and advisory groups and any contemplated new guidelines may lengthen the regulatory review process, require us to perform additional studies, increase our development costs, lead to changes in regulatory positions and interpretations, delay or prevent approval and commercialization of our product candidates or lead to significant post-approval limitations or restrictions. As we advance our product candidates, we will be required to consult with these regulatory and advisory groups, and comply with applicable guidelines. If we fail to do so, we may be required to

delay or discontinue development of our product candidates. Delay or failure to obtain, or unexpected costs in obtaining, the regulatory approval necessary to bring a product candidate to market could decrease our ability to generate sufficient revenue to maintain our business.

Our product candidates could fail to receive regulatory approval for many reasons, including the following:

- we may be unable to successfully complete our ongoing and future clinical trials of product candidates;
- we may be unable to demonstrate to the satisfaction of the FDA or other regulatory authorities that a product candidate is safe, pure, and potent for any or all of a product candidate's proposed indications;
- we may be unable to demonstrate that a product candidate's benefits outweigh the risk associated with the product candidate;
- the FDA or other regulatory authorities may disagree with the design or implementation of our clinical trials;
- the results of clinical trials may not meet the level of statistical significance required by the FDA or other regulatory authorities for approval;
- the FDA or other regulatory authorities may disagree with our interpretation of data from preclinical studies or clinical trials;
- a decision by the FDA, other regulatory authorities or us to suspend or terminate a clinical trial at any time;
- the data collected from clinical trials of our product candidates may be inconclusive or may not be sufficient to support the submission of a biologics license application, or BLA, or other submission or to obtain regulatory approval in the United States or elsewhere;
- the inability to obtain sufficient quantities of the product candidates for use in clinical trials;
- our third party manufacturers of supplies needed for manufacturing product candidates may fail to satisfy FDA or other regulatory requirements and may not pass inspections that may be required by FDA or other regulatory authorities;
- the failure to comply with applicable regulatory requirements following approval of any of our product candidates may result in the refusal by the FDA or similar foreign regulatory agency to approve a pending BLA or supplement to a BLA submitted by us for other indications or new product candidates; and
- the approval policies or regulations of the FDA or other regulatory authorities outside of the United States may significantly change in a manner rendering our clinical data insufficient for approval.

We or our collaborators may gain regulatory approval for any of our product candidates in some but not all of the territories available and any future approvals may be for some but not all of the target indications, limiting their commercial potential. Regulatory requirements and timing of product approvals vary from country to country and some jurisdictions may require additional testing beyond what is required to obtain FDA approval. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other countries or by the FDA. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. In addition, regulatory approval does not specify pricing or reimbursement which may not match our expectations based on the results of our clinical data.

Even if we obtain regulatory approval for a product candidate, our products will be subject to ongoing regulatory scrutiny.

Any of our product candidates that are approved in the United States will continue to be subject to ongoing regulatory requirements relating to the quality, identity, strength, purity, safety, efficacy, testing, manufacturing, marketing, advertising, promotion, distribution, sale, storage, packaging, pricing, import or export, record-

keeping and submission of safety and other post-market information for all approved product candidates, including both federal and state requirements in the United States. In particular, as a condition of approval of a BLA, the FDA may require a REMS, to ensure that the benefits of the drug outweigh the potential risks. REMS can include medication guides, communication plans for healthcare professionals and elements to assure safe use, or ETASU. ETASU can include, but are not limited to, special training or certification for prescribing or dispensing, dispensing only under certain circumstances, special monitoring, and the use of patient registries. Moreover, regulatory approval may require substantial post-approval (Phase 4) testing and surveillance to monitor the drug's safety or efficacy. Delays in the REMS approval process could result in delays in the BLA approval process. In addition, as part of the REMS, the FDA could require significant restrictions, such as restrictions on the prescription, distribution and patient use of the product, which could significantly impact our ability to effectively commercialize our product candidates, and dramatically reduce their market potential thereby adversely impacting our business, results of operations and financial condition. Post-approval study requirements could add additional burdens, and failure to timely complete such studies, or adverse findings from those studies, could adversely affect our ability to continue marketing the product.

Any failure to comply with ongoing regulatory requirements, as well as post-approval discovery of previously unknown problems, including adverse events of unanticipated severity or frequency, or with manufacturing operations or processes, may significantly and adversely affect our ability to generate revenue from our product candidates, and may result in, among other things:

- restrictions on the marketing or manufacturing of the product candidates, withdrawal of the product candidates from the market, or voluntary or mandatory product recalls;
- costly regulatory inspections;
- fines, warning letters, or holds on clinical trials;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us or our collaborators, or suspension or revocation of BLAs;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties by FDA or other regulatory bodies.

If regulatory sanctions are applied or if regulatory approval is withdrawn, the value of our business and our operating results will be adversely affected.

The FDA's policies, or that of the applicable regulatory bodies in other jurisdictions, may change, and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we or our collaborators are not able to maintain regulatory compliance, are slow or unable adopt new requirements or policies, or effect changes to existing requirements, we or our collaborators may no longer be able to lawfully market our product, and we may not achieve or sustain profitability, which would adversely affect our business.

Ethical and other concerns surrounding the use of embryonic stem cell-based therapy may negatively affect regulatory approval or public perception of our non-embryonic stem cell product candidates, which could reduce demand for our products or depress our share price.

The use of embryonic stem cells, or ESCs, for research and therapy has been the subject of considerable public debate, with many people voicing ethical, legal and social concerns related to their collection and use. Our cells are not ESCs, which have been the predominant focus of this public debate and concern in the United States and elsewhere. However, the distinction between ESCs and non-ESCs, such as our MLCs, is frequently misunderstood by the public. Negative public attitudes toward stem cell therapy could also result in greater governmental regulation of stem cell therapies, which could harm our business. The use of these cells could give rise to ethical and social commentary adverse to us, which could harm the market demand for new products and depress the price of our ordinary shares. Ongoing lack of understanding of the difference between ESCs and non-

ESCs could negatively impact the public's perception of our company and product candidates and could negatively impact us.

Additional government-imposed restrictions on, or concerns regarding possible government regulation of, the use of stem cells in research, development and commercialization could also cause an adverse effect on us by harming our ability to establish important partnerships or collaborations, delaying or preventing the development of certain product candidates, and causing a decrease in the price of our ordinary shares or by otherwise making it more difficult for us to raise additional capital. For example, concerns regarding such possible regulation could impact our ability to attract collaborators and investors. Also, existing and potential government regulation of stem cells may lead researchers to leave the field of stem cell research altogether in order to assure that their careers will not be impeded by restrictions on their work. This may make it difficult for us to find and retain qualified scientific personnel.

Fast track designation by the FDA may not lead to a faster development or regulatory review or approval process, and it does not increase the likelihood that any of our product candidates will receive marketing approval in the United States.

If a drug is intended for the treatment of a serious or life-threatening condition or disease and the applicable nonclinical or clinical data demonstrate the potential to address unmet medical needs for this condition, the drug sponsor may apply for FDA fast track designation. The FDA has broad discretion whether or not to grant this designation, so even if we believe a particular product candidate is eligible for this designation, we cannot assure that the FDA would decide to grant it. We may in the future seek fast track designation for our product candidates as appropriate in the United States. For any product candidate that receives fast track designation, we may not experience a faster development, review or approval process compared to conventional FDA procedures. The FDA may withdraw fast track designation if it believes that the designation is no longer supported by data from our clinical development program.

Orphan drug designation may not ensure that we will enjoy market exclusivity in a particular market, and if we fail to obtain or maintain orphan drug designation or other regulatory exclusivity for some of our product candidates, our competitive position would be harmed.

A product candidate that receives orphan drug designation can benefit from potential commercial benefits following approval. Under the Orphan Drug Act, the FDA may designate a product candidate as an orphan drug if it is intended to treat a rare disease or condition, defined as affecting a patient population of fewer than 200,000 in the United States, or a patient population greater than 200,000 in the United States where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the United States. In the European Union, or EU, the EMA's Committee for Orphan Medicinal Products grants orphan drug designation to promote the development of products that are intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition affecting not more than 10,000 persons in the EU. Currently, this designation provides market exclusivity in the U.S. and the European Union for seven years and ten years, respectively, if a product is the first such product approved for such orphan indication. This market exclusivity does not, however, pertain to indications other than those for which the drug was specifically designated in the approval, nor does it prevent other types of drugs from receiving orphan designations or approvals in these same indications. Further, even after an orphan drug is approved, the FDA can subsequently approve a drug with similar chemical structure for the same condition if the FDA concludes that the new drug is clinically superior to the orphan product or a market shortage occurs. In the EU, orphan exclusivity may be reduced to six years if the drug no longer satisfies the original designation criteria or can be lost altogether if the marketing authorization holder consents to a second orphan drug application or cannot supply enough drug, or when a second applicant demonstrates its drug is "clinically superior" to the original orphan drug.

Our MSC-100-IV product candidate has received orphan drug designation for the treatment of aGVHD by the FDA. If we seek orphan drug designations for this or other product candidates in other indications or in other jurisdictions, such as for MSC-100-IV in the EU, we may fail to receive such orphan drug designations and, even if we succeed, such orphan drug designations may fail to result in or maintain orphan drug exclusivity upon approval, which would harm our competitive position.

Breakthrough therapy designation by the FDA may not lead to a faster development or regulatory review or approval process, and it does not increase the likelihood that any of our product candidates will receive marketing approval in the United States.

We have in the past and may in the future apply for breakthrough therapy designation for our product candidates, as appropriate, in the United States. A breakthrough therapy is defined as a product that is intended, alone or in combination with one or more other drugs, to treat a serious or life-threatening disease or condition, and for which preliminary clinical evidence indicates substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For drugs and biologics that have been designated as breakthrough therapies, interaction and communication between the FDA and the applicant can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Products designated as breakthrough therapies by the FDA may, in some cases, also be eligible for accelerated approval.

Designation as a breakthrough therapy is within the discretion of the FDA. Accordingly, even if we believe one of our products or product candidates meets the criteria for designation as a breakthrough therapy, the FDA may disagree. In any event, the receipt of a breakthrough therapy designation for a product or product candidate may not result in a faster development process, review or approval compared to products considered for approval under conventional FDA procedures and, in any event, does not assure ultimate approval by the FDA. We have in the past been denied breakthrough designation for certain of our product candidates. In addition, even if one or more of our products or product candidates does qualify as a breakthrough therapy, the FDA may later decide that the products no longer meet the conditions for qualification or decide that the time period for FDA review or approval will not be shortened.

We may face competition from biosimilars due to changes in the regulatory environment.

We may face competition from biosimilars due to the changing regulatory environment. In the United States, the Biologics Price Competition and Innovation Act of 2009 created an abbreviated approval pathway for biological products that are demonstrated to be "highly similar," or biosimilar, to or "interchangeable" with an FDA-approved innovator (original) biological product. This new pathway could allow competitors to reference data from innovator biological products already approved after 12 years from the time of approval. In his proposed budget for fiscal years 2014 and 2015, President Obama proposed to cut this 12-year period of exclusivity down to seven years. The President has also proposed to prohibit additional periods of exclusivity due to minor changes in product formulations, a practice often referred to as "evergreening." In Europe, the European Commission has granted marketing authorizations for several biosimilars pursuant to a set of general and product class-specific guidelines for biosimilar approvals issued over the past few years. In Europe, a competitor may reference data from biological products already approved, but will not be able to get on the market until ten years after the time of approval. This 10-year period will be extended to 11 years if, during the first eight of those 10 years, the marketing authorization holder obtains an approval for one or more new therapeutic indications that bring significant clinical benefits compared with existing therapies. In addition, companies may be developing biosimilars in other countries that could compete with our products. If competitors are able to obtain marketing approval for biosimilars referencing our products, our products may become subject to competition from such biosimilars, with the attendant competitive pressure and consequences.

Risks Related to Our Strategic Alliances

We are substantially dependent on the expertise of Teva and JCR to develop and commercialize our product candidates in certain indications. If we fail to maintain our current strategic relationships with Teva and JCR, our business, commercialization prospects and financial condition may be materially adversely affected.

We have entered into agreements with Cephalon, Inc. (a wholly owned subsidiary of Teva), or Cephalon, and JCR, under which Teva and JCR are responsible for certain development and commercialization activities related to the respective product candidates. Teva is responsible for Phase 3 trials, and for the commercialization (excluding manufacturing) of certain of our stem cell product candidates in specified indications, namely in the

cardiovascular, central nervous system and bone marrow transplant fields. Currently, we are collaborating with Teva, and Teva has commenced a Phase 3 trial for our MPC-150-IM product candidate for CHF. JCR is responsible for the development and commercialization of TEMCELL for the treatment of aGVHD in the Japanese market. The prospects for these product candidates to be successfully developed and commercialized depend on the expertise and financial strength of Teva and JCR.

Our collaborations with Teva or JCR may not be successful, and we may not realize the expected benefits from such collaborations, due to a number of important factors, including but not limited to the following:

- Teva or JCR may terminate their agreement with us as described below prior to completing development or commercialization of our product candidates, in whole or in part, adversely impacting our potential approval and revenue from licensed products;
- the timing and amount of any payments we may receive under these agreements will depend on, among other things, the efforts, allocation of resources, and successful commercialization of the relevant product candidates by Teva or JCR, as applicable, under our agreements;
- the timing and amounts of expense reimbursement that we may receive are uncertain; or
- Teva or JCR may change the focus of their development or commercialization efforts or pursue or emphasize higher-priority programs.

In particular, with the exception of the cardiovascular field, in which Teva is obligated to conduct and fund the Phase 3 clinical trial in CHF at least through the first interim analysis, Teva has the right to terminate their agreement with us upon advance notice to us. JCR has the right to terminate their agreement with us upon advance notice to us.

A failure by Teva or JCR to successfully develop our product candidates which are covered by the collaboration, or commercialize such, or the termination of our agreement with Teva or JCR, as applicable, may have a material adverse effect on our business, results of operations and financial condition.

We rely on third parties to conduct our nonclinical and clinical studies and perform other tasks for us. If these third parties do not successfully carry out their contractual duties, meet expected deadlines, or comply with regulatory requirements, we may not be able to obtain regulatory approval for or commercialize our product candidates in a timely and cost-effective manner or at all, and our business could be substantially harmed.

We have relied upon and plan to continue to rely upon third-party entities, including CROs, academic institutions, hospitals and other third-party collaborators, to monitor, support, conduct and/or oversee preclinical and clinical studies of our current and future product candidates. We rely on these parties for execution of our nonclinical and clinical studies, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory, and scientific standards and our reliance on the CROs does not relieve us of our regulatory responsibilities.

If any of our relationships with these third-parties terminate, we may not be able to enter into arrangements with alternative parties or do so on commercially reasonable terms. In addition, these parties are not our employees, and except for remedies available to us under our agreements with such third parties, we cannot control whether or not they devote sufficient time and resources to our on-going nonclinical and clinical programs. If third parties do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to our protocols, regulatory requirements, or for other reasons, our clinical studies may be extended, delayed, or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. Third parties may also generate higher costs than anticipated. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase, and our ability to generate revenue could be delayed.

Switching or adding additional third parties involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new third party commences work. As a result, delays occur, which can materially impact our ability to meet our desired clinical development timelines. Though we carefully manage our relationships with these third parties, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition, and prospects.

Our existing product development and/or commercialization arrangements, and any that we may enter into in the future, may not be successful, which could adversely affect our ability to develop and commercialize our product candidates.

We are a party to, and continue to seek additional, collaboration arrangements with other biopharmaceutical companies for the development and/or commercialization of our current and future product candidates. For example, in April 2015, we entered into an agreement with Celgene Corporation, under which Celgene purchased 15.3 million of our ordinary shares for US$45 million and received a six-month right of first refusal with respect to our product candidates for the prevention and treatment of aGVHD, certain oncologic diseases, inflammatory bowel diseases, and organ transplant rejection. We may enter into new arrangements on a selective basis depending on the merits of retaining certain development and commercialization rights for ourselves as compared to entering into selective collaboration arrangements with leading pharmaceutical or biotechnology companies for each product candidate, both in the United States and internationally. To the extent that we decide to enter into collaboration agreements, we will face significant competition in seeking appropriate collaborators. Any failure to meet our clinical milestones with respect to an unpartnered product candidate would make finding a collaborator more difficult. Moreover, collaboration arrangements are complex and time consuming to negotiate, document and implement, and we cannot guarantee that we can successfully maintain such relationships or that the terms of such arrangements will be favorable to us. If we fail to establish and implement collaboration or other alternative arrangements, the value of our business and operating results will be adversely affected.

We may not be successful in our efforts to establish, implement and maintain collaborations or other alternative arrangements if we choose to enter into such arrangements. The terms of any collaboration or other arrangements that we may establish may not be favorable to us. The management of collaborations may take significant time and resources that distract our management from other matters.

Our ability to successfully collaborate with any future collaborators may be impaired by multiple factors including:

- a collaborator may shift its priorities and resources away from our programs due to a change in business strategies, or a merger, acquisition, sale or downsizing of its company or business unit;
- a collaborator may cease development in therapeutic areas which are the subject of our strategic alliances;
- a collaborator may change the success criteria for a particular program or product candidate thereby delaying or ceasing development of such program or candidate;
- a significant delay in initiation of certain development activities by a collaborator will also delay payments tied to such activities, thereby impacting our ability to fund our own activities;
- a collaborator could develop a product that competes, either directly or indirectly, with our current or future products, if any;
- a collaborator with commercialization obligations may not commit sufficient financial or human resources to the marketing, distribution or sale of a product;
- a collaborator with manufacturing responsibilities may encounter regulatory, resource or quality issues and be unable to meet demand requirements;
- a collaborator may exercise its rights under the agreement to terminate our collaboration;

- a dispute may arise between us and a collaborator concerning the research or development of a product candidate or commercialization of a product resulting in a delay in milestones, royalty payments or termination of a program and possibly resulting in costly litigation or arbitration which may divert management attention and resources;
- the results of our clinical trials may not match our collaborators' expectations, even if statistically significant;
- a collaborator may not adequately protect or enforce the intellectual property rights associated with a product or product candidate; and
- a collaborator may use our proprietary information or intellectual property in such a way as to invite litigation from a third party.

Any such activities by our current or future collaborators could adversely affect us financially and could harm our business reputation.

Risks Related to Our Manufacturing and Supply Chain

We have no experience manufacturing our product candidates at a commercial scale and we are in the process of establishing a new manufacturing facility and processes for clinical supply for our MSC product candidates. We may not be able to manufacture our product candidates in quantities sufficient for development and commercialization if our product candidates are approved, or for any future commercial demand for our product candidates.

We have manufactured clinical quantities of our MPC product candidates in our manufacturing facilities, owned by Lonza Walkersville, Inc. and Lonza Bioscience Singapore Pte. Ltd., collectively referred to as Lonza. With respect to MSCs, successful clinical production of MSCs was established prior to our acquisition of the MSC assets. We are now establishing MSC production in a Lonza facility in Singapore. We do not have any direct experience in manufacturing commercial quantities of any of our product candidates. The production of any biopharmaceutical, particularly stem cells, involves complex processes and protocols. We cannot provide assurance that such production efforts will enable us to manufacture our product candidates in the quantities and with the quality needed for clinical trials and any resulting commercialization. If we are unable to do so, our clinical trials and commercialization efforts, if any, may not proceed in a timely fashion and our business will be adversely affected. If any of our product candidates are approved for commercialization and marketing, we may be required to manufacture the product in large quantities to meet demand. Producing product in commercial quantities requires developing and adhering to complex manufacturing processes that are different from the manufacture of a product in smaller quantities for clinical trials, including adherence to additional and more demanding regulatory standards. Although we believe that we have developed processes and protocols that will enable us to consistently manufacture commercial-scale quantities of product, we cannot provide assurance that such processes and protocols will enable us to manufacture our product candidates in quantities that may be required for commercialization of the product with yields and at costs that will be commercially attractive. If we are unable to establish or maintain commercial manufacture of the product or are unable to do so at costs that we currently anticipate, our business will be adversely affected.

Further, we have made significant advances in the development of 3-dimensional, or 3D, bioreactor based production for MLCs, the goal of which is to allow us to produce our products at commercial scale. There is no guarantee that we will successfully complete this process, due to multiple factors, including the failure to produce sufficient quantities and the inability to produce cells that are equivalent in physical and therapeutic properties as compared to the products produced using our current two-dimensional, or 2D, manufacturing processes. In the event our transition to 3D manufacturing is unsuccessful, we may not be able to produce our products in a cost-efficient manner and our business may be adversely affected.

We rely on Lonza as our sole supplier and manufacturer of certain of our product candidates. Our business could be harmed if Lonza fails to provide us with sufficient quantities of these product candidates or fails to do so at acceptable quality levels or prices.

We do not currently have, nor do we plan to acquire, the infrastructure or capability internally to manufacture our MLC product candidates for use in the conduct of our clinical trials, and we currently lack the internal resources and the capability to manufacture any of our product candidates on a clinical or commercial scale. As a result, we currently depend on Lonza to manufacture our MLC product candidates. Relying on Lonza as our sole source to manufacture our MLC product candidates entails risks, and Lonza may:

- cease or reduce production or deliveries, raise prices or renegotiate terms;
- be unable to meet any product specifications and quality requirements consistently;
- delay or be unable to procure or expand sufficient manufacturing capacity, which may harm our reputation or frustrate our customers;
- not have the capacity sufficient to support the scale-up of manufacturing for our product candidates;
- have manufacturing and product quality issues related to scale-up of manufacturing;
- experience costs and validation of new equipment facilities requirement for scale-up that it will pass on to us;
- fail to comply with cGMP and similar foreign standards;
- lose its manufacturing facility in Singapore, stored inventory or laboratory facilities through fire or other causes, or other loss of materials necessary to manufacture our product candidates;
- experience disruptions to its operations by conditions unrelated to our business or operations, including the bankruptcy or interruptions of its suppliers;
- experience carrier disruptions or increased costs that it will pass on to us;
- fail to secure adequate supplies of essential ingredients in our manufacturing process;
- experience failure of third parties involved in the transportation, storage or distribution of our products, including the failure to deliver supplies it uses for the manufacture of our product candidates under specified storage conditions and in a timely manner; and
- appropriate or misuse our trade secrets and other proprietary information.

Any of these events could lead to delays in the development of our product candidates, including delays in our clinical trials, or failure to obtain regulatory approval for our product candidates, or it could impact our ability to successfully commercialize our current product candidates or any future products. Some of these events could be the basis for FDA or other regulatory action, including injunction, recall, seizure or total or partial suspension of production.

In addition, the lead time needed to establish a relationship with a new manufacturer can be lengthy, and we may experience delays in meeting demand in the event we must switch to a new manufacturer. We are expanding our manufacturing collaborations in order to meet future demand and to provide back-up manufacturing options, which also involves risk and requires significant time and resources. Our future collaborators may need to expand their facilities or alter the facilities to meet future demand and changes in regulations. These activities may lead to delays, interruptions to supply, or may prove to be more costly than anticipated. Any problems in our manufacturing process could have a material adverse effect on our business, results of operations and financial condition.

We may not be able to manufacture or commercialize our product candidates in a profitable manner under our relationship with Teva or otherwise.

We intend to implement a business model under which we control the manufacture and supply of our product candidates, including but not exclusively, through our product suppliers, including Lonza. For example, under our collaboration with Teva, we are obligated to supply our product candidates subject to that collaboration at our expense. In return, we are paid a transfer price equal to an escalating double-digit percentage of Teva's net sales price for our product candidates. We and the suppliers of our product candidates, including Lonza, have no experience manufacturing our product candidates at commercial scale. Accordingly, there can be no assurance as to whether we and our suppliers will be able to scale-up the manufacturing processes and implement technological improvements in a manner that will allow the manufacture of our product candidates in a cost effective manner. Our collaborators' inability to sell our product candidates at a price that exceeds our cost of manufacture by an amount that is profitable for us, will have a material adverse result on the results of our operations and our financial condition.

Our or our collaborators' ability to identify, test and verify new donor tissue in order to create new master cell banks involves many risks.

The initial stage of manufacturing involves obtaining MLC-containing bone marrow from donors, for which we currently rely on Lonza. MLCs are isolated from each donor's bone marrow, and expanded to create a master cell bank. Each individual master cell bank comes from a single donor. A single master cell bank can source many production runs, which in turn can produce up to thousands of doses of a given product, depending on the dose level. The process of identifying new donor tissue, testing and verifying its validity in order to create new master cell banks and validating such cell bank with the FDA and other regulatory agencies is time consuming, costly and prone to the many risks involved with creating living cell products. There could be consistency or quality control issues with any new master cell bank. Although we believe we and our collaborators have the necessary know-how and processes to enable us to create master cell banks with consistent quality and within the timeframe necessary to meet projected demand and we have begun doing so, we cannot be certain that we or our collaborators will be able to successfully do so, and any failure or delays in creating new master cell banks will have a material adverse impact on our business, results of operations, financial conditions and growth prospects and could result in our inability to continue operations.

We and our collaborators depend on a limited number of suppliers for our product candidates' materials, equipment or supplies and components required to manufacture our product candidates. The loss of these suppliers, or their failure to provide quality supplies on a timely basis, could cause delays in our current and future capacity and adversely affect our business.

We and our collaborators depend on a limited number of suppliers for the materials, equipment and components required to manufacture our product candidates and the product candidates themselves. We rely exclusively on Lonza to supply certain of our product candidates. In addition, we rely on general market availability third parties to provide various "devices" or "carriers" for some of our programs (e.g., the catheter for use with MPC-150-IC, the collagen sponge used in spinal fusion, and the hyaluronic acid used for disc repair). The main consumable used in our manufacturing process is our media, which currently is sourced from fetal bovine serum, or FBS. This material comes from limited sources, and as a result is expensive. As a result, we or our collaborators may not be able to obtain sufficient quantities of our product candidates or other critical materials equipment and components in the future, at affordable prices or at all. A delay or interruption by our suppliers may also harm our business, and operating results. In addition, the lead time needed to establish a relationship with a new supplier can be lengthy, and we or our collaborators may experience delays in meeting demand in the event we must switch to a new supplier. The time and effort to qualify for and, in some cases, obtain regulatory approval for a new supplier could result in additional costs, diversion of resources or reduced manufacturing yields, any of which would negatively impact our operating results. Our and our collaborators' dependence on single-source suppliers exposes us to numerous risks, including the following:

- our or our collaborators' suppliers may cease or reduce production or deliveries, raise prices or renegotiate terms;

- we or our collaborators may be unable to locate suitable replacement suppliers on acceptable terms or on a timely basis, or at all; and
- delays caused by supply issues may harm our reputation, frustrate our customers and cause them to turn to our competitors for future needs.

We and our collaborators and Lonza are subject to significant regulation with respect to manufacturing our product candidates. The Lonza manufacturing facilities on which we rely may not continue to meet regulatory requirements or may not be able to meet supply demands.

All entities involved in the preparation of therapeutics for clinical studies or commercial sale, including our existing manufacturers, including Lonza, are subject to extensive regulation. Components of a finished therapeutic product approved for commercial sale or used in late-stage clinical studies must be manufactured in accordance with current Good Manufacturing Practice and other international regulatory requirements. These regulations govern manufacturing processes and procedures (including record keeping) and the implementation and operation of quality systems to control and assure the quality of investigational products and products approved for sale. Poor control of production processes can lead to the introduction of contaminants or to inadvertent changes in the properties or stability of our product candidates. We, our collaborators, or suppliers must supply all necessary documentation in support of a BLA on a timely basis and must adhere to current Good Laboratory Practice and current Good Manufacturing Practice regulations enforced by the FDA and other regulatory agencies through their facilities inspection program. Lonza and other suppliers have never produced a commercially approved cellular therapeutic product and therefore have not obtained the requisite regulatory authority approvals to do so.

Before we can begin commercial manufacture of our products for sale in the United States, we must obtain FDA regulatory approval for the product, in addition to the approval of the processes and quality systems associated with the manufacturing of such product, which requires a successful FDA inspection of the facility handling the manufacturing of our product, including Lonza's manufacturing facilities. The novel nature of our product candidates creates significant challenges in regards to manufacturing. For example, the U.S. federal and state governments and other jurisdictions impose restrictions on the acquisition and use of tissue, including those incorporated in federal Good Tissue Practice regulations. We may not be able to identify or develop sources for the cells necessary for our product candidates that comply with these laws and regulations. Further, we may be required to conduct additional clinical trials using 3D manufacturing processes before we receive regulatory approval.

In addition, the regulatory authorities may, at any time before or after product approval, audit or inspect a manufacturing facility involved with the preparation of our product candidates or raw materials or the associated quality systems for compliance with the regulations applicable to the activities being conducted. Although we oversee each contract manufacturer involved in the production of our product candidates, we cannot control the manufacturing process of, and are dependent on, Lonza for compliance with the regulatory requirements. If Lonza is unable to comply with manufacturing regulations, we may be subject to fines, unanticipated compliance expenses, recall or seizure of any approved products, total or partial suspension of production and/or enforcement actions, including injunctions, and criminal or civil prosecution. These possible sanctions would adversely affect our business, results of operations and financial condition. If Lonza fails to maintain regulatory compliance, the FDA or other applicable regulatory authority can impose regulatory sanctions including, among other things, refusal to approve a pending application for a new drug product or biologic product, withdrawal of an approval, or suspension of production. As a result, our business, financial condition, and results of operations may be materially harmed.

We will rely on third parties to perform many necessary services for the commercialization of our product candidates, including services related to the distribution, storage and transportation of our products.

We will rely upon third parties for certain storage, distribution and other logistical services. In accordance with certain laws, regulations and specifications, our product candidates must be stored and transported at low temperatures within a certain range. If these environmental conditions deviate, our product candidates' remaining shelf-lives could be impaired or their efficacy and safety could become adversely affected, making them no

longer suitable for use. If any of the third parties that we intend to rely upon in our storage, distribution and other logistical services process fail to comply with applicable laws and regulations, fail to meet expected deadlines, or otherwise do not carry out their contractual duties to us, or encounter physical damage or natural disaster at their facilities, our ability to deliver product to meet commercial demand may be significantly impaired.

Product recalls or inventory losses caused by unforeseen events may adversely affect our operating results and financial condition.

Our product candidates are manufactured, stored and distributed using technically complex processes requiring specialized facilities, highly specific raw materials and other production constraints. The complexity of these processes, as well as strict company and government standards for the manufacture, storage and distribution of our product candidates, subjects us to risks. For example, during the manufacturing process we have from time to time experienced several different types of issues that have led to a rejection of various batches. Historically, the most common reasons for batch rejections include major process deviations during the production of a specific batch and failure of manufactured product to meet one or more specifications for cell count, viability and appearance. While product candidate batches released for the use in clinical trials or for commercialization undergo sample testing, some latent defects may only be identified following product release. In addition, process deviations or unanticipated effects of approved process changes may result in these product candidates not complying with stability requirements or specifications. The occurrence or suspected occurrence of production and distribution difficulties can lead to lost inventories, and in some cases product recalls, with consequential reputational damage and the risk of product liability. The investigation and remediation of any identified problems can cause production delays, substantial expense, lost sales and delays of new product launches. In the event our production efforts require a recall or result in an inventory loss, our operating results and financial condition may be adversely affected.

Risks Related to Commercialization of Our Product Candidates

Our future commercial success depends upon attaining significant market acceptance of our product candidates, if approved, among physicians, patients and healthcare payors.

Even when product development is successful and regulatory approval has been obtained, our ability to generate significant revenue depends on the acceptance of our products by physicians, payors and patients. Many potential market participants have limited knowledge of, or experience with, stem cell-based products, so gaining market acceptance and overcoming any safety or efficacy concerns may be more challenging than for more traditional therapies. Our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may never be successful. Such efforts to educate the marketplace may require more resources than are required by the conventional therapies marketed by our competitors. We cannot assure you that our products will achieve the expected market acceptance and revenue if and when they obtain the requisite regulatory approvals. Alternatively, even if we obtain regulatory approval, that approval may be for indications or patient populations that are not as broad as intended or desired or may require labeling that includes significant use or distribution restrictions or safety warnings. The market acceptance of each of our product candidates will depend on a number of factors, including:

- the efficacy and safety of the product candidate, as demonstrated in clinical trials;
- the clinical indications for which the product is approved and the label approved by regulatory authorities for use with the product, including any warnings that may be required on the label;
- acceptance by physicians and patients of the product as a safe and effective treatment;
- the cost, safety and efficacy of treatment in relation to alternative treatments;
- the continued projected growth of markets for our various indications;
- relative convenience and ease of administration;
- the prevalence and severity of adverse side effects; and
- the effectiveness of our, and our collaborators', sales and marketing efforts.

Market acceptance is critical to our ability to generate significant revenue. Any product candidate, if approved and commercialized, may be accepted in only limited capacities or not at all. If any approved products are not accepted by the market to the extent that we expect, we may not be able to generate significant revenue and our business would suffer.

If, in the future, we are unable to establish our own sales, marketing and distribution capabilities or enter into licensing or collaboration agreements for these purposes, we may not be successful in independently commercializing any future products.

We have no sales and marketing infrastructure and, as a company, have limited sales, marketing or distribution experience. Commercializing our product candidates, if such product candidates obtain regulatory approval, would require significant sales, distribution and marketing capabilities. Where and when appropriate, we may elect to utilize contract sales forces or distribution collaborators to assist in the commercialization of our product candidates. If we enter into arrangements with third parties to perform sales, marketing and distribution services for our product candidates, the resulting revenue or the profitability from this revenue to us may be lower than if we had sold, marketed and distributed that product ourselves. In addition, we may not be successful in entering into arrangements with third parties to sell, market and distribute any future products or may be unable to do so on terms that are favorable to us. We may have little control over such third parties, and any of these third parties may fail to devote the necessary resources and attention to sell, market and distribute our current or any future products effectively.

To the extent we are unable to engage third parties to assist us with these functions, we will have to invest significant amounts of financial and management resources, some of which will need to be committed prior to any confirmation that any of our proprietary product candidates will be approved. For any future products for which we decide to perform sales, marketing and distribution functions ourselves, we could face a number of additional risks, including:

- our inability to recruit and retain adequate numbers of effective sales and marketing personnel or to develop alternative sales channels;
- the inability of sales personnel to obtain access to physicians or persuade adequate numbers of physicians to prescribe any future products;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more diversified product lines; and
- unforeseen costs and expenses associated with creating and maintaining an independent sales and marketing organization.

We face substantial competition, which may result in others discovering, developing or commercializing products before, or more successfully, than we do.

The biopharmaceutical industry is highly competitive and subject to rapid change. The industry continues to expand and evolve as an increasing number of competitors and potential competitors enter the market. Examples of potential competitors for our Tier 1 products include, but are not limited to, Novartis Pharmaceuticals and Servier Laboratories for CHF; Johnson & Johnson, Pfizer, Inc. and ISTO Technologies for CLBP; Amgen Inc., Pfizer, Inc. and Johnson & Johnson for aGVHD; and NephroGenex, Inc. and AbbVie Inc. for diabetic nephropathy. Many of our potential competitors, potentially including the aforementioned, have significantly greater development, financial, manufacturing, marketing, technical and human resources than we do. Large pharmaceutical companies, in particular, have extensive experience in clinical testing, obtaining regulatory approvals, recruiting patients and in manufacturing pharmaceutical products. Recent and potential future merger and acquisition activity in the biotechnology and pharmaceutical industries may result in even more resources being concentrated among a smaller number of our competitors. Established pharmaceutical companies may also invest heavily to accelerate discovery and development of novel compounds that could make our product candidates obsolete. As a result of all of these factors, our competitors may succeed in obtaining patent protection and/or FDA approval or discovering, developing and commercializing our product candidates or competitors to our product candidates before we do.

Specialized, smaller or early-stage companies may also prove to be significant competitors, particularly those with a focus and expertise in the stem cell industry and/or those with collaboration arrangements and other third party payors. In addition, any new product that competes with an approved product must demonstrate compelling advantages in efficacy, convenience, tolerability and safety in order to overcome price competition and to be commercially successful. If we are not able to compete effectively against potential competitors, our business will not grow and our financial condition and results of operations will suffer.

Our marketed products may be used by physicians for indications that are not approved by the FDA. If the FDA finds that we marketed our products in a manner that promoted off-label use, we may be subject to civil or criminal penalties.

Under the Federal Food, Drug and Cosmetic Act, or FDCA, and other laws, if any of our product candidates are approved by the FDA, we would be prohibited from promoting our products for off-label uses. This means, for example, that we would not be able to make claims about the use of our marketed products outside of their approved indications, and we would not be able to proactively discuss or provide information on off-label uses of such products, with very specific and limited exceptions. The FDA does not, however, prohibit physicians from prescribing products for off-label uses in the practice of medicine. Should the FDA determine that our activities constituted the promotion of off-label use, the FDA could issue a warning or untitled letter or, through the Department of Justice, bring an action for seizure or injunction, and could seek to impose fines and penalties on us and our executives. In addition, failure to follow FDA rules and guidelines relating to promotion and advertising can result in, among other things, the FDA's refusal to approve a product, the suspension or withdrawal of an approved product from the market, product recalls, fines, disgorgement of money, operating restrictions, injunctions or criminal prosecutions.

If we or our collaborators fail to obtain and sustain an adequate level of reimbursement for our products by third-party payors, sales and profitability would be adversely affected.

Our and our collaborators' ability to commercialize any products successfully will depend, in part, on the extent to which coverage and reimbursement for our products and related treatments will be available from government healthcare programs, private health insurers, managed care plans, and other organizations. Additionally, even if there is a commercially viable market, if the level of third-party reimbursement is below our expectations, our revenue and profitability could be materially and adversely affected.

Third-party payors, such as government programs, including Medicare in the United States, or private healthcare insurers, carefully review and increasingly question the coverage of, and challenge the prices charged for medical products and services, and many third-party payors limit coverage of or reimbursement for newly approved healthcare products. Reimbursement rates from private health insurance companies vary depending on the company, the insurance plan and other factors, including the third-party payor's determination that use of a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

A current trend in the U.S. healthcare industry as well as in other countries around the world is toward cost containment. Large public and private payors, managed care organizations, group purchasing organizations and similar organizations are exerting increasing influence on decisions regarding the use of, and reimbursement levels for, particular treatments. In particular, third-party payors may limit the covered indications. Cost-control initiatives could decrease the price we might establish for any product, which could result in product revenue and profitability being lower than anticipated.

There may be significant delays in obtaining coverage and reimbursement for newly approved drugs, and coverage may be more limited than the purposes for which the drug is approved by the FDA or other regulatory authorities. Moreover, eligibility for coverage and reimbursement does not imply that a drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale and distribution expenses. Interim reimbursement levels for new drugs, if applicable, may also be insufficient to cover our and any collaborator's costs and may not be made permanent. Reimbursement rates may vary according to the use of the drug and the clinical setting in which it is used, may be based on reimbursement levels already set for lower cost drugs and may be incorporated into existing payments for other services. Our inability to promptly obtain coverage and profitable payment rates from both government-funded and private payors for any approved products that we develop could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products and our overall financial condition.

Furthermore, reimbursement systems in international markets vary significantly by country and by region, and reimbursement approvals must be obtained on a country-by-country basis. Our existing or future collaborators, if any, may elect to reduce the price of our products in order to increase the likelihood of obtaining reimbursement approvals which could adversely affect our revenues and profits. In many countries, products cannot be commercially launched until reimbursement is approved and the negotiation process in some countries can exceed 12 months. In addition, pricing and reimbursement decisions in certain countries can be affected by decisions taken in other countries, which can lead to mandatory price reductions and/or additional reimbursement restrictions across a number of other countries, which may thereby adversely affect our sales and profitability. In the event that countries impose prices which are not sufficient to allow us or our collaborators to generate a profit, our collaborators may refuse to launch the product in such countries or withdraw the product from the market, which would adversely affect sales and profitability.

Due to the novel nature of our stem cell therapy and the potential for our product candidates to offer therapeutic benefit in a single administration, we face uncertainty related to pricing and reimbursement for these product candidates.

Our target patient populations may be relatively small, and as a result, the pricing and reimbursement of our product candidates, if approved, must be adequate to support commercial infrastructure. If we are unable to obtain adequate levels of reimbursement, our ability to successfully market and sell our product candidates will be adversely affected. The manner and level at which reimbursement is provided for services related to our product candidates (e.g., for administration of our product to patients) is also important. Inadequate reimbursement for such services may lead to physician resistance and adversely affect our ability to market or sell our products. Further, if the results of our clinical trials do not clearly demonstrate the efficacy of our product candidates, our pricing and reimbursement may be adversely affected.

Price controls may be imposed in foreign markets, which may adversely affect our future profitability.

In some countries, particularly EU member states, Japan, Australia and Canada, the pricing of prescription drugs is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after receipt of marketing approval for a product. In addition, there can be considerable pressure by governments and other stakeholders on prices and reimbursement levels, including as part of cost containment measures. Political, economic and regulatory developments may further complicate pricing negotiations, and pricing negotiations may continue after reimbursement has been obtained. Reference pricing used by various EU member states and parallel distribution, or arbitrage between low-priced and high-priced member states, can further reduce prices. In some countries, we or our collaborators may be required to conduct a clinical trial or other studies that compare the cost-effectiveness of our product candidates to other available therapies in order to obtain or maintain reimbursement or pricing approval. Publication of discounts by third-party payors or authorities may lead to further pressure on the prices or reimbursement levels within the country of publication and other countries. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business, revenues or profitability could be adversely affected.

If the market opportunities for our product candidates are smaller than we believe they are, our revenues may be adversely affected and our business may suffer. Because the target patient populations of certain of our product candidates are small, we must be able to successfully identify patients and achieve a significant market share to maintain profitability and growth.

Certain of our research and product development focuses on treatments for small patient populations, including orphan or niche markets. Our projections of both the number of people who have these diseases, as well as the subset of people with these diseases who have the potential to benefit from treatment with our product candidates, are based on estimates. These estimates may prove to be incorrect and new studies may change the estimated incidence or prevalence of these diseases. The number of patients in the United States, Europe and elsewhere may turn out to be lower than expected, may not be otherwise amenable to treatment with our products, or new patients may become increasingly difficult to identify or gain access to, all of which would adversely affect our results of operations and our business.

We are exposed to risks related to our international operations, and failure to manage these risks may adversely affect our operating results and financial condition.

We and our subsidiaries operate out of Australia, the United States, Singapore and Switzerland, and we have a collaborator, JCR, with rights to develop and distribute products based on our MSC technology in Japan. Our primary manufacturing collaborator, Lonza, serves us primarily out of their facilities in Singapore, and through contractual relationships with third parties, have access to storage facilities in the U.S., Europe, Australia and Singapore. As a result, a significant portion of our operations are conducted by and/or rely on entities outside the markets in which certain of our trials take place, our suppliers are sourced, our product candidates are developed, and, if any such product candidates obtain regulatory approval, our products may be sold. Accordingly, we import a substantial number of products into such markets. We may, therefore, be denied access to our customers, suppliers or other collaborators or denied the ability to ship products from any of these sites as a result of a closing of the borders of the countries in which we operate, or in which these operations are located, due to economic, legislative, political and military conditions in such countries. If any of our product candidates are approved for commercialization, we may enter into agreements with third parties to market them on a worldwide basis or in more limited geographical regions. We expect that we will be subject to additional risks related to entering into international business relationships, including:

- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- logistics and regulations associated with shipping cell samples and other perishable items, including infrastructure conditions and transportation delays;
- potential import and export issues with the U.S. Customs and Border Protection and similar bodies in other jurisdictions;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters including earthquakes, typhoons, floods and fires.

Use of animal-derived materials could harm our product development and commercialization efforts.

Some of the manufacturing materials and/or components that we use in, and which are critical to, implementation of our technology involve the use of animal-derived products, including FBS. Suppliers or

regulatory changes may limit or restrict the availability of such materials for clinical and commercial use. While FBS is commonly used in the production of various marketed biopharmaceuticals, the suppliers of FBS that meet our strict quality standards are limited in number and region. As such, to the extent that any such suppliers or regions face an interruption in supply (for example, a new occurrence of so-called "mad cow disease"), it may lead to a restricted supply of the serum currently required for our product manufacturing processes. Any restrictions on these materials would impose a potential competitive disadvantage for our products or prevent our ability to manufacture our cell products. The FDA has issued regulations for controls over bovine material in animal feed. These regulations do not appear to affect our ability to purchase the manufacturing materials we currently use. However, the FDA may propose new regulations that could affect our operations. Our inability to develop or obtain alternative compounds would harm our product development and commercialization efforts. There are certain limitations in the supply of certain animal-derived materials, which may lead to delays in our ability to complete clinical trials or eventually to meet the anticipated market demand for our cell products.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability as a result of the human clinical use of our product candidates and will face an even greater risk if we commercialize any products. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates. Even a successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our products, even if such products are approved;
- injury to our reputation;
- withdrawal of clinical trial participants;
- costs to defend the related litigations;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals, or labeling, marketing or promotional restrictions;
- increased cost of liability insurance;
- loss of revenue;
- the inability to commercialize our product candidates; and
- a decline in our ordinary share price.

Failure to obtain and retain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of products we develop. Additionally, our insurance policies have various exclusions, and we may be subject to a product liability claim for which we have no coverage or reduced coverage. Any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts.

Risks Related to Our Intellectual Property

We may not be able to protect our proprietary technology in the marketplace.

Our success will depend, in part, on our ability to obtain patents, protect our trade secrets and operate without infringing on the proprietary rights of others. We rely upon a combination of patents, trade secret protection, and confidentiality agreements to protect the intellectual property of our product candidates. Patents might not be issued or granted with respect to our patent applications that are currently pending, and issued or granted patents might later be found to be invalid or unenforceable, be interpreted in a manner that does not adequately protect our current product or any future products, or fail to otherwise provide us with any competitive advantage. As such, we do not know the degree of future protection that we will have on our proprietary products and technology, if any, and a failure to obtain adequate intellectual property protection with respect to our product candidates and proprietary technology could have a material adverse impact on our business.

Filing, prosecuting and defending patents throughout the world would be prohibitively expensive, so our policy is to patent technology in jurisdictions with significant or otherwise relevant commercial opportunities or activities. However, patent protection may not be available for some of the products or technology we are developing. If we must spend significant time and money protecting or enforcing our patents, designing around patents held by others or licensing, potentially for large fees, patents or other proprietary rights held by others, our business, results of operations and financial condition may be harmed.

The patent positions of biopharmaceutical products are complex and uncertain.

The scope and extent of patent protection for our product candidates are particularly uncertain. To date, our principal product candidates have been based on specific subpopulations of known and naturally occurring adult stem cells. We anticipate that the products we develop in the future will continue to include or be based on the same or other naturally occurring stem cells or derivatives or products thereof. Although we have sought and expect to continue to seek patent protection for our product candidates, their methods of use and methods of manufacture, any or all of them may not be subject to effective patent protection. Publication of information related to our product candidates by us or others may prevent us from obtaining or enforcing patents relating to these products and product candidates. Furthermore, others may independently develop similar products, may duplicate our products, or may design around our patent rights. In addition, any of our issued patents may be declared invalid. If we fail to adequately protect our intellectual property, we may face competition from companies who attempt to create a generic product to compete with our product candidates. We may also face competition from companies who develop a substantially similar product to our other product candidates that may not be covered by any of our patents.

Filing, prosecuting and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the U.S. can be less extensive than those in the U.S. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the U.S. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S., or from selling or importing products made using our inventions in and into the U.S. or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the U.S. These products may compete with our current or future products, if any, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries do not favor the enforcement of patents, trade secrets and other intellectual property protection, particularly those relating to biotechnology products, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put

our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

We may be unable to adequately prevent disclosure of trade secrets and other proprietary information.

We maintain certain of our proprietary know-how and technological advances as trade secrets, especially where we do not believe patent protection is appropriate or obtainable, including, but not exclusively, with respect to certain aspects of the manufacturing of our products. However, trade secrets are difficult to protect. We take a number of measures to protect our trade secrets including, limiting disclosure, physical security and confidentiality and non-disclosure agreements. We enter into confidentiality agreements with our employees, consultants, outside scientific collaborators, contract manufacturing partners, sponsored researchers and other advisors and third parties to protect our trade secrets and other proprietary information. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, others may independently discover our trade secrets and proprietary information. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights. Failure to obtain or maintain trade secret protection, or failure to adequately protect our intellectual property could enable competitors to develop generic products or use our proprietary information to develop other products that compete with our products or cause additional, material adverse effects upon our business, results of operations and financial condition.

We may be forced to litigate to enforce or defend our intellectual property rights, and/or the intellectual property rights of our licensors.

We may be forced to litigate to enforce or defend our intellectual property rights against infringement by competitors, and to protect our trade secrets against unauthorized use. In so doing, we may place our intellectual property at risk of being invalidated, unenforceable, or limited or narrowed in scope and may no longer be used to prevent the manufacture and sale of competitive product. Further, an adverse result in any litigation or other proceedings before government agencies such as the United States Patent and Trademark Office, or the USPTO, may place pending applications at risk of non-issuance. Further, interference proceedings, derivation proceedings, entitlement proceedings, ex parte reexamination, inter partes reexamination, inter partes review, post-grant review, and opposition proceedings provoked by third parties or brought by the USPTO or any foreign patent authority may be used to challenge inventorship, ownership, claim scope, or validity of our patent applications. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential and proprietary information could be compromised by disclosure during this type of litigation.

Intellectual property disputes could cause us to spend substantial resources and distract our personnel from their normal responsibilities.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses, and could distract our technical and/or management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the market price of our ADSs and ordinary shares. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of litigation proceedings more effectively than we can because of their greater financial resources and personnel. In addition, the uncertainties associated with litigation could have a material adverse effect on our ability to raise the funds necessary to conduct our clinical trials, continue our internal research programs, in-license needed technology or enter into strategic collaborations that would help us bring

our product candidates to market. As a result, uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace.

Recent U.S. patent reform legislation and court decisions could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued U.S. patents.

On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law, including provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The USPTO has and continues to develop and implement regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act. The full effect of these changes are currently unclear as the USPTO has not yet adopted all pertinent final rules and regulations, the courts have yet to address these provisions and the applicability of the Leahy-Smith Act and new regulations on specific patents, including our patents discussed herein, have not been determined and would need to be reviewed. Accordingly, it is not yet clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. As a result, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents, all of which could have a material adverse effect on our business and financial condition.

On June 13, 2013, the U.S. Supreme Court decision in *Association for Molecular Pathology v. Myriad Genetics, Inc.,* held that isolated DNA sequences are not patentable because they constitute a product of nature. The Supreme Court did not address stem cells in particular, and as a result, it is not yet clear what, if any, impact this recent Supreme Court decision or future decisions will have on the operation of our business.

If third parties claim that intellectual property used by us infringes upon their intellectual property, commercialization of our product candidates and our operating profits could be adversely affected.

There is a substantial amount of litigation, both within and outside the United States, involving patent and other intellectual property rights in the biopharmaceutical industry. We may, from time to time, be notified of claims that we are infringing upon patents, trademarks, copyrights, or other intellectual property rights owned by third parties, and we cannot provide assurances that other companies will not, in the future, pursue such infringement claims against us or any third-party proprietary technologies we have licensed. Any such claims could also be expensive and time consuming to defend and divert management's attention and resources, and could delay or prevent us from commercializing our product candidates. Our competitive position could suffer as a result. Although we have reviewed certain third-party patents and patent filings that we believe may be relevant to our product candidates, we have not conducted a freedom-to-operate search or analysis for our product candidates, and we may not be aware of patents or pending or future patent applications that, if issued, would block us from commercializing our product candidates. Thus, we cannot guarantee that our product candidates, or our commercialization thereof, do not and will not infringe any third party's intellectual property.

If we do not obtain patent term extension in the United States under the Hatch-Waxman Act and in foreign countries under similar legislation, thereby potentially extending the term of our marketing exclusivity of our product candidates, our business may be materially harmed.

Depending on the timing, duration and specifics of FDA marketing approval of our product candidates, if any, one of the U.S. patents covering each of such approved product(s) or the use thereof may be eligible for up to five years of patent term restoration under the Hatch-Waxman Act. The Hatch-Waxman Act allows a maximum of one patent to be extended per FDA approved product. Patent term extension also may be available in certain foreign countries upon regulatory approval of our product candidates, including by the EMA in the EU or the PMDA in Japan. Nevertheless, we may not be granted patent term extension either in the United States or in any foreign country because of, for example, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the term of

extension, as well as the scope of patent protection during any such extension, afforded by the governmental authority could be less than we request. In addition, if a patent we wish to extend is owned by another party and licensed to us, we may need to obtain approval and cooperation from our licensor to request the extension.

If we are unable to obtain patent term extension or restoration, or the term of any such extension is less than we request, the period during which we will have the right to exclusively market our product will be shortened and our competitors may obtain approval of competing products following our patent expiration, and our revenue could be reduced, possibly materially.

Risks Related to Our Business and Industry

If we fail to attract and keep senior management and key scientific personnel, we may be unable to successfully develop our product candidates, conduct our clinical trials and commercialize our product candidates.

We are highly dependent on members of our executive management, particularly Silviu Itescu, our Chief Executive Officer. Dr. Itescu was an early pioneer in the study and clinical development of stem cell therapeutics and is globally recognized in the field of regenerative medicine. The loss of the services of Dr. Itescu or any other member of the executive management team could impede the achievement of our research, development and commercialization objectives. We do not maintain "key person" insurance for any of our executives or other employees.

Recruiting and retaining qualified scientific, clinical, manufacturing, sales and marketing personnel will also be critical to our success. We may not be able to attract and retain these personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific and clinical personnel from universities and research institutions. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us.

Our employees, principal investigators, consultants and collaboration partners may engage in misconduct or other improper activities, including noncompliance with laws and regulatory standards and requirements and insider trading.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include failures to comply with FDA regulations, to provide accurate information to the FDA, to comply with manufacturing standards we have established, to comply with federal and state healthcare fraud and abuse laws and regulations, to report financial information or data accurately or to disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations restrict or prohibit a wide range of activity relating to pricing, discounting, marketing and promotion, sales commissions, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation, or, given we are a listed company in Australia, and will be a listed company in the United States following the completion of this offering, breach of insider trading laws. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

We may acquire other companies or assets which could divert our management's attention, result in additional dilution to our shareholders and otherwise disrupt our operations and harm our operating results.

We have in the past and may in the future seek to acquire businesses, products or technologies that we believe could complement or expand our product offerings, enhance our technical capabilities or otherwise offer growth opportunities. For example, we acquired MSC-assets from Osiris in 2013, which we are still working to integrate into our business. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. If we acquire additional businesses, we may not be able to integrate the acquired personnel, operations and technologies successfully, or effectively manage the combined business following the acquisition. We also may not achieve the anticipated benefits from the acquired business due to a number of factors, including:

- incurrence of acquisition-related costs;
- diversion of management's attention from other business concerns;
- unanticipated costs or liabilities associated with the acquisition;
- harm to our existing business relationships with collaborators as a result of the acquisition;
- harm to our brand and reputation;
- the potential loss of key employees;
- use of resources that are needed in other parts of our business; and
- use of substantial portions of our available cash to consummate the acquisition.

In the future, if our acquisitions do not yield expected returns, we may be required to take charges to our operating results arising from the impairment assessment process. Acquisitions may also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our operating results. In addition, if an acquired business fails to meet our expectations, our business, results of operations and financial condition may be adversely affected.

We and our collaborators must comply with environmental laws and regulations, and failure to comply with these laws and regulations could expose us to significant liabilities.

We and our collaborators are subject to various federal, state and local environmental laws, rules and regulations, including those relating to the discharge of materials into the air, water and ground, the manufacture, storage, handling, use, transportation and disposal of hazardous and biological materials, and the health and safety of employees with respect to laboratory activities required for the development of products and technologies. In the event of contamination or injury, or failure to comply with environmental, occupational health and safety and export control laws and regulations, we could be held liable for any resulting damages and any such liability could exceed our assets and resources.

We work with outside scientists and their institutions in developing product candidates. These scientists may have other commitments or conflicts of interest, which could limit our access to their expertise and harm our ability to leverage our discovery platform.

We work with scientific advisors and collaborators at academic research institutions in connection with our product development. These scientific advisors serve as our link to the specific pools of trial participants we are targeting in that these advisors may:

- identify individuals as potential candidates for study;
- obtain their consent to participate in our research;
- perform medical examinations and gather medical histories;
- conduct the initial analysis of suitability of the individuals to participate in our research based on the foregoing; and

- collect data and biological samples from trial participants periodically in accordance with our study protocols.

These scientists and collaborators are not our employees, rather they serve as either independent contractors or the primary investigators under research collaboration agreements that we have with their sponsoring academic or research institution. Such scientists and collaborators may have other commitments that would limit their availability to us. Although our scientific advisors generally agree not to do competing work, if an actual or potential conflict of interest between their work for us and their work for another entity arises, we may lose their services. It is also possible that some of our valuable proprietary knowledge may become publicly known through these scientific advisors if they breach their confidentiality agreements with us, which would cause competitive harm to our business.

If our ability to use cumulative carry forward net operating losses is or becomes subject to certain limitations or if certain tax incentive credits from which we benefit expire or no longer apply to us, our business, results of operations and financial condition may be adversely affected.

We are an Australian company subject to Australian corporate taxation. As of June 30, 2015, our cumulative operating losses have a potential tax benefit of $69.9 million at local tax rates. These losses may be available for use, once we are in a tax profitable position. These losses were incurred in different jurisdictions and can only be offset against profits earned in the relevant jurisdictions. Tax losses are able to be carried forward at their nominal amount indefinitely in Australia and in Singapore, and for up to 20 years in the U.S. as long as certain conditions are met. In order to use these tax losses, it is necessary to satisfy certain tests and, as a result, we cannot assure you that the tax losses will be available to offset profits if and when we earn them. Our carry forward net operating losses in the U.S. first start to expire in 2032. In addition, we are eligible for certain research and development tax incentive refundable credits in Australia which may increase our available cash flow. We currently project to benefit from these incentives in future taxable years. There can be no assurances that we will continue to benefit from these incentives or that such tax incentive credit programs will not be revoked or modified in any way in the future. If these incentives are revoked or modified or if we are no longer eligible for such incentives, our business, results of operations and financial condition may be adversely affected.

Taxing authorities could reallocate our taxable income within our subsidiaries, which could increase our consolidated tax liability.

We conduct operations in multiple tax jurisdictions and the tax laws of those jurisdictions generally require that the transfer prices between affiliated companies in different jurisdictions be the same as those between unrelated companies dealing at arms' length, and that such prices are supported by contemporaneous documentation. While we believe that we operate in compliance with applicable transfer pricing laws and intend to continue to do so, our transfer pricing procedures are not binding on applicable tax authorities. If tax authorities in any of these countries were to successfully challenge our transfer prices as not reflecting arms' length transactions, they could require us to adjust our transfer prices and thereby reallocate our income to reflect these revised transfer prices, which could result in a higher tax liability to us, and possibly interest and penalties, and could adversely affect our business, results of operations and financial condition.

The pharmaceutical industry is highly regulated and pharmaceutical companies are subject to various federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act.

Healthcare fraud and abuse regulations are complex and can be subject to varying interpretations as to whether or not a statute has been violated. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute which prohibits, among other things, the knowing and willful payment of remuneration to induce or reward patient referrals or the generation of business involving any item or service which may be payable by the federal health care programs (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients);

- the federal False Claims Act which prohibits, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment for government funds (e.g., payment from Medicare or Medicaid) or knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim for government funds;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and its implementing regulations, imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HIPAA imposes civil and criminal liability for the wrongful access or disclosure of protected health information;
- the federal Physician Payments Sunshine Act, created under Section 6002 of the Patient Protection and Affordable Care Act, as amended, the ACA, requires certain manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report information related to certain payments or other transfers of value made or distributed to physicians and teaching hospitals, or to entities or individuals at the request of, or designated on behalf of, those physicians and teaching hospitals and to report annually certain ownership and investment interests held by physicians and their immediate family members;
- the FDCA, which, among other things, regulates the testing, development, approval, manufacture, promotion and distribution of drugs, devices and biologics. The FDCA prohibits manufacturers from selling or distributing "adulterated" or "misbranded" products. A drug product may be deemed misbranded if, among other things, (i) the product labeling is false or misleading, fails to contain requisite information or does not bear adequate directions for use; (ii) the product is manufactured at an unregistered facility; or (iii) the product lacks the requisite FDA clearance or approval;
- the U.S. Foreign Corrupt Practices Act, or FCPA, which prohibits corrupt payments, gifts or transfers of value to non-U.S. officials; and
- non-U.S. and U.S. state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers.

The federal fraud and abuse laws have been interpreted to apply to arrangements between pharmaceutical manufacturers and a variety of health care professionals. Although the federal Anti-Kickback Statute has several statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, all elements of the potentially applicable exemption or safe harbor must be met in order for the arrangement to be protected, and prosecutors have interpreted the federal healthcare fraud statutes to attack a wide range of conduct by pharmaceutical companies. In addition, most states have statutes or regulations similar to the federal anti-kickback and federal false claims laws, which apply to items and services covered by Medicaid and other state programs, or, in several states, apply regardless of the payor. Administrative, civil and criminal sanctions may be imposed under these federal and state laws.

Further, the ACA, among other things, amended the intent standard under the Anti-Kickback Statute such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. In addition, the ACA makes clear that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim under the federal False Claims Act. Any violations of these laws, or any action against us for violation of these laws, even if we successfully defend against it, could result in a material adverse effect on our reputation, business, results of operations and financial condition.

A failure to adequately protect private health information could result in severe harm to our reputation and subject us to significant liabilities, each of which could have a material adverse effect on our business.

Throughout the clinical trial process, we may obtain the private health information of our trial subjects. There are a number of state, federal and international laws protecting the privacy and security of health

information and personal data. As part of the American Recovery and Reinvestment Act 2009, or ARRA, Congress amended the privacy and security provisions of HIPAA. HIPAA imposes limitations on the use and disclosure of an individual's healthcare information by healthcare providers conducting certain electronic transactions, healthcare clearinghouses, and health insurance plans, collectively referred to as covered entities. The HIPAA amendments also impose compliance obligations and corresponding penalties for non-compliance on certain individuals and entities that provide services to or perform certain functions on behalf of healthcare providers and other covered entities involving the use or disclosure of individually identifiable health information, collectively referred to as business associates. ARRA also made significant increases in the penalties for improper use or disclosure of an individual's health information under HIPAA and extended enforcement authority to state attorneys general. The amendments also create notification requirements to federal regulators, and in some cases local and national media, for individuals whose health information has been inappropriately accessed or disclosed. Notification is not required under HIPAA if the health information that is improperly used or disclosed is deemed secured in accordance with certain encryption or other standards developed by the U.S. Department of Health and Human Services, or HHS. Most states have laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Many state laws impose significant data security requirements, such as encryption or mandatory contractual terms to ensure ongoing protection of personal information. Activities outside of the U.S. implicate local and national data protection standards, impose additional compliance requirements and generate additional risks of enforcement for non-compliance. The EU's Data Protection Directive, Canada's Personal Information Protection and Electronic Documents Act and other data protection, privacy and similar national, state/provincial and local laws may also restrict the access, use and disclosure of patient health information abroad. We may be required to expend significant capital and other resources to ensure ongoing compliance with applicable privacy and data security laws, to protect against security breaches and hackers or to alleviate problems caused by such breaches.

Our operations are subject to anti-corruption laws, including Australian bribery laws, the United Kingdom Bribery Act, and the FCPA and other anti-corruption laws that apply in countries where we do business.

Anti-corruption laws generally prohibit us and our employees and intermediaries from bribing, being bribed or making other prohibited payments to government officials or other persons to obtain or retain business or gain some other business advantage. We participate in collaborations and relationships with third parties whose actions could potentially subject us to liability under these anti-corruption laws. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

There is no assurance that we will be completely effective in ensuring our compliance with all applicable anti-corruption laws or other laws including trade related laws. If we are not in compliance with these laws, we may be subject to criminal and civil penalties, disgorgement and other sanctions and remedial measures, and legal expenses, which could have an adverse impact on our business, financial condition, results of operations and liquidity. Likewise, any investigation of any potential violations of these laws by respective government bodies could also have an adverse impact on our reputation, our business, results of operations and financial condition.

Risks Related to Ownership of Our ADSs, Our Trading Market and This Offering

The market price and trading volume of the ADSs may be volatile and may be affected by economic conditions beyond our control.

The market price of the ADSs may be highly volatile and subject to wide fluctuations. In addition, the trading volume of the ADSs may fluctuate and cause significant price variations to occur. If the market price of the ADSs declines significantly, you may be unable to resell your ADSs at or above the offering price, if at all. We cannot assure you that the market price of the ADSs will not fluctuate or significantly decline in the future.

Some specific factors that could negatively affect the price of the ADSs or result in fluctuations in their price and trading volume include:

- results of clinical trials of our product candidates;
- results of clinical trials of our competitors' products;
- regulatory actions with respect to our products or our competitors' products;
- actual or anticipated fluctuations in our quarterly operating results or those of our competitors;
- publication of research reports by securities analysts about us or our competitors in the industry;
- our failure or the failure of our competitors to meet analysts' projections or guidance that we or our competitors may give to the market;
- fluctuations of exchange rates between the U.S. dollar and the Australian dollar;
- additions to or departures of our key management personnel;
- issuances by us of debt or equity securities;
- litigation involving our company, including: shareholder litigation; investigations or audits by regulators into the operations of our company; or proceedings initiated by our competitors or clients;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- the passage of legislation or other regulatory developments affecting us or our industry;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- changes in trading volume of ADSs on the NASDAQ Global Select Market and of our ordinary shares on the ASX;
- sales or perceived potential sales of the ADSs or ordinary shares by us, our directors, senior management or our shareholders in the future;
- short selling or other market manipulation activities;
- announcement or expectation of additional financing efforts;
- terrorist acts, acts of war or periods of widespread civil unrest;
- natural disasters and other calamities;
- changes in market conditions for biopharmaceutical stocks; and
- conditions in the U.S. or Australian financial markets or changes in general economic conditions.

An active trading market for the ADSs may not develop in the United States and the trading price for our ordinary shares may fluctuate significantly.

Our ADSs began trading on the over-the-counter market in 2005. Since trading began on this market, our ADSs have not traded on many days and the highest trading volume recorded in a single day was 24,000 ADSs. If an active public market in the United States for the ADSs does not develop after this offering, the market price and liquidity of the ADSs may be materially and adversely affected. While we intend to apply for the listing of the ADSs on the NASDAQ Global Select Market, a liquid public market in the United States for the ADSs may not develop or be sustained after this offering. The initial public offering price for the ADSs will be determined by negotiation among us and the underwriters, and the price at which the ADSs are traded after this offering may decline below the initial public offering price, which means you may experience a decrease in the value of your ADSs regardless of our operating performance or prospects. In the past, following periods of volatility in the market price of a company's securities, shareholders often instituted securities class action litigation against that

company. If we were involved in a class action suit, it could divert the attention of senior management and, if adversely determined, could have a material adverse effect on our results of operations and financial condition. Investors purchasing the ADSs in this offering will suffer immediate and substantial dilution.

The public offering price for the ADSs will be substantially higher than the net tangible book value per share of our outstanding ordinary shares immediately after this offering. If you purchase ADSs in this offering, you will incur substantial and immediate dilution in the net tangible book value of your investment. Net tangible book value per ordinary share represents the amount of total tangible assets less total liabilities, divided by the number of ordinary shares, respectively, then outstanding. To the extent that performance rights and options that are currently outstanding are exercised or converted, there will be further dilution in your investment. We may also issue additional ordinary shares, performance rights, options and other securities in the future that may result in further dilution of your ordinary shares. See "Dilution" for a calculation of the extent to which your investment will be diluted.

The dual listing of our ordinary shares and the ADSs following this offering may adversely affect the liquidity and value of the ADSs.

Following this offering and after the ADSs are listed on the NASDAQ Global Select Market, our ordinary shares will continue to be listed on the ASX. We cannot predict the effect of this dual listing on the value of our ordinary shares and ADSs. However, the dual listing of our ordinary shares and ADSs may dilute the liquidity of these securities in one or both markets and may adversely affect the development of an active trading market for the ADSs in the United States. The price of the ADSs could also be adversely affected by trading in our ordinary shares on the ASX.

We are subject to risks associated with currency fluctuations, and changes in foreign currency exchange rates could impact our results of operations.

Historically, a substantial portion of our operating expenses has been denominated in U.S. dollars and our main currency requirements are Singapore dollars, U.S. dollars and Australian dollars. Approximately 64% of our cash and cash equivalents as of June 30, 2015 were denominated in U.S. dollars and 36% were denominated in Australian dollars. Because we have multiple functional currencies across different jurisdictions, changes in the exchange rate between these currencies and the foreign currencies of the transactions recorded in our accounts could materially impact our reported results of operations and distort period-to-period comparisons. For example, a portion of our research and clinical trials are undertaken in Australia. As such, payment will be made in Australian dollar currency, and may exceed the budgeted expenditure if there are adverse currency fluctuations against the U.S. dollar.

Further, any significant change in the value of the Australian dollar may have a material adverse effect on the value of our ADSs in U.S. dollars. More specifically, if we decide to convert our Australian dollars into U.S. dollars for any business purpose, appreciation of the U.S. dollar against the Australian dollar would have a negative effect on the U.S. dollar amount available to us. To the extent that we need to convert U.S. dollars we receive from our initial public offering into Australian dollars for our operations, appreciation of the Australian dollar against the U.S. dollar would have an adverse effect on the Australian dollar amount we would receive from the conversion. Consequently, appreciation or depreciation in the value of the Australian dollar relative to the U.S. dollar would affect our financial results reported in U.S. dollar terms without giving effect to any underlying change in our business or results of operations. As a result of such foreign currency fluctuations, it could be more difficult to detect underlying trends in our business and results of operations.

Future sales of our ordinary shares or ADSs, or the perception that such sales may occur, could depress the price of our ADSs.

After the completion of this offering, we expect to have ordinary shares outstanding, including the shares underlying the ADSs we are selling in this offering, almost all of which may be resold in the public market immediately after this offering. We, all of our directors, our chief executive officer, our chief financial

officer and Cephalon, Inc. will sign lock-up agreements for a period of 180 days following the date of this prospectus, subject to extension in the case of an earnings release, material news or a material event relating to us. See "Underwriting."

The underwriters may, in their sole discretion and without notice, release all or any portion of the ordinary shares subject to lock-up agreements. As restrictions on resale end, the market price of our ADSs could drop significantly if the holders of these ordinary shares sell them or are perceived by the market as intending to sell them. These factors could also make it more difficult for us to raise additional funds through future offerings of our ordinary shares, ADSs or other securities.

We currently report our financial results under IFRS, which differs in certain significant respect from U.S. GAAP.

Currently we report our financial statements under IFRS. There have been and there may in the future be certain significant differences between IFRS and U.S. GAAP, including differences related to revenue recognition, intangible assets, share-based compensation expense, income tax and earnings per share. As a result, our financial information and reported earnings for historical or future periods could be significantly different if they were prepared in accordance with U.S. GAAP. In addition, we do not intend to provide a reconciliation between IFRS and U.S. GAAP unless it is required under applicable law. As a result, you may not be able to meaningfully compare our financial statements under IFRS with those companies that prepare financial statements under U.S. GAAP.

As a foreign private issuer, we are permitted and expect to follow certain home country corporate governance practices in lieu of certain NASDAQ requirements applicable to domestic issuers and we are permitted to file less information with the Securities and Exchange Commission than a company that is not a foreign private issuer. This may afford less protection to holders of our ADSs.

As a "foreign private issuer," as defined in Rule 405 under the Securities Exchange Act of 1933, as amended, or the Securities Act, whose ADSs will be listed on the NASDAQ Global Select Market, we will be permitted to, and plan to, follow certain home country corporate governance practices in lieu of certain NASDAQ Global Select Market requirements. For example, we may follow home country practice with regard to certain corporate governance requirements, such as the composition of the board of directors and quorum requirements applicable to shareholders' meetings. This difference may result in a board that is more difficult to remove and less shareholder approvals required generally. In addition, we may follow home country practice instead of the NASDAQ Global Select Market requirement to hold executive sessions and to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions or private placements of securities. The above differences may result in less shareholder oversight and requisite approvals for certain acquisition or financing related decisions. Further, we may follow home country practice instead of the NASDAQ Global Select Market requirement to obtain shareholder approval prior to the establishment or amendment of certain share option, purchase or other compensation plans. This difference may result in less shareholder oversight and requisite approvals for certain company compensation related decisions. A foreign private issuer must disclose in its annual reports filed with the Securities and Exchange Commission, or SEC, and the NASDAQ Global Select Market, the requirements with which it does not comply followed by a description of its applicable home country practice. The Australian home country practices described above may afford less protection to holders of the ADSs than that provided under the NASDAQ Global Select Market rules.

Further, as a foreign private issuer, we are exempt from certain rules under the Securities Exchange Act of 1934, as amended, or the Exchange Act, that impose disclosure requirements as well as procedural requirements for proxy solicitations under Section 14 of the Exchange Act. In addition, our officers, directors and principal shareholders are exempt from the reporting and "short-swing" profit recovery provisions of Section 16 of the Exchange Act. Moreover, we are not required to file periodic reports and financial statements with the SEC as frequently or as promptly as a company that files as a domestic issuer whose securities are registered under the Exchange Act, nor are we generally required to comply with the SEC's Regulation FD, which restricts the

selective disclosure of material non-public information. Accordingly, the information may not be disseminated in as timely a manner, or there may be less information publicly available concerning us generally than there is for a company that files as a domestic issuer.

We may lose our foreign private issuer status, which would then require us to comply with the Exchange Act's domestic reporting regime and cause us to incur additional legal, accounting and other expenses.

In order to maintain our current status as a foreign private issuer, either (1) a majority of our ordinary shares must be either directly or indirectly owned of record by non-residents of the United States or (2) (a) a majority of our executive officers or directors must not be U.S. citizens or residents, (b) more than 50 percent of our assets cannot be located in the United States and (c) our business must be administered principally outside the United States. If we lost this status, we would be required to comply with the Exchange Act reporting and other requirements applicable to U.S. domestic issuers, which are more detailed and extensive than the requirements for foreign private issuers. We may also be required to make changes in our corporate governance practices in accordance with various SEC rules and NASDAQ listing standards. Further, we would be required to comply with United States generally accepted accounting principles, as opposed to IFRS, in the preparation and issuance of our financial statements for historical and current periods. The regulatory and compliance costs to us under U.S. securities laws if we are required to comply with the reporting requirements applicable to a U.S. domestic issuer may be higher than the cost we would incur as a foreign private issuer. As a result, we expect that a loss of foreign private issuer status would increase our legal and financial compliance costs.

If we fail to establish and maintain proper internal controls, our ability to produce accurate financial statements or comply with applicable regulations could be impaired.

Section 404(a) of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, requires that, beginning with our annual report for the year ending June 30, 2017, our management assess and report annually on the effectiveness of our internal controls over financial reporting and identify any material weaknesses in our internal controls over financial reporting. Although Section 404(b) of the Sarbanes-Oxley Act requires our independent registered public accounting firm to issue an annual report that addresses the effectiveness of our internal controls over financial reporting, we have opted to rely on the exemptions provided to us by virtue of being a foreign private issuer, and consequently will not be required to comply with SEC rules that implement Section 404(b) of the Sarbanes-Oxley Act until we file our second annual report with the SEC.

Our first Section 404(a) assessment will take place beginning with our annual report for the year ending June 30, 2017. As of the date of this filing, we have not designed and implemented controls to maintain appropriate segregation of duties in our manual and computer based business processes which could have a pervasive impact over the preparation of the financial statements. Specifically, we have limited accounting personnel to enable effective segregation of duties to allow for appropriate monitoring of financial reporting matters and internal control over financial reporting. Consequently we have determined there is a material weakness in the internal control over financial reporting. This material weakness did not result in material adjustments to the financial statements, however there is a reasonable possibility that a material misstatement of the annual financial statements would not have been prevented or detected on a timely basis due to the failure to design and implement appropriate segregation of duty controls.

In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal controls over financial reporting, we will need to expend significant resources and provide significant management oversight. We have commenced the process of reviewing and improving our internal controls over financial reporting for compliance with Section 404(a) of the Sarbanes-Oxley Act. We have made efforts to improve our internal controls and accounting policies and procedures, including hiring new accounting personnel and engaging external temporary resources. Implementing any appropriate changes to our internal controls may require specific compliance training of our directors and employees, entail substantial costs in order to modify our existing accounting systems, take a significant period of time to complete and divert management's attention from other business concerns. These changes may not, however, be effective in maintaining the adequacy of our internal control.

If either we are unable to conclude that we have effective internal controls over financial reporting or, at the appropriate time, our independent auditors are unwilling or unable to provide us with an unqualified report on the effectiveness of our internal controls over financial reporting as required by Section 404(b) of the Sarbanes-Oxley Act, investors may lose confidence in our operating results, the price of the ADSs could decline and we may be subject to litigation or regulatory enforcement actions. In addition, if we are unable to meet the requirements of Section 404 of the Sarbanes-Oxley Act, we may not be able to remain listed on NASDAQ Global Select Market.

We will incur significant increased costs as a result of operating as a company whose ADSs are publicly traded in the United States, and our management will be required to devote substantial time to new compliance initiatives.

As a company whose ADSs will be publicly traded in the United States, we will incur significant legal, accounting, insurance and other expenses that we did not previously incur. In addition, the Sarbanes-Oxley Act, Dodd-Frank Wall Street Reform and Consumer Protection Act and related rules implemented by the SEC and NASDAQ, have imposed various requirements on public companies including requiring establishment and maintenance of effective disclosure and financial controls. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives, and we will need to add additional personnel and build our internal compliance infrastructure. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. These laws and regulations could also make it more difficult and expensive for us to attract and retain qualified persons to serve on our board of directors, our board committees or as our senior management. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of the ADSs, fines, sanctions and other regulatory action and potentially civil litigation.

ADS holders may be subject to additional risks related to holding ADSs rather than ordinary shares.

ADS holders do not hold ordinary shares directly and, as such, are subject to, among others, the following additional risks:

- As an ADS holder, we will not treat you as one of our shareholders and you will not be able to exercise shareholder rights, except through the American depositary receipt, or ADR, depositary as permitted by the deposit agreement.
- Distributions on the ordinary shares represented by your ADSs will be paid to the ADR depositary, and before the ADR depositary makes a distribution to you on behalf of your ADSs, any withholding taxes that must be paid will be deducted. Additionally, if the exchange rate fluctuates during a time when the ADR depositary cannot convert the foreign currency, you may lose some or all of the value of the distribution.
- We and the ADR depositary may amend or terminate the deposit agreement without the ADS holders' consent in a manner that could prejudice ADS holders.

You must act through the ADR depositary to exercise your voting rights and, as a result, you may be unable to exercise your voting rights on a timely basis.

As a holder of ADSs (and not the ordinary shares underlying your ADSs), we will not treat you as one of our shareholders, and you will not be able to exercise shareholder rights. The ADR depositary will be the holder of the ordinary shares underlying your ADSs, and ADS holders will be able to exercise voting rights with respect to the ordinary shares represented by the ADSs only in accordance with the deposit agreement relating to the ADSs. There are practical limitations on the ability of ADS holders to exercise their voting rights due to the additional procedural steps involved in communicating with these holders. For example, holders of our ordinary shares will receive notice of shareholders' meetings by mail or email and will be able to exercise their voting rights by either attending the shareholders meeting in person or voting by proxy. ADS holders, by comparison, will not receive notice directly from us. Instead, in accordance with the deposit agreement, we will provide notice to the ADR depositary of any such shareholders meeting and details concerning the matters to be voted upon. As

soon as practicable after receiving notice from us of any such meeting, the ADR depositary will mail to holders of ADSs the notice of the meeting and a statement as to the manner in which voting instructions may be given by ADS holders. To exercise their voting rights, ADS holders must then instruct the ADR depositary as to voting the ordinary shares represented by their ADSs. Due to these procedural steps involving the ADR depositary, the process for exercising voting rights may take longer for ADS holders than for holders of ordinary shares. The ordinary shares represented by ADSs for which the ADR depositary fails to receive timely voting instructions will not be voted. Under Australian law and our Constitution, any resolution to be considered at a meeting of the shareholders shall be decided on a show of hands unless a poll is demanded by the shareholders at or before the declaration of the result of the show of hands. Under voting by a show of hands, multiple "yes" votes by ADS holders will only count as one "yes" vote and will be negated by a single "no" vote, unless a poll is demanded.

We may be or become classified as a passive foreign investment company, which could result in adverse U.S. federal income tax consequences to U.S. holders of our ADSs or ordinary shares.

Based on our business projections and the anticipated composition of our income and assets for the current and future years, we do not expect that we will be a "passive foreign investment company," or PFIC, for the taxable year ending June 30, 2015. However, if there is a change in the type or composition of our gross income, or our actual business results do not match our projections, it is possible that we may become a PFIC in future taxable years. We will be a PFIC for any taxable year if either: (i) 75% or more of our gross income for the taxable year is passive income (such as certain dividends, interest, rents or royalties and certain gains from the sale of shares and securities or commodities transactions, including amounts derived by reason of the temporary investment of funds raised in offerings of our ordinary shares or ADSs), or (ii) the average percentage value of our gross assets during the taxable year that produce passive income or are held for the production of passive income is at least 50% of the value of our total assets. For purposes of the PFIC asset test, passive assets generally include any cash, cash equivalents and cash invested in short-term, interest bearing, debt instruments or bank deposits that is readily convertible into cash. If we own at least 25% (by value) of the stock of another corporation, we will be treated, for purposes of the PFIC income and asset tests, as owning our proportionate share of the other corporation's assets and receiving our proportionate share of the other corporation's income. Investors should be aware that our gross income for purposes of the PFIC income test depends on the receipt of Australian research and development tax incentive credits and other revenue, and there can be no assurances that such tax incentive credit programs will not be revoked or modified, that we will continue to conduct our operations in the manner necessary to be eligible for such incentives or that we will receive other gross income that is not considered passive for purposes of the PFIC income test. The value of our assets for purposes of the PFIC asset test will generally be determined by reference to our market capitalization, which may fluctuate. The composition of our income and assets will also be affected by how, and how quickly, we spend the cash raised in this offering. Under circumstances where our gross income from activities that produce passive income significantly increases relative to our gross income from activities that produce non-passive income or where we decide not to deploy significant amounts of cash for active purposes, our risk of becoming classified as a PFIC may substantially increase. Since a separate factual determination as to whether we are or have become a PFIC must be made each year (after the close of such year), we cannot assure you that we will not be or become a PFIC in the current or any future taxable year. If we are treated as a PFIC for any taxable year, then U.S. holders generally would be subject to adverse U.S. federal income tax consequences (regardless of whether we continued to be a PFIC) unless a U.S. holder makes a "mark-to-market" election or a "Qualified Electing Fund" election. We intend to provide U.S. holders with the information necessary to make and maintain a "Qualified Electing Fund" election if we are treated as a PFIC for any taxable year. See "Taxation—Default PFIC Rules."

We have never declared or paid dividends on our ordinary shares, and we do not anticipate paying dividends in the foreseeable future. Therefore, you must rely on price-appreciation of our ADSs for a return on your investment.

We have never declared or paid cash dividends on our ordinary shares. For the foreseeable future, we currently intend to retain all available funds and any future earnings to support our operations and to finance the growth and development of our business. Any future determination to declare cash dividends will be made at the

discretion of our board of directors, subject to compliance with applicable laws and covenants under current or future credit facilities, which may restrict or limit our ability to pay dividends, and will depend on our financial condition, operating results, capital requirements, general business conditions and other factors that our board of directors may deem relevant. We do not anticipate paying any cash dividends on our ordinary shares in the foreseeable future. As a result, a return on your investment in our ADSs will likely only occur if our ADS price appreciates. There is no guarantee that our ADSs will appreciate in value after this offering or even maintain the price at which you purchase the ADSs. You may not realize a return on your investment in our ADSs and you may even lose your entire investment in our ADSs.

Changes in foreign currency exchange rates could impact amounts you receive as a result of any dividend or distribution we declare on our ordinary shares.

Any significant change in the value of the Australian dollar may impact amounts you receive in U.S. dollars as a result of any dividend or distribution we declare on our ordinary shares as a holder of our ADSs. More specifically, any dividends that we pay on our ordinary shares will be in Australian dollars. The depositary for the ADSs has agreed to pay to you the cash dividends or other distributions it or the custodian receives on our ordinary shares or other deposited securities after deducting its fees and expenses, including any such fees or expenses incurred to convert any such Australian dollars into U.S. dollars. You will receive these distributions in U.S. dollars in proportion to the number of our ordinary shares your ADSs represent. Depreciation of the U.S. dollar against the Australian dollar would have a negative effect on any such distribution payable to you.

You may not receive distributions on our ordinary shares represented by the ADSs or any value for such distribution if it is illegal or impractical to make them available to holders of ADSs.

While we do not anticipate paying any dividends on our ordinary shares in the foreseeable future, if such a dividend is declared, the depositary for the ADSs has agreed to pay to you the cash dividends or other distributions it or the custodian receives on our ordinary shares or other deposited securities after deducting its fees and expenses. You will receive these distributions in proportion to the number of our ordinary shares your ADSs represent. However, in accordance with the limitations set forth in the deposit agreement, it may be unlawful or impractical to make a distribution available to holders of ADSs. We have no obligation to take any other action to permit the distribution of the ADSs, ordinary shares, rights or anything else to holders of the ADSs. This means that you may not receive the distributions we make on our ordinary shares or any value from them if it is unlawful or impractical to make them available to you. These restrictions may have a material adverse effect on the value of your ADSs.

Our management has discretion as to the use of the net proceeds from this offering, and such use may not produce income or increase the market price of our ADSs.

We intend to use the net proceeds of this offering to among other things, support commercial manufacturing requirements for our Tier 1 and Tier 2 product candidates, fund the costs of Phase 2b/3 clinical development of MPC-300-IV for biologic-refractory rheumatoid arthritis and diabetic kidney disease, general and administrative expenses, working capital and other general corporate purposes, and general research and development expenses. However, our management will have considerable discretion in the application of the net proceeds received by us. For more information, see “Use of Proceeds.” You will not have the opportunity, as part of your investment decision, to assess whether proceeds are being used appropriately. You must rely on the judgment of our management regarding the application of the net proceeds from this offering. The net proceeds may be used for corporate purposes that do not improve our efforts to maintain profitability or increase our ADS price. Moreover, the net proceeds from this offering may be placed in investments that do not produce income or that lose value.

If securities or industry analysts do not publish research reports about our business, or if they issue an adverse opinion about our business, the market price and trading volume of our ordinary shares and/or ADSs could decline.

The trading market for our ordinary shares and ADSs will be influenced by the research and reports that securities or industry analysts publish about us or our business. Securities and industry analysts may discontinue

research on our company, to the extent such coverage currently exists, or in other cases, may never publish research on our company. If no or too few securities or industry analysts commence coverage of our company, the trading price for our ordinary shares and ADSs would likely be negatively impacted. In the event securities or industry analysts initiate coverage, if one or more of the analysts who cover us downgrade our ordinary shares or ADSs or publish inaccurate or unfavorable research about our business, the market price of our ADSs would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, demand for our ordinary shares and/or ADSs could decrease, which might cause our price and trading volume to decline.

You may be subject to limitations on transfers of your ADSs.

Your ADSs are transferable on the books of the depositary. However, the depositary may close its transfer books at any time or from time to time when it deems expedient in connection with the performance of its duties. In addition, the depositary may refuse to deliver, transfer or register transfers of ADSs generally when our books or the books of the depositary are closed, or at any time if we or the depositary deems it advisable to do so because of any requirement of law or of any government or governmental body, or under any provision of the deposit agreement, or for any other reason.

U.S. investors may have difficulty enforcing civil liabilities against our company, our directors or members of senior management and the experts named in this prospectus.

Several of our officers, directors and the experts named in this prospectus are non-residents of the United States, and a substantial portion of the assets of such persons are located outside the United States. As a result, it may be impossible to serve process on such persons in the United States or to enforce judgments obtained in U.S. courts against them based on civil liability provisions of the securities laws of the United States. Even if you are successful in bringing such an action, there is doubt as to whether Australian courts would enforce certain civil liabilities under U.S. securities laws in original actions or judgments of U.S. courts based upon these civil liability provisions. In addition, awards of punitive damages in actions brought in the United States or elsewhere may be unenforceable in Australia or elsewhere outside the U.S. An award for monetary damages under the U.S. securities laws would be considered punitive if it does not seek to compensate the claimant for loss or damage suffered and is intended to punish the defendant. The enforceability of any judgment in Australia will depend on the particular facts of the case as well as the laws and treaties in effect at the time. The United States and Australia do not currently have a treaty or statute providing for recognition and enforcement of the judgments of the other country (other than arbitration awards) in civil and commercial matters.

As a result, our public shareholders may have more difficulty in protecting their interests through actions against us, our management, our directors than would shareholders of a corporation incorporated in a jurisdiction in the United States.

Australian takeover laws may discourage takeover offers being made for us or may discourage the acquisition of a significant position in our ordinary shares or ADSs.

We are incorporated in Australia and are subject to the takeover laws of Australia. Among other things, we are subject to the Australian Corporations Act 2001, or the Corporations Act. Subject to a range of exceptions, the Corporations Act prohibits the acquisition of a direct or indirect interest in our issued voting shares if the acquisition of that interest will lead to a person's voting power in us increasing to more than 20%, or increasing from a starting point that is above 20% and below 90%. Australian takeover laws may discourage takeover offers being made for us or may discourage the acquisition of a significant position in our ordinary shares. This may have the ancillary effect of entrenching our board of directors and may deprive or limit our shareholders' opportunity to sell their ordinary shares and may further restrict the ability of our shareholders to obtain a premium from such transactions. See "Description of Share Capital—Change of Control."

Our Constitution and Australian laws and regulations applicable to us may adversely affect our ability to take actions that could be beneficial to our shareholders.

As an Australian company we are subject to different corporate requirements than a corporation organized under the laws of the United States. Our Constitution, as well as the Corporations Act, set forth various rights and obligations that apply to us as an Australian company and which may not apply to a U.S. corporation. These requirements may operate differently than those of many U.S. companies. You should carefully review the summary of these matters set forth under the section entitled, "Description of Share Capital" as well as our Constitution, which is included as an exhibit to this registration statement to which this prospectus forms a part, prior to investing in the ADSs.

FORWARD-LOOKING STATEMENTS

This prospectus includes forward-looking statements that relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Words such as, but not limited to, "believe," "expect," "anticipate," "estimate," "intend," "plan," "targets," "likely," "will," "would," "could," and similar expressions or phrases identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and future events and financial trends that we believe may affect our financial condition, results of operation, business strategy and financial needs. Forward-looking statements include, but are not limited to, statements about:

- the initiation, timing, progress and results of our preclinical and clinical studies, and our research and development programs;
- our ability to advance product candidates into, enroll and successfully complete, clinical studies, including multi-national clinical trials;
- our ability to advance our manufacturing capabilities;
- the timing or likelihood of regulatory filings and approvals, manufacturing activities and product marketing activities, if any;
- the commercialization of our product candidates, if approved;
- regulatory or public perceptions and market acceptance surrounding the use of stem-cell based therapies;
- the potential for our product candidates, if any are approved, to be withdrawn from the market due to patient adverse events or deaths;
- the potential benefits of strategic collaboration agreements and our ability to enter into and maintain established strategic collaborations;
- our ability to establish and maintain intellectual property on our product candidates and our ability to successfully defend these in cases of alleged infringement;
- the scope of protection we are able to establish and maintain for intellectual property rights covering our product candidates and technology;
- estimates of our expenses, future revenues, capital requirements and our needs for additional financing;
- our financial performance;
- our use of proceeds from this offering;
- developments relating to our competitors and our industry;
- the pricing and reimbursement of our product candidates, if approved; and
- other risks and uncertainties, including those listed under the caption "Risk Factors."

You should read thoroughly this prospectus and the documents that we refer to herein with the understanding that our actual future results may be materially different from and/or worse than what we expect. We qualify all of our forward-looking statements by these cautionary statements. Other sections of this prospectus include additional factors which could adversely impact our business and financial performance. Moreover, we operate in an evolving environment. New risk factors emerge from time to time and it is not possible for our management to predict all risk factors, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

This prospectus also contains third-party data relating to the biopharmaceutical market in Australia that includes projections based on a number of assumptions. The biopharmaceutical market may not grow at the rates projected by market data, or at all. The failure of this market to grow at the projected rates may have a material adverse effect on our business and the market price of our ADSs. Furthermore, if any one or more of the assumptions underlying the market data turns out to be incorrect, actual results may differ from the projections based on these assumptions. You should not place undue reliance on these forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. The forward-looking statements made in this prospectus relate only to events or information as of the date on which the statements are made in this prospectus. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

USE OF PROCEEDS

We anticipate that the net proceeds from this offering will be approximately US$, or approximately US$ if the underwriters exercise their option to purchase additional shares in full, at an assumed initial public offering price of US$ per ADS (the midpoint of the price range set forth on the cover page of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us. A US$1.00 increase (decrease) in the assumed initial public offering price of US$ per ADS would increase (decrease) the net proceeds of this offering by US$ million, after deducting underwriting discounts and commissions.

The principal purposes of this offering are to increase our financial flexibility, create a U.S. public market for our ADSs in addition to our existing Australian public market thereby enhancing our access to public equity markets.

We currently intend to use the net proceeds from this offering as follows:

- approximately $ million to support commercial manufacturing requirements for our Tier 1 and Tier 2 product candidates, through development and implementation of our proprietary manufacturing processes and expansion of our manufacturing capabilities and resources, including, but not limited to, finalizing the development and implementation of the 3D bioreactor-based manufacturing of our products, finalizing the development of our proprietary FBS-free media, and expansion of the scale of manufacturing to support commercial production of our products at our collaborator Lonza;
- approximately $ million to fund the costs of Phase 2b/3 clinical development of MPC-300-IV for biologic-refractory rheumatoid arthritis and diabetic kidney disease; and
- the remainder for general and administrative expenses (including personnel-related costs), working capital and other general corporate purposes, including funding general corporate overhead and the costs of operating as a public company, and general research and development expenses associated with our technology platform and earlier stage product development costs.

This expected use of net proceeds from this offering represents our intentions based upon our current plans and business conditions. As of the date of this prospectus, we cannot predict with certainty the particular uses for the net proceeds to be received upon the completion of this offering or the actual amounts that we will spend on the uses set forth above. Due to the many variables inherent to the development of product candidates, we cannot currently predict the stage of development we expect the net proceeds of this offering to achieve for our clinical trials and product candidates.

As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering. We may find it necessary or advisable to use the net proceeds from this offering for other purposes, and we will have broad discretion in the application of net proceeds. Although we may use a portion of the net proceeds of this offering for the acquisition or licensing, as the case may be, of additional technologies, other assets or businesses, we have no current understandings, agreements or commitments to do so.

As of June 30, 2015, our cash and cash equivalents were US$110.7 million. Pending our use of the net proceeds from this offering, we intend to invest the net proceeds in a variety of capital preservation investments, including short-term, investment-grade, interest-bearing instruments.

PRICE RANGE OF OUR ORDINARY SHARES

The following tables present, for the periods indicated, the high and low market prices for our ordinary shares reported on the ASX under the symbol "MSB" for the periods indicated in Australian dollars and U.S. dollars. U.S. dollar per ordinary share amounts have been translated into U.S. dollars at a rate of A$1.00 to US$0.7704 based on the certified foreign exchange rates published by the Board of Governors of the Federal Reserve System on June 30, 2015.

	Price per ordinary share (A$)		Price per ordinary share (US$)	
Period	High	Low	High	Low
Annual:				
Fiscal Year Ended 30 June, 2011	9.95	1.72	7.67	1.33
Fiscal Year Ended 30 June, 2012	10.04	5.44	7.73	4.19
Fiscal Year Ended 30 June, 2013	7.49	4.22	5.77	3.25
Fiscal Year Ended 30 June, 2014	6.80	4.18	5.24	3.22
Fiscal Year Ended 30 June, 2015	5.88	3.17	4.53	2.44
Quarterly				
Fiscal Year ended June 30, 2013:				
First quarter ended September 30, 2012	7.37	5.52	5.68	4.25
Second quarter ended December 31, 2012	6.88	4.22	5.30	3.25
Third quarter ended March 31, 2013	7.49	5.17	5.77	3.98
Fourth quarter ended June 30, 2013	6.43	5.14	4.95	3.96
Fiscal Year ended June 30, 2014:				
First quarter ended September 30, 2013	6.22	5.19	4.79	4.00
Second quarter ended December 31, 2013	6.80	5.37	5.24	4.14
Third quarter ended March 31, 2014	6.13	5.15	4.72	3.97
Fourth quarter ended June 30, 2014	5.45	4.18	4.20	3.22
Fiscal Year ended June 30, 2015:				
First quarter ended September 30, 2014	5.88	3.91	4.53	3.01
Second quarter ended December 31, 2014	4.59	3.64	3.54	2.80
Third quarter ended March 31, 2014	4.60	3.50	3.54	2.70
Fourth quarter ended June 30, 2015	4.16	3.17	3.20	2.44
Most Recent Six Months:				
Month ended Mar 31, 2015	4.17	3.50	3.21	2.70
Month ended Apr 30, 2015	4.07	3.17	3.14	2.44
Month ended May 31, 2015	3.97	3.58	3.06	2.76
Month ended Jun 30, 2015	4.16	3.65	3.20	2.81
Month ended Jul 31, 2015	4.06	3.71	3.13	2.86
Month ended Aug 31, 2015	4.02	2.91	3.10	2.24

DIVIDENDS AND DIVIDEND POLICY

Since our inception, we have not declared or paid any dividends on our shares. We intend to retain any earnings for use in our business and do not currently intend to pay cash dividends on our ordinary shares. Dividends, if any, on our outstanding ordinary shares will be declared by and subject to the discretion of our board of directors, and subject to Australian law.

Any dividend we declare will be paid to the holders of ADSs, subject to the terms of the deposit agreement, to the same extent as holders of our ordinary shares, to the extent permitted by applicable law and regulations, less the fees and expenses payable under the deposit agreement. Any dividend we declare will be distributed by the depositary bank to the holders of our ADSs, subject to the terms of the deposit agreement. See “Description of American Depositary Shares—Ordinary Share Dividends and Other Distributions.”

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2015. Our capitalization is presented on:

- an actual basis; and
- an as adjusted basis to reflect the issuance and sale of ordinary shares in the form of ADSs by us in this offering and our receipt of the estimated net proceeds from such issuance and sale in this offering, each based on an assumed initial public offering price of US$ per ADS (the midpoint of the price range set forth on the cover page of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table in conjunction with our consolidated financial statements and the related notes thereto included elsewhere in this prospectus and the information under "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

	As of June 30, 2015	
	Actual(1)	As adjusted
	US$	US$
	(in thousands)	
Cash and cash equivalents	110,701	
Liabilities:		
Non-current liabilities	265,372	
Current liabilities	48,407	
Total liabilities	313,779	
Equity:		
Issued capital (336,997,729 ordinary shares (no par value) issued as of June 30, 2015)	709,191	
Reserves	22,756	
Accumulated losses	(263,960)	
Total equity	467,987	
Total capitalization	781,766	

(1) A US$1.00 increase (decrease) in the assumed initial public offering price of US$ per ADS would increase (decrease) total cash and cash equivalents, equity and total capitalization by US$ million, after deducting the estimated underwriting discounts and commissions payable by us and assuming no exercise of the underwriters' option to purchase additional ADSs.

The table above excludes:

- the exercise of employee options outstanding at June 30, 2015 to purchase 18,369,078 fully paid ordinary shares issuable upon at a weighted average exercise price of A$5.25 per ordinary share.

The table above includes:

- an aggregate of 3,500,000 ordinary shares at a weighted average exercise price of A$6.78 held in trust as part of our LFSP.

DILUTION

As of June 30, 2015, our net tangible book value was US$(0.54) per ordinary share and per ADS. Net tangible book value per ordinary share represents total tangible assets minus total liabilities divided by the total number of ordinary shares outstanding. Dilution is determined by subtracting net tangible book value per ordinary share from the assumed public offering price per ordinary share.

Without taking into account any other changes in net tangible book value after June 30, 2015, other than giving effect to our sale of ADSs in the offering at an assumed initial public offering price of US$ per ADS (the midpoint of the price range set forth on the cover page of this prospectus) and after deducting underwriting discounts and commissions and estimated expenses of the offering payable by us, the net tangible book value per ordinary share would increase to US$ per ordinary share (or US$ per ADS), or US$ per ordinary share (or US$ per ADS) if the underwriters' over-allotment option is exercised in full. This represents an immediate increase in net tangible book value of US$ per ordinary share (or US$ per ADS) to our existing shareholders (or US$ per ordinary share (or US$ per ADS) if the underwriters' over-allotment option is exercised in full), and an immediate dilution of US$ per ordinary share (or US$ per ADS) to purchasers of ADSs in the offering (or US$ per ordinary share (or US$ per ADS), if the underwriters' over-allotment option is exercised in full).

The following table illustrates this dilution on a per ordinary share basis and a per ADS basis assuming that all ADSs are exchanged for ordinary shares:

	Per ordinary share	Per ADS
Assumed initial public offering price		
Net tangible book value as of June 30, 2015		
Increase attributable to the sale of the ADSs		
Pro forma net tangible book value after this offering		
Dilution to purchasers of ADSs in the offering		

A US$1.00 increase (decrease) in the assumed public offering price of US$ per ADS would increase (decrease) our pro forma net tangible book value after giving effect to the offering by US$ per ordinary share and US$ per ADS, respectively, and the dilution in pro forma net tangible book value per ordinary share and per ADS to new investors in this offering by US$ per ordinary share and US$ per ADS, respectively, assuming no change to the number of ADSs offered by us as set forth on the cover page of this prospectus, and after deducting underwriting discounts and commissions.

The following table summarizes, on a pro forma basis as of June 30, 2015, the differences between our existing shareholders as of such date and the new investors with respect to the number of ordinary shares purchased from us, the total consideration paid and the average price per ordinary shares paid at an assumed initial public offering price of US$ per ADS (the midpoint of the price range set forth on the cover page of this prospectus) before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Ordinary shares purchased		Total consideration		Average price per ordinary share	Average price per ADS
	Number	Percent	Amount	Percent		
	(in millions, except percent and per share data)					
Existing shareholders		%	US$	%	US$	US$
Purchasers of ADSs					US$	US$
Total		100.0%		100.0%		

A US$1.00 increase (decrease) in the assumed initial public offering price of US$ per ADS would increase (decrease) total consideration paid by new investors, total consideration paid by all shareholders and the average price per ADS paid by existing shareholders by US$ million, US $ million and US$, respectively, assuming no change in the number of ADSs sold by us as set forth on the cover page of this prospectus and without deducting underwriting discounts and commissions.

The number of ordinary shares to be outstanding following the offering is based on 336,997,729 fully paid ordinary shares outstanding at June 30, 2015, and excludes:

- the exercise of employee options outstanding at June 30, 2015 to purchase 18,369,078 fully paid ordinary shares issuable upon at a weighted average exercise price of A$5.25 per ordinary share;

and includes:

- an aggregate of 3,500,000 ordinary shares at a weighted average exercise price of A$6.78 held in trust as part of our LFSP.

To the extent all options outstanding at June 30, 2015 are exercised, the number of ordinary shares to be outstanding immediately following the offering would increase to and the total consideration would increase to US$. Our existing shareholders would hold ordinary shares or % of the number of ordinary shares outstanding immediately following the offering for which they paid US$ or % of the total consideration. The purchasers of ADSs in the offering would hold % of the number of ordinary shares outstanding immediately following the offering and would experience immediate dilution in net tangible book value of US$ per ordinary share (or US$ per ADS). In addition, we may in the future elect to raise additional capital as a result of favorable market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the issuance of such securities could result in further dilution to our shareholders. See “Risk Factors—Risks related to Ownership of Our ADSs, Our Trading Market and This Offering—An active trading market for the ADSs may not develop in the United States and the trading price for our ordinary shares may fluctuate significantly.”

SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data presented below as of and for the years ended June 30, 2015, 2014 and 2013 has been derived from our audited consolidated financial statements included elsewhere in this prospectus. The following selected consolidated financial data presented below as of and for the years ended June 30, 2012 and 2011 has been derived from our consolidated financial statements not included elsewhere in this prospectus. Historical results are not necessarily indicative of results to be expected in the future. The summary consolidated financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes thereto included elsewhere in this prospectus.

Our financial statements are presented in U.S. dollars and have been prepared in accordance with IFRS.

	For the Year Ended June 30,				
	US$ 2015	US$ 2014	US$ 2013	US$ 2012	US$ 2011
	(in thousands, except per share information)				
Consolidated Income Statement Data:					
Revenue:					
Commercialization revenue	15,004	15,004	18,685	28,771	15,513
Milestone revenue	2,000	—	—	—	—
Interest revenue	2,757	8,386	10,616	10,821	4,739
Revenue from continuing operations	19,761	23,390	29,301	39,592	20,252
Other income:					
Foreign exchange gains	10,478	—	—	—	—
Research & development tax incentive	4,418	7,775	5,495	—	—
Other revenue	407	—	—	—	—
Rental income	96	—	—	—	—
Release of excess provision for services	—	2,344	—	—	—
Government grant revenue	—	—	—	134	—
Gain on revaluation of investment to fair value	—	—	—	—	88,357
Share of losses of equity accounted associates written back on acquisition	—	—	—	—	14,306
Other income	15,399	10,119	5,495	134	102,662
Total revenue from continuing operations	35,160	33,509	34,796	39,726	122,914
Expenses from continuing operations:					
Research and development	(62,649)	(50,929)	(48,513)	(37,840)	(12,359)
Manufacturing commercialization	(23,783)	(25,434)	(23,082)	(25,295)	(3,483)
Management and administration	(29,636)	(24,403)	(22,899)	(24,816)	(12,199)
Finance costs	(8,506)	(4,078)	—	—	(15)
Share of losses of equity accounted associates	—	—	—	—	(1,557)
Other expenses	(6,830)	(4,195)	(952)	(1,067)	—
Total expenses from continuing operations	(131,404)	(109,039)	(95,446)	(89,018)	(29,614)
(Loss)/Profit before income tax	(96,244)	(75,530)	(60,650)	(49,292)	93,301
Income tax expense	—	(4)	(1,470)	(22,782)	(1,692)
(Loss)/Profit attributable to the owners of Mesoblast Limited	(96,244)	(75,534)	(62,120)	(72,074)	91,609
(Losses)/Earnings per share from continuing operations attributable to the ordinary equity holders:	**Cents**	**Cents**	**Cents**	**Cents**	**Cents**
Basic—(losses)/earnings per share(1)	(29.99)	(23.65)	(21.02)	(25.48)	42.26
Diluted—(losses)/earnings per share(1)	(29.99)	(23.65)	(21.02)	(25.48)	40.22

(1) Please refer to Note 20 to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for a calculation of basic and diluted losses per share.

	As of June 30,				
	US$ 2015	US$ 2014	US$ 2013	US$ 2012	US$ 2011
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	110,701	185,003	292,449	209,518	278,946
Total current assets	122,460	191,931	307,789	220,716	281,348
Total assets	781,766	847,153	819,663	734,247	808,828
Total current liabilities	48,407	40,199	46,921	45,344	32,634
Total liabilities	313,779	308,594	235,071	246,223	262,180
Equity:					
Issued capital 336,997,729, 321,640,094, 316,468,901, 285,835,106, and 280,345,258 ordinary shares (no par value) issued as of June 30, 2015, 2014, 2013, 2012 and 2011, respectively)	709,191	662,722	642,378	467,760	459,771
Reserves	22,756	43,553	34,396	50,326	44,864
Accumulated loss	(263,960)	(167,716)	(92,182)	(30,062)	42,012
Total equity	467,987	538,559	584,592	488,024	546,648

	Year Ended June 30,				
	US$ 2015	US$ 2014	US$ 2013	US$ 2012	US$ 2011
	(in thousands)				
Cash Flow Data:					
Net cash (outflows)/inflows in operating activities	(101,036)	(74,906)	(55,746)	(64,575)	112,247
Net cash (outflows)/inflows in investing activities	(5,064)	(38,202)	(4,801)	(4,355)	1,946
Net cash inflows by financing activities	45,852	2,196	174,415	4,980	127,488

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with "Selected Consolidated Financial Data," and our consolidated financial statements included elsewhere in this prospectus. We present our consolidated financial statements in U.S. dollars and in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, or IFRS.

For us and our subsidiaries that use a functional currency that is not U.S. dollars, the assets and liabilities have been translated at the closing exchange rate, while the income and expenses have been translated at the exchange rate at the transaction date. The resulting exchange differences are recognized in our consolidated statement of comprehensive income. See note 21(d) in the notes to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for more information.

The statements in this discussion regarding industry outlook, our expectations regarding our future performance, liquidity and capital resources and other non-historical statements are forward-looking statements. These forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described in "Risk Factors" and "Forward-Looking Statements" in this prospectus. Our actual results may differ materially from those contained in or implied by any forward-looking statements.

Our fiscal year ends each year on June 30. Reference to a year relates to the fiscal year, ended in June 30 of the year indicated, rather than the calendar year, unless indicated by a specific date. "FY2015" refers to the year ended June 30, 2015, "FY2014" refers to the year ended June 30, 2014 and "FY2013" refers to the year ended June 30, 2013.

Overview

We are a global leader in the field of regenerative medicine. We have leveraged our proprietary technology platform, which is based on specialized cells known as MLCs to establish what we believe to be the most advanced regenerative medicine product portfolio in the industry. We have what we believe to be an extensive safety profile for our product candidates, with over 1,340 patients treated. Based on outcomes in Phase 2 trials across multiple indications, we now have five MLC product candidates that are in active Phase 3 trials or are Phase 3-ready.

In September 2015, our licensee JCR Pharmaceuticals Co. Ltd, or JCR, received full approval for the first "allogeneic" cell-based product in Japan, meaning a product containing cells from a single donor expanded and used in many unrelated patients. We believe we are well positioned to have the first industrially-manufactured allogeneic stem cell product approved in the United States.

We have incurred net losses during most of our fiscal periods since our inception. For the year ended June 30, 2015, we had a comprehensive loss of US$122.0 million.

Mergers and Acquisitions

On October 11, 2013, we acquired all of Osiris Therapeutics, Inc.'s business and assets related to culture-expanded mesenchymal stem cells, or MSCs, for US$126.9 million in cash, securities and contingent consideration. See Note 12 to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for more information regarding the acquisition consideration. We believe the acquisition is complementary to our business in its nature with many commercial and strategic benefits. The acquired assets included:

- MSC-100-IV for aGVHD;
- broadened late-stage clinical programs in other strategic areas of focus, including Crohn's disease and acute myocardial infarction, or AMI;
- long-term clinical data from approximately 1,000 patients treated with MSCs, including safety, efficacy and repeat dosing data; and
- MSC-focused intellectual property and know-how.

Financial Overview

We have incurred significant losses since our inception. We anticipate that we may continue to incur significant losses for the foreseeable future. There can be no assurance that we will ever achieve or maintain profitability. We have never generated any sales revenues ourselves or royalty revenues from sales of our products by our collaborators and we may never be profitable.

We expect our future capital requirements will continue as we:

- continue the research and clinical development of our product candidates, including our MPC-150-IM (Class II-IV CHF), MPC-06-ID (CLBP), MSC-100-IV (aGVHD) and MPC-300-IV (inflammatory conditions) product candidates;
- initiate and advance our product candidates into larger and more expensive clinical studies, including a Phase 3 clinical trial for our MPC-25-Osteo (spinal fusion) product candidate;
- seek to identify, assess, acquire, and/or develop other product candidates and technologies;
- seek regulatory and marketing approvals in multiple jurisdictions for our product candidates that successfully complete clinical studies;
- establish collaborations with third parties for the development and commercialization of our product candidates, or otherwise build and maintain a sales, marketing, and distribution infrastructure to commercialize any products for which we may obtain marketing approval;
- further develop and implement our proprietary manufacturing processes in both planar technology and our bioreactor programs and expand our manufacturing capabilities and resources for commercial production;
- seek coverage and reimbursement from third-party payors, including government and private payors for future products;
- make milestone or other payments under our agreements pursuant to which we have licensed or acquired rights to intellectual property and technology;
- seek to maintain, protect, and expand our intellectual property portfolio; and
- seek to attract and retain skilled personnel.

We expect that our Research and development and Management and administration expenses will continue to increase and, as a result, we will need additional capital to fund our operations, which we may raise through a combination of equity offerings, debt financings, other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements. We may be unable to raise additional funds or enter into such other arrangements when needed on favorable terms or at all. Our failure to raise capital or enter into such other arrangements as and when needed would have a negative impact on our financial condition and our ability to develop our products and to continue as a going concern. We do not expect to generate revenue from product sales unless and until we successfully complete development and obtain regulatory approval for one or more of our product candidates.

Revenue from Continuing Operations

We derive revenue from continuing operations as follows:

Commercialization Revenue. Commercialization revenue refers to upfront and milestone payments received under development and commercialization agreements.

In the year ended June 30, 2015, we recognized as revenue US$2.0 million from JCR for the completion of a milestone pertaining to the filing of TEMCELL for regulatory approval in Japan. This amount was recorded in revenue as there are no further performance obligations required in regards to this item.

In the year ended June 30, 2011, we received upfront payments of US$130.0 million under a development and commercialization agreement, or the DCA, with Teva. See "Business—Our Strategic Alliances—Teva/Cephalon, Inc.—Cardiovascular, Neurological and Bone Marrow Collaboration."

Revenues from such non-refundable, up-front payments are initially reported as deferred revenues on the consolidated balance sheet and are recognized in revenue as earned over the estimated development period. As management cannot readily estimate the costs required to complete the development program pursuant to the DCA, management has concluded that the revenue is earned over the estimated development period of MPC-150-IM. Therefore, revenues are being recognized on straight line basis over the development period of this product candidate. If we were to shorten or lengthen the development period then we would be required to change the amount of revenue we recognize.

Interest Revenue. Interest revenue is accrued on a time basis by reference to the principal outstanding and at the effective interest rate applicable.

Other Income. Other income primarily comprises tax incentive payments from the Australian Government's Innovation Australia Research and Development Tax Incentive Plan for research and development activities conducted in Australia in relation to our qualifying research that meets the regulatory criteria. A refundable tax offset is available to eligible companies with an annual aggregate turnover of less than A$20.0 million. The commercialization revenue is not subject to inclusion in the determination of the annual aggregate turnover measure. Eligible companies can receive a refundable tax offset for a percentage of their research and development spending. Up to June 30, 2013, the rate of the refundable tax offset was 45% and after that date the rate is 43.5%.

Other income also includes unrealized foreign exchange gains on U.S. dollar deposits plus realized gains on any foreign currency payments to our suppliers. Foreign exchange gains of US$10.5 million and US$Nil were recorded for the year ended June 30, 2015 and June 30, 2014, respectively. For the year ended June 30, 2014, the net result of foreign exchange movements for us was a US$4.0 million loss, and this loss was recorded in Other expenses. Other income also includes rental income from subleasing our office space.

Expenses from Continuing Operations

Research and Development. Research and development expenditure is recognized as an expense as incurred. Our Research and development expenses consist primarily of:

- third party costs comprise all external expenditure on our Research and development programs such as fees paid to Contract Research Organizations, or CROs, and consultants who perform research on our behalf and under our direction, rent and utility costs for our research and development facilities, and database analysis fees;
- product support costs consist primarily of salaries and related overhead expenses for personnel in research and development functions (for example wages, salaries and associated on costs such as superannuation, share-based incentives and payroll taxes, plus travel costs and recruitment fees for new hires); and
- intellectual property support costs comprise payments to our patent attorneys to progress patent applications and all costs of renewing of our granted patents.

Our R&D expenses are not charged to specific products or programs, since the number of clinical and preclinical product candidates or development projects tends to vary from period to period and since internal resources are utilized across multiple products and programs over any given period of time. As a result, our management does not maintain and evaluate research and development costs by product or program.

Acquired in-process research and development is capitalized as an asset and is not amortized but is subject to impairment review.

Manufacturing Commercialization. Manufacturing commercialization expenditure is recognized as an expense as incurred. Our manufacturing commercialization expenses consist primarily of:

- salaries and related overhead expenses for personnel in manufacturing functions;
- fees paid to our contract manufacturing organizations, which perform process development on our behalf and under our direction;
- costs related to laboratory supplies used in our manufacturing development efforts; and
- costs related to share-based incentives granted to personnel in manufacturing functions.

Management and Administration. Management and administration expenses consist primarily of salaries and related costs for employees in executive, corporate and administrative functions. Other significant Management and administration expenses include legal and professional services, rent and depreciation of leasehold improvements, insurance and information technology services.

Finance Costs. Finance costs relate to the unwinding of contingent consideration items pertaining to the MSC assets of Osiris. We did not have any borrowings outstanding as of June 30, 2015.

Other Expenses. Other expenses comprise remeasurement of contingent consideration and foreign exchange losses.

Remeasurement of contingent consideration pertains to the acquisition of assets from Osiris. This remeasurement expense is as a result of changes to the key assumptions of the contingent consideration valuation such as market population, market penetration, product pricing and developmental timelines. The net result of changes to the key assumptions was an increase in the valuation of contingent consideration payable to Osiris on royalties from sales and on the achievement of certain pre-determined milestones as we draw closer to potential product approval. Remeasurement of contingent consideration was US$6.8 million for the year ended June 30, 2015 compared with US$0.2 million for the year ended June 30, 2014.

Other expenses comprise unrealized foreign exchange losses on our U.S. dollar deposits plus realized losses on any foreign currency payments to our suppliers. Any unrealized foreign exchange gains on our U.S. dollar deposits or realized gains on any foreign currency payments to our suppliers would be included in Other Income. Foreign exchange losses was $Nil for the year ended June 30, 2015 compared with US$4.0 million for the year ended June 30, 2014. The US$4.0 million foreign exchange losses recognized in the year ended June 30, 2014 was due to movements in exchange rates as the A$ appreciated against the US$ during the year ended June 30, 2014.

Results of Operations

Comparison of Our Results for the Year Ended June 30, 2015 with the Year Ended June 30, 2014

The following table summarizes our results of operations for the years ended June 30, 2015 and 2014, together with the changes in those items in dollars and as a percentage.

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands except per share information)			
Consolidated Income Statement Data:				
Revenue:				
Commercialization revenue	15,004	15,004	—	0%
Milestone Revenue	2,000	—	2,000	NM
Interest Revenue	2,757	8,386	(5,629)	(67%)
Revenue from continuing operations	19,761	23,390	(3,629)	(16%)
Other Income:				
Foreign exchange gains	10,478	—	10,478	NM
Research & development tax incentive	4,418	7,775	(3,357)	(43%)
Other revenue	407	—	407	NM
Rental income	96	—	96	NM
Release of excess provision for services	—	2,344	(2,344)	(100%)
Other Income	15,399	10,119	5,280	52%
Total Revenue from continuing operations	35,160	33,509	1,651	5%
Expenses from continuing operations:				
Research & development	(62,649)	(50,929)	(11,720)	23%
Manufacturing commercialization	(23,783)	(25,434)	1,651	(6%)
Management and administration	(29,636)	(24,403)	(5,233)	21%
Finance costs	(8,506)	(4,078)	(4,428)	109%
Other expenses	(6,830)	(4,195)	(2,635)	63%
Total expenses from continuing operations	(131,404)	(109,039)	(22,365)	21%
Loss before income tax	(96,244)	(75,530)	(20,714)	27%
Income tax expense	—	(4)	4	(100%)
Loss attributable to the owners of Mesoblast Limited	(96,244)	(75,534)	(20,710)	27%
Losses per share from continuing operations attributable to the ordinary equity holders:				
Basic—losses per share(1)	(29.99)	(23.65)	(6.34)	27%
Diluted—losses per share(1)	(29.99)	(23.65)	(6.34)	27%

* NM = not meaningful.
(1) Please refer to Note 20 to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for a calculation of basic and diluted losses per share.

Revenue from Continuing Operations

Revenues were US$19.8 million for the year ended June 30, 2015, compared with US$23.4 million for the year ended June 30, 2014, a decrease of US$3.6 million. The following table shows the movement within revenue for the year ended June 30, 2015 and 2014, together with the changes in those items.

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands)			
Revenue:				
Commercialization revenue	15,004	15,004	—	0%
Milestone revenue	2,000	—	2,000	NM
Interest revenue	2,757	8,386	(5,629)	(67%)
Revenue from continuing operations	19,761	23,390	(3,629)	(16%)

There has been no change in commercialization revenue in the year ended June 30, 2015 when compared with the year ended June 30, 2014.

The US$2.0 million increase in milestone revenue has been recognized upon our partner, JCR, achieving a substantive milestone being the filing for marketing approval of MSC product TEMCELL in Japan. We have no further performance obligations in relation to this revenue.

The US$5.6 million decrease in interest revenue from the year ended June 30, 2015 compared with June 30, 2014 is driven by a decline in cash reserves and since we held a higher proportion of cash reserves in U.S. dollars compared with Australian dollars in the year ended June 30, 2015, when compared with the year ended June 30, 2014. These changes in cash reserve holdings decreased revenue as yields on U.S. dollar cash deposits are lower than yields on Australian dollar cash deposits. We increased the proportion of cash reserves held in U.S. dollars to reduce currency risk. Currency risk is minimized by matching cash reserves for each currency with the expected rate of spend of each currency.

Other Income

Other income was US$15.4 million for the year ended June 30, 2015, compared with US$10.1 million for the year ended June 30, 2014, an increase of US$5.3 million. The following table shows movements within other income for the year ended June 30, 2015 and 2014, together with the changes in those items:

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands)			
Other income:				
Foreign exchange gains	10,478	—	10,478	NM
Research & development tax incentive income	4,418	7,775	(3,357)	(43%)
Other revenue	407	—	407	NM
Rental income	96	—	96	NM
Release of excess provision for services	—	2,344	(2,344)	(100%)
Other income	15,399	10,119	5,280	52%

US$10.5 million of foreign exchange gains were recognized for the year ended June 30, 2015, compared with US$Nil for the year ended June 30, 2014. For the year ended June 30, 2015 we recognized a foreign exchange gain due to movements in exchange rates as the A$ depreciated against the US$ during the year ended June 30, 2015. Within our Australian company, we hold certain cash and term deposit balances in US$, resulting in foreign exchange gains on the revaluation of foreign currency denominated monetary assets and liabilities into our functional currency of A$. As of June 30, 2015, in addition to our A$ cash reserves, we held a total of US$70.6 million of our cash reserves in US$. For the year ended June 30, 2014 the net result of foreign exchange movements was a US$4.0 million loss and this loss was recorded in Other expenses.

Research & development tax incentive income decreased by US$3.4 million from US$7.8 million for the year ended June 30, 2014 to US$4.4 million for the year ended June 30, 2015. We have recognized incentive income pertaining to the eligible expenditure undertaken in each of these periods. At each period end management estimates the refundable tax offset available to us based on available information at the time. This estimate is also reviewed by external tax advisors. Of the US$4.4 million Research and development tax incentive recorded in other income for the year ended June 30, 2015, US$0.5 million relates to a change in the original estimate of the Research and development tax incentive income we estimated we would receive from the Australian Government for the year ended June 30, 2014.

Other revenue increased by US$0.4 million for the year ended June 30, 2015 as we recognized a one-off insurance recovery. Rental income increased by US$0.1 million for the year ended June 30, 2015 as we entered into a sublease agreement for a portion of the Melbourne office space in December 2014.

For the year ended June 30, 2014, other income includes a one off release of a provision of services that has been settled during the year. The settlement was US$2.3 million less than the recorded provision.

Research and Development

Research and development expenses were US$62.6 million for the year ended June 30, 2015, compared with US$50.9 million for the year ended June 30, 2014, an increase of US$11.7 million. The US$11.7 million net increase in Research and development expenses reflects the continued clinical development of the MSC assets acquired from Osiris, the clinical advancement of our MPC programs as they transition to late-stage development, and our continued investment in resources to execute our clinical programs.

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands)			
Research and Development expense:				
Third party costs	30,612	19,114	11,498	60%
Product support costs	29,361	29,202	159	1%
Intellectual property support costs	2,676	2,613	63	2%
Research and development expenses	62,649	50,929	11,720	23%

Third party costs, which consist of all external expenditure on our research and development programs, have increased by US$11.5 million for the year ended June 30, 2015 compared with the year ended June 30, 2014.

Within this US$11.5 million, there was a US$12.8 million increase in third party costs for the period relates to the advancement of our Tier 1 products, and in particular the clinical programs for CLBP and aGVHD. Third party costs for the MPC-150-IM product for CHF are predominantly funded by our collaborators, Teva (advanced heart failure) and the NIH (end-stage heart failure with mechanical support). This increase in Tier 1 costs was offset by a US$1.3 million decrease in third party costs for our Tier 2 and pipeline products for the year ended June 30, 2015, compared with the year ended June 30, 2014 as the Tier 1 programs were prioritized ahead of Tier 2 clinical trials and pipeline activities.

Product support costs, which consist primarily of salaries and related overhead expenses for personnel in research and development functions, have increased by US$0.2 million for the year ended June 30, 2015 compared with the year ended June 30, 2014. This increase is across all programs primarily reflecting the costs of the additional resources required to run the MSC-100-IV product late-stage programs acquired in October 2013, together with increased development costs for our MPC-06-ID product for CLBP as we progress to Phase 3 clinical development. In the year ended June 30, 2015, full time equivalents in our research and development group increased by 18 from 64 for the year ended June 30, 2014 to 82 for the year ended June 30, 2015.

Also included in research and development expenses are intellectual property support costs, which consist of payments to our patent attorneys to progress patent applications and all costs of renewing our granted patents, which have risen by US$0.1 million in the year ended June 30, 2015 compared with the year ended June 30, 2014. This increase reflects the purchase of MSC patent families from Osiris.

We expect that our Research and development expenses will modestly increase as we continue to fund our programs through to market. We believe these increases will likely include increased costs paid to CROs and increased costs related to laboratory supplies.

Manufacturing Commercialization expenses

Manufacturing commercialization expenses were US$23.8 million for the year ended June 30, 2015, compared with US$25.4 million for the year ended June 30, 2014, a decrease of US$1.6 million.

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands)			
Manufacturing Commercialization expenses:				
MSC-based manufacturing commercialization	11,388	3,330	8,058	242%
MPC-based manufacturing commercialization	8,855	18,583	(9,728)	(52%)
Manufacturing commercialization support expenses	3,540	3,521	19	1%
Manufacturing Commercialization expenses	23,783	25,434	(1,651)	(6%)

MSC-based manufacturing commercialization expenses, which consist of fees paid to our contract manufacturing organizations and laboratory supplies used in manufacturing commercialization of our MSC-based products, increased by US$8.1 million for the year ended June 30, 2015 compared to the year ended June 30, 2014. This increase reflects a full year of expenditure, whereas in the prior year, expenditure only commenced after the acquisition of the MSC assets in October 2013. In the year ended June 30, 2015, expenses related to production and the manufacturing development process in anticipation of upcoming clinical and commercial production requirements were incurred.

This abovementioned increase was offset by a decrease of US$9.7 million on MPC-based manufacturing commercialization expenses. MPC-based manufacturing commercialization expenses consist of fees paid to our contract manufacturing organizations and laboratory supplies used in manufacturing commercialization of our MPC-based products. The decrease in these expenses was due to a reduction in clinical grade production for MPC-based products as we focused on establishing the manufacturing process for our acquired MSC-based products.

Manufacturing commercialization support expenses, which consist primarily of salaries and related overhead expenses for personnel in manufacturing commercialization functions, increased by US$0.1 million for the year ended June 30, 2015, compared with the year ended June 30, 2014, as full time equivalents increased in this group by 2 from 8 for the year ended June 30, 2014 to 10 in the year ended June 30, 2015.

In addition to the above, we continue to invest cash to (i) further establish our manufacturing processes in Lonza's Singapore facility, (ii) produce MPCs and MSCs to support clinical trial activities, (iii) optimize clinical production processes, including transitioning away from bovine serum, and (iv) continue bioreactor manufacturing development.

We expect that our Manufacturing commercialization expenses will remain relatively consistent as we continue to develop our manufacturing processes in anticipation of commercial and clinical demands, and further invest in bioreactor manufacturing development.

Management and administration

Management and administration expenses were US$29.6 million for the year ended June 30, 2015, compared with US$24.4 million for the year ended June 30, 2014, an increase of US$5.2 million.

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands)			
Management and administration:				
Labor and associated expenses	14,309	12,573	1,736	14%
Corporate overheads	9,803	7,530	2,273	30%
Legal and professional fees	5,524	4,300	1,224	28%
Management and administration	29,636	24,403	5,233	21%

Labor and associated expenses increased by US$1.7 million from US$12.6 million for the year ended June 30, 2014, to US$14.3 million for the year ended June 30, 2015, as a result of increased full time equivalents during the year ended June 30, 2015. Corporate overhead increased by US$2.3 million from US$7.5 million for the year ended June 30, 2014, to US$9.8 million for the year ended June 30, 2015, primarily as a result of increased full time equivalents, in this group, and to a lesser extent due to rent and depreciation expenses. Full time equivalents increased by 5 from 22 for the year ended June 30, 2014 to 27 for the year ended June 30, 2015.

Legal and professional fees increased by US$1.2 million from US$4.3 million for the year ended June 30, 2014 to US$5.5 million for the year ended June 30, 2015, on intellectual property management and associated legal, taxation and accounting compliance advice.

We expect that our Management and administration expenses will remain relatively consistent as our product candidates develop towards commercialization.

Finance Costs

Finance costs increased by US$4.4 million from US$4.1 million for the year ended June 30, 2014 to $8.5 million for the year ended June 30, 2015, primarily due to a full 12 months impact in the year ended June 30, 2015, compared with a partial year impact in the year ended June 30, 2014. The Finance costs in the years ended June 30, 2015 and June 30, 2014 represent the change in fair value of contingent consideration financial liabilities pertaining to the acquired MSC assets of Osiris. These costs relate to the unwinding of the risk adjusted discount as the time period shortens between the valuation date and the potential settlement date of the contingent consideration. With respect to future milestone payments, contingent consideration will be payable in cash or shares at our discretion. With respect to commercialization, product royalties will be payable in cash which will be funded from the profits generated.

We expect that these Finance costs will continue to increase as we continue to develop towards commercialization of the MSC-based products as the discounting of the contingent consideration unwinds with time and/or achievement of milestones.

Other Expenses

Other expenses were US$6.8 million for the year ended June 30, 2015 compared with US$4.2 million for the year ended June 30, 2014, an increase of US$2.6 million.

Remeasurement of contingent consideration was US$6.8 million for the year ended June 30, 2015 compared with US$0.2 million for the year ended June 30, 2014, an increase of US$6.6 million. The US$6.8 million remeasurement of contingent consideration recognized in the year ended June 30, 2015 pertains to the acquisition of assets from Osiris. This remeasurement expense is as a result of changes to the key assumptions of the contingent consideration valuation such as market population, market penetration, product pricing and developmental timelines. The net result of changes to the key assumptions was an increase in the valuation of

contingent consideration payable to Osiris on royalties from sales and on the achievement of certain pre-determined milestones as we draw closer to potential product approval.

Foreign exchange losses was $Nil for the year ended June 30, 2015, compared with US$4.0 million for the year ended June 30, 2014, a decrease of US$4.0 million. The US$4.0 million foreign exchange losses recognized in the year ended June 30, 2014 was due to movements in exchange rates as the A$ appreciated against the US$ during the year ended June 30, 2014.

We expect that Other expenses will continue to fluctuate as a result of the movement in the Australian dollar to U.S. dollar exchange rate going forward.

Net Operating Losses

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2015	US$ 2014		
	(in thousands)			
Loss before income tax	96,244	75,530	20,714	27%
Income tax expense	—	(4)	(4)	(100%)
Loss after income tax	**96,244**	**75,534**	**20,710**	**27%**

Loss after income tax was US$96.2 million for the year ended June 30, 2015 compared with US$75.5 million for the year ended June 30, 2014, an increase of US$20.7 million. This increase reflects the continued clinical development of our programs as they transition to late-stage development and our continued investment in resources to execute our clinical programs.

As of June 30, 2015 and 2014, our cumulative operating losses have a potential tax benefit of US$69.9 million and US$57.0 million at local tax rates, respectively, which may be available for use once we are in a taxable profit position. These losses were incurred in different jurisdictions and can only be offset against profits earned in the relevant jurisdiction. Further, in order to use these tax losses it is necessary to satisfy certain tests and, as a result, we cannot assure you that the tax losses will be available to offset profits if and when we earn them.

Comparison of Our Results for the Year Ended June 30, 2014 with the Year Ended June 30, 2013

The following table summarizes our results of operations for the years ended June 30, 2014 and 2013, together with the changes in those items in dollars and as a percentage:

	For the Year Ended June 30,		Dollar	%
	US$ 2014	US$ 2013	Change	Change
	(in thousands except per share information)			
Consolidated Income Statement Data:				
Revenue:				
Commercialization revenue	15,004	18,685	(3,681)	(20%)
Interest Revenue	8,386	10,616	(2,230)	(21%)
Revenue from continuing operations	23,390	29,301	(5,911)	(20%)
Other Income:				
Research & development tax incentive	7,775	5,495	2,280	41%
Release of excess provision for services	2,344	—	2,344	NM
Other Income	10,119	5,495	4,624	84%
Total Revenue from continuing operations	33,509	34,796	(1,287)	(4%)
Expenses from continuing operations:				
Research & development	(50,929)	(48,513)	(2,416)	5%
Manufacturing commercialization	(25,434)	(23,082)	(2,352)	10%
Management and administration	(24,403)	(22,899)	(1,504)	7%
Finance costs	(4,078)	—	(4,078)	NM
Other expenses	(4,195)	(952)	(3,243)	341%
Total expenses from continuing operations	(109,039)	(95,446)	(13,593)	14%
Loss before income tax	(75,530)	(60,650)	(14,880)	25%
Income tax expense	(4)	(1,470)	1,466	(100%)
Loss attributable to the owners of Mesoblast Limited	(75,534)	(62,120)	(13,414)	22%
Losses per share from continuing operations attributable to the ordinary equity holders:				
Basic—losses per share(1)	(23.65)	(21.02)	(2.63)	13%
Diluted—losses per share(1)	(23.65)	(21.02)	(2.63)	13%

* NM = not meaningful

(1) Please refer to Note 20 to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for a calculation of basic and diluted losses per share.

Revenue from Continuing Operations

Revenues were US$23.4 million for the year ended June 30, 2014, compared to US$29.3 million for the year ended June 30, 2013, a decrease of US$5.9 million. The following table shows movement within revenue for the years ended June 30, 2014 and 2013, together with the changes in those items:

	For the Year Ended June 30,		Dollar	%
	US$ 2014	US$ 2013	Change	Change
	(in thousands)			
Revenue:				
Commercialization revenue	15,004	18,685	(3,681)	(20%)
Interest revenue	8,386	10,616	(2,230)	(21%)
Revenue from continuing operations	23,390	29,301	(5,911)	(20%)

The US$3.7 million decrease in commercialization revenue from FY2014 to FY2013 is based on the increase in the estimated development period of the upfront milestone payment from Cephalon, Inc. (a wholly-owned subsidiary of Teva), or Cephalon.

The US$2.2 million decrease in interest revenue is due to a decline in market interest rates over the period, and a move towards investing in shorter term deposits. We have also held a higher ratio of U.S. dollars to Australian dollars in FY2014 compared with FY2013, which decreased revenue as yields on U.S. dollar bank accounts were lower than yields on Australian dollar bank accounts.

Other Income

Other income was US$10.1 million for the year ended June 30, 2014, compared to US$5.5 million for the year ended June 30, 2013, an increase of US$4.6 million. The following table shows movement within other income for the years ended June 30, 2014 and 2013, together with the changes in those items:

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2014	US$ 2013		
	(in thousands)			
Other income:				
Research and development tax incentive scheme	7,775	5,495	2,280	41%
Release of excess provision of services	2,344	—	2,344	NM
Other income	10,119	5,495	4,624	84%

* NM = not meaningful

The US$2.3 million increase in research and development tax incentive, from US$5.5 million for the year ended June 30, 2013 to US$7.8 million for the year ended June 30, 2014, is due to additional research and development tax incentive income being received in FY2014 for qualifying research and development. The change in estimate was due to the fact that research and development tax incentives were estimated based on the level of qualifying research and development expenditures made during the year, which was higher than estimated.

Of the US$7.8 million research and development tax incentive recorded in other income for the year ended June 30, 2014, US$3.1 million relates to the incentive we received from the Australian Government for the year ended June 30, 2013 following a change in the original assessment. The change in estimate was due to the fact that research and development tax incentives were dependent on the level of qualifying research and development expenditure and as such we estimated amounts we deemed probable of collection in the year ended June 30, 2013 until we had better information related to the implementation of the relevant regulations with the assistance of our tax advisors.

Other income includes a one-time release of a provision regarding a dispute with a service provider that has been settled during FY2014. A provision of US$7.8 million had been taken up in 2010 and, on finalization of this matter in April 2014, the excess provision of US$2.3 million was recorded as other income.

Research and Development

	For the Year Ended June 30,		Dollar Change	% Change
	US$ 2014	US$ 2013		
	(in thousands)			
Research and Development expenses:				
Third party costs	19,114	21,040	(1,926)	(9%)
Product support costs	29,202	25,952	3,250	13%
Intellectual property support costs	2,613	1,521	1,092	72%
Total Research and Development expenses	50,929	48,513	2,416	5%

Research and development expenses were US$50.9 million for the year ended June 30, 2014, compared to US$48.5 million for the year ended June 30, 2013, an increase of US$2.4 million. The US$2.4 million net increase in Research and development expenses reflects the clinical development of the MSC assets acquired

from Osiris, the clinical advancement of our MPC programs as they transition to late-stage development, and our continued investment in resources to execute our late-stage clinical programs.

Third party costs have decreased by US$1.9 million in FY2014 compared with FY2013. Within this US$1.9 million decrease, third party costs for our Tier 1 products increased US$0.9 million. This increase for the year relates to the advancement of our Tier 1 products, and in particular the clinical programs for aGVHD and Crohn's Disease. These programs form part of our MSC-100-IV product portfolio acquired from Osiris. The third party costs for our Tier 1 product MPC-06-ID for the treatment of CLBP are consistent with the prior year, while Third party costs for the MPC-150-IM product for CHF are predominantly funded by our collaborators, Teva (advanced heart failure) and the NIH (end-stage heart failure with mechanical support).

Tier 2 and pipeline product third party costs in FY2014 decreased by US$2.8 million compared to FY2013. FY2013 included significant expenditures on site start-up and study initiation costs of our MPC-25-IC product candidate that were not repeated in FY2014. This was offset by increased expenditures on patient recruitment, which we undertook during FY2014 for our three programs within the MPC-300-IV product (which has since been elevated to Tier 1), in particular, the treatment of glucose control in patients with type 2 diabetes, diabetic nephropathy and rheumatoid arthritis.

Product support costs in FY2014 across all programs increased by US$3.3 million compared to FY2013, primarily reflecting the costs of the additional resources required to run the MSC-100-IV product late-stage programs acquired during FY2014, together with increased development costs for our MPC-06-ID product for chronic low back pain as we progress to Phase 3 clinical development.

Also included in Research and development expenses are intellectual property support costs, which have risen in FY2014 by US$1.1 million compared with FY2013. This reflects the purchase of MSC patent families from Osiris.

Manufacturing Commercialization

Manufacturing commercialization expenses were US$25.4 million for the year ended June 30, 2014, compared with US$23.1 million for the year ended June 30, 2013, an increase of US$2.3 million. US$3.3 million of the US$2.3 million net increase in Manufacturing commercialization expenses is attributable to production of MSC-100-IV. This also includes the purchase of MSC master cell banks from Lonza, as well as review and transfer of the MSC production process from the Lonza facility in the U.S. to the facility in Singapore.

In support of MSC production and our ongoing transition from research grade production to commercial production, the manufacturing department has grown in employees from six as of June 30, 2013 to twelve as of June 30, 2014, resulting in a US$1.2 million increase in salaries, share-based compensation and associated expenses for FY2014.

The increases mentioned above were offset by a decrease US$2.2 million on MPC-based manufacturing commercialization expenses. MPC-based manufacturing commercialization expenses consist of fees paid to our contract manufacturing organizations and laboratory supplies used in manufacturing commercialization of our MPC-based products. The decrease in these expenses was due to a reduction in clinical grade production for MPC-based products as we focused on establishing the manufacturing process for our MSC-based products.

We are also continuing to invest in bioreactor manufacturing processes. During FY2013, this development work was partially funded by a third party supplier in anticipation of future work being carried out with such supplier, hence our expenses were relatively low compared to the work performed. During FY2014 the funding from the third party supplier decreased and the arrangement will be completed by December 2014.

Management and Administration Expenses

Management and administration expenses were US$24.4 million for the year ended June 30, 2014, compared with US$22.9 million for the year ended June 30, 2013, an increase of US$1.5 million. The US$1.5 million increase in Management and administration expenses is primarily the result of additional costs incurred as a result of the increased head count of 116 staff at June 30, 2014 compared with 75 at June 30, 2013, such as rent costs due to increased office space, information technology support and general compliance.

Finance Costs

Finance costs of US$4.1 million in FY2014 represent the change in fair value of contingent consideration financial liabilities pertaining to the acquisition of the MSC assets of Osiris. These costs relate to the unwinding of the risk adjusted discount as the time period shortens between the valuation date and the potential settlement date of the contingent consideration. With respect to future milestone payments, contingent consideration will be payable in cash or shares at our discretion. With respect to commercialization, product royalties will be payable in cash which will be funded from the profits generated.

Other Expenses

Other expenses were US$4.2 million for the year ended June 30, 2014, compared with US$1.0 million for the year ended June 30, 2013, an increase of US$3.2 million. US$3.0 million of this increase is attributable to foreign exchange losses on revaluation of foreign currency denominated monetary assets and liabilities, mostly due to the appreciation of the Australian dollar relative to the U.S. dollar during the second half of FY2014. US$0.2 million of this increase is due to remeasurement of contingent consideration pertaining to the acquisition of assets from Osiris.

Net Operating Losses

As of June 30, 2014, our cumulative operating losses have a potential tax benefit of US$57.0 million at local tax rates which may be available for use, once we are in a taxable profit position. These losses were incurred in different jurisdictions and can only be offset against profits earned in the relevant jurisdiction. Further, in order to use these tax losses, it is necessary to satisfy certain tests and, as a result, we cannot assure you that the tax losses will be available to offset profits if and when we earn them.

Liquidity and Capital Resources

Sources of Liquidity

We have incurred losses from operations since our inception in 2004 and as of June 30, 2015, we had an accumulated deficit of US$264.0 million. We expect that the net proceeds from this offering and our existing cash and cash equivalents will be sufficient to fund our current operations through at least the next twelve months. We expect that our Research and development and Management and administration expenses will continue to increase and, as a result, we will need additional capital to fund our operations, which we may raise through a combination of equity offerings, debt financings, other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements.

From our inception through June 30, 2015, we have funded our operations principally with US$709.2 million in proceeds received from the sale of our ordinary shares including receipt of US$45.0 million upon signing of a stock placement agreement with Celgene Corporation during the financial year ended June 30, 2015. In April 2015, we entered into an agreement with Celgene Corporation, under which Celgene purchased 15.3 million of our ordinary shares for US$45 million and received a six-month right of first refusal with respect to our product candidates for the prevention and treatment of aGVHD, certain oncologic diseases, inflammatory bowel diseases, and organ transplant rejection. In addition to proceeds received from the sale of ordinary shares, we received US$130.0 million upon signing a development and commercialization agreement with Cephalon during the financial year ended June 30, 2011. As of June 30, 2015 we had cash and cash equivalents of US$110.7 million. Cash in excess of immediate requirements is invested primarily in money market funds in order to maintain liquidity and preserve capital.

Cash Flows

The following table sets forth the significant sources and uses of cash for the periods set forth below:

	For the Year Ended June 30,		
	US$ 2015	US$ 2014	US$ 2013
		(in thousands)	
Cash Flow Data:			
Net cash (outflows) in operating activities	(101,036)	(74,906)	(55,746)
Net cash (outflows) in investing activities	(5,064)	(38,202)	(4,801)
Net cash inflows in financing activities	45,852	2,196	174,415
Net (decrease)/increase in cash and cash equivalents	(60,248)	(110,912)	113,868

Cash Flows from Operating Activities. Net cash outflows for operating activities were US$101.0 million for the year ended June 30, 2015, compared with US$74.9 million for the year ended June 30, 2014, an increase of US$26.1 million. Outflows increased by US$9.4 million due to an increase in payments to suppliers and employees for the advancement of our clinical programs and manufacturing commercialization costs for our MPC and MSC programs, as they transition to late-stage development and our continued investment in associated resources. Outflows increased by US$4.1 million due to payments to Osiris related to fair value in excess of amounts originally recorded for contingent consideration subsequent to the business combination measurement period. Inflows decreased as interest receipts reduced by US$8.5 million due to a decline in cash reserves and because we held a higher proportion of cash reserves in US$ compared with A$ in the year ended June 30, 2015, when compared with the year ended June 30, 2014. Inflows decreased as receipts for the research and development tax incentive were US$4.3 million lower due to the receipts of both the FY2012 and FY2013 claims occurring in the year ended June 30, 2014, while only the FY2014 claim was received in the year ended June 30, 2015.

Inflows increased by US$2.0 million due the receipt of a US$2.0 million milestone payment. The milestone was received upon the filing for marketing approval in Japan for MSC product TEMCELL. Inflows decreased by US$2.3 million due to a tax refund of overpaid US taxes in the year ended June 30, 2014 which was not repeated. Other inflows increased by US$0.5 million due to increased rent income received and receipts from other operating revenue items which included receipts from insurance settlements.

Net cash outflows for operating activities were US$74.9 million for the year ended June 30, 2014, compared with US$55.7 million for the year ended June 30, 2013, an increase of US$19.2 million. Outflows increased by US$27.7 million due to an increase in payments to suppliers and employees for the advancement of our clinical programs and manufacturing commercialization costs for our MPC and MSC programs, as they transition to late-stage development and our continued investment in associated resources. Inflows increased by US$8.7 million due to the both the FY2012 and FY2013 research and development tax incentive claims being receipted in the year ended June 30, 2014, while there was no claim received in the year ended June 30, 2013. Receipts from other operating revenue items reduced inflows by US$0.2 million.

Cash Flows from Investing Activities. Net cash outflows for investing activities were US$5.1 million for the year ended June 30, 2015, compared with US$38.2 million for the year ended June 30, 2014, a decrease of US$33.1 million. US$31.3 million of the decrease was due to a reduction in payments for business combination. US$1.9 million decrease due to payments for deposits on commencement of leases in the year June 30, 2014 for our New York and Melbourne offices.

Net cash outflows for investing activities were US$38.2 million for the year ended June 30, 2014, compared with US$4.8 million for the year ended June 30, 2013, an increase of US$33.4 million. US$31.8 million of the increase was due to an increase in payments for business combinations. US$1.6 million of the increase was due to payments for deposits on commencement of leases in the year ended June 30, 2014 for our New York and Melbourne offices.

Cash Flows from Financing Activities. Net cash inflows for financing activities were US$45.9 million for the year ended June 30, 2015, compared with US$2.2 million for the year ended June 30, 2014, an increase of US$43.7 million. Celgene Corporation, a global biopharmaceutical company engaged in the development and commercialization of innovative therapies for the treatment of cancer and immune-inflammatory related diseases, bought Mesoblast stock for US$45.0 million in a private placement. This increase was offset by a US$0.9 million decrease in receipts from the exercise of the employee share options. US$0.4 million decrease was due to an increase in transaction costs arising on share issues.

Net cash inflows for financing activities were US$2.2 million for the year ended June 30, 2014, compared with US$174.4 million for the year ended June 30, 2013, a decrease of US$172.2 million. US$169.4 million of the decrease relates to the placement of shares in the year ended June 30, 2013. Mesoblast made a share placement of 26,970,979 shares to institutional and sophisticated investors in March 2013 at a price of A$6.30. Net of transaction costs this placement raised US$169.4 million. Additionally receipts from the exercise of the employee share options increase of US$2.8 million in the year ended June 30, 2014.

Operating Capital Requirements

To date, we have not generated any revenues from our product sales. We do not know when, or if, we will generate any revenue from our product sales. We do not expect to generate significant revenue from product sales unless and until we obtain regulatory approval of and commercialize one or more of our cell-based product candidates. We anticipate that we will continue to incur losses for the foreseeable future, and we expect the losses to increase as we continue the development of, and seek regulatory approvals for, our cell-based product candidates, and begin to commercialize any approved products either directly ourselves or through a collaborator or partner. We are subject to all of the risks incident in the development of new cell-based products, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business. Upon the completion of this offering, we expect to incur additional costs associated with operating as a U.S. public company. We anticipate that we will need substantial additional funding in connection with our continuing operations.

We expect that our Research and development and Management and administration expenses will continue to increase and, as a result, we will need additional capital to fund our operations, which we may raise through a combination of equity offerings, debt financings, other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements.

Additional capital may not be available on reasonable terms, if at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates. If we raise additional funds through the issuance of additional debt or equity securities, it could result in dilution to our existing shareholders, increased fixed payment obligations and the existence of securities with rights that may be senior to those of our ordinary shares. If we incur indebtedness, we could become subject to covenants that would restrict our operations and potentially impair our competitiveness, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. Any of these events could significantly harm our business, financial condition and prospects.

Contractual Obligations and Commitments

Lease Commitments: Group as Lessee

We lease various offices under non-cancellable operating leases expiring within 1 to 6 years. The leases have varying terms, escalation clauses and renewal rights. On renewal, the terms of the leases are renegotiated. Excess office space is sub-let to a third party also under a non-cancellable operating lease.

(US$ in thousands)	Total	Within one year	Later than one year but no later than three years	Later than three years but no later than five years	Later than five years
Operating leases	14,116	2,592	7,448	4,076	—
Total Commitments	14,116	2,592	7,448	4,076	—

Lease commitments include amounts in AUD and Singapore dollars which have been translated to USD as of June 30, 2015 using foreign exchange rates published by the Reserve Bank of Australia.

Sub-Lease Commitments: Group as Lessor

Future minimum lease payments expected to be received in relation to a non-cancellable sub-lease of operating leases are set out below:

(US$ in thousands)	Total	Within one year	Later than one year but no later than three years	Later than three years but no later than five years	Later than five years
Operating sub-lease	712	161	483	67	—
Total commitments	712	161	483	67	—

Sub-lease commitment includes amounts in AUD which have been translated to USD as of June 30, 2015 foreign using exchange rate published by the Reserve Bank of Australia.

In addition to the obligations in the table above, as of June 30, 2015 we also had the following significant contractual obligations described below.

Contingent Liabilities

We will be required to make a milestone payment to Central Adelaide Local Health Network Incorporated, or CALHNI, of US$0.25 million on completion of each Phase 3 (human) clinical trial and US$0.35 million on each FDA marketing approval for products in the orthopedic field. We will pay CALHNI a commercial arm's length royalty based on net sales by us of licensed products in the orthopedic field each quarter.

We may also be required to pay consideration to CALHNI upon successful completion of subsequent clinical milestones in fields other than orthopedic. These payments are not included in the table above due to the uncertainty of their timing.

We have entered into a number of agreements with other third parties pertaining to intellectual property. Contingent liabilities may arise in the future if certain events or developments occur in relation to these agreements. As of June 30, 2015 we have assessed these contingent liabilities to be remote.

Capital Commitments

We did not have any commitments for future capital expenditure outstanding as of June 30, 2015.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, other than operating leases as mentioned above, as defined under SEC rules.

Certain Differences Between IFRS and GAAP

IFRS differs from GAAP in certain respects. Management has not assessed the materiality of differences between IFRS and GAAP. Our significant accounting policies are described in Note 21 to our consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

Quantitative and Qualitative Disclosure About Market Risk

The following sections provide quantitative information on our exposure to interest rate risk, share price risk, and foreign currency exchange risk. We make use of sensitivity analyses which are inherently limited in estimating actual losses in fair value that can occur from changes in market conditions.

Interest Rate Risk

We are not exposed to typical interest rate risk, which is the impact of interest rates on the cost of servicing and repaying debt. Our exposure to interest rate arises through movements in regards to interest income we earn on our deposits. The interest income derived from these balances can fluctuate due to interest rate changes. This interest rate risk is managed by spreading the maturity date of our deposits across various periods. We ensure that sufficient funds are available, in at-call accounts, to meet our cash flow requirements.

Foreign Currency Exchange Risk

We have certain clinical, regulatory and manufacturing activities which are being conducted internationally. Our primary currency exposure is the clinical trial activities which are occurring in the United States of America and manufacturing activities occurring in Singapore. As a result of these activities, we have foreign currency amounts owing primarily in U.S. dollars and Singapore dollars, as well as some smaller amounts in various other currencies. These foreign currency balances give rise to a currency risk, which is the risk of the exchange rate moving, in either direction, and the impact it may have on our financial performance.

We manage the currency risk by evaluating the trend of the relevant foreign currency rates, or FX rates, to the Australian dollar and making decisions as to the levels to hold in each currency by assessing our future activities which will likely be incurred in those currencies. We engage professional advice when considering forward foreign exchange contracts.

As of June 30, 2015, we held 64% of our cash in U.S. dollars, and 36% in Australian dollars. We have entered these financial derivative contracts to take advantage of enhanced interest rates yields available on Australian dollar deposit when compared to U.S. dollar deposits. We sell U.S. dollars and buy Australian dollars from the bank at a pre-agreed FX rate and agree to then sell those Australian dollars and buy U.S. dollars from the bank on maturity also at a pre-agreed rate. As these FX rates are known at the outset, there is no currency risk.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which we have prepared in accordance with IFRS. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in our consolidated financial statements appearing elsewhere in this prospectus, we believe that the following accounting policies are the most critical for fully understanding and evaluating our financial condition and results of operations.

Revenue Recognition

Revenues comprise the fair value of the consideration received or receivable.

Commercialization Revenue

Development and commercialization revenue generally includes non-refundable up-front license and collaboration fees; milestone payments, the receipt of which is dependent upon the achievement of certain clinical, regulatory or commercial milestones; as well as royalties on product sales of licensed products, if and when such product sales occur; and revenue from the supply of products.

Where such arrangements can be divided into separately identifiable components (each component constituting a separate earnings process), the arrangement consideration is allocated to the different components based on their relative fair values and recognized over the respective performance period in accordance with IAS 18 *Revenue*. Where the components of the arrangement cannot be divided into separate units, the individual deliverables are combined as a single unit of accounting and the total arrangement consideration is recognized over the estimated collaboration period. Such analysis requires considerable estimates and judgments to be made by us, including the relative fair values of the various elements included in such agreements and the estimated length of the respective performance periods.

Amounts received prior to satisfying the revenue recognition criteria are recorded as deferred revenue in our consolidated balance sheets. Amounts expected to be recognized as revenue within the 12 months following the balance sheet date are classified as deferred revenue, within current liabilities. Amounts not expected to be recognized as revenue within the 12 months following the balance sheet date are classified as deferred revenue, within non-current liabilities.

Cephalon Arrangement

In December 2010, we entered into a development and commercialization agreement, or the DCA, with Cephalon, Inc., now a wholly-owned subsidiary of Teva, which allows for Teva to obtain world-wide rights to commercialize specific products based on our proprietary adult stem cell technology platform. As part of the DCA, we received US$130 million as a non-refundable up-front payment.

Further payments of up to US$1.7 billion may be received on achievement of certain regulatory milestones with respect to each product Teva may choose to commercialize. The milestones are based on approvals of the product for treatment in various territories. We would also be entitled to receive future royalty payments for supply of commercialized product as a percentage of net sales. No such payments have been received.

We analyzed the arrangement to determine whether the components which include a license, participation in a joint steering committee, a development program, and manufacturing and supply services, can be separated or must be treated as a single transaction in assessing revenue recognition criteria.

As our obligations in relation to the joint steering committee and the development program are substantive and cannot be readily separated from the initial license transfer, we have not accounted for the license as a separate component. As management cannot readily estimate the costs required to complete the development program, due to significant uncertainties relating to success of the development program, revenue has been recognized on a straight line basis over the estimated development period of MPC-150-IM. If we were to shorten or lengthen the development period then we would be required to change the amount of revenue we recognize.

For the years ended June 30, 2015, 2014 and 2013 we recognized US$15.0 million, US$15.0 million and US$18.7 million of revenue, respectively, being the amortization of the initial payment over the estimated development program term. No revenue has been recognized for any future development milestones or royalties specified in the agreement as we cannot reliably estimate whether we would become entitled to such payments. We changed our estimate for the development period in the year ended June 30, 2013 following the approval of the program protocol and associated program timelines by the Joint Steering Committee.

JCR Arrangement

In October 2013, we acquired all of Osiris' culture-expanded, MSC-based assets. These assets included assumption of a collaboration agreement with JCR, a research and development oriented pharmaceutical company in Japan. Revenue recognized under this model is limited to the amount of cash received or for which we are entitled, as JCR has the right to terminate the agreement at any time.

Under the JCR Agreement, JCR is responsible for all development and manufacturing costs including sales and marketing expenses. Under the JCR Agreement, JCR has the right to develop our MSCs in two fields for the Japanese market: exclusive in conjunction with the treatment of hematological malignancies by the use of HSCs derived from peripheral blood, cord blood or bone marrow, or the First JCR Field; and non-exclusive for developing assays that use liver cells for non-clinical drug screening and evaluation, or the Second JCR Field. With respect to the First JCR Field, we are entitled to payments when JCR reaches certain development and commercial milestones and to escalating double-digit royalties. These royalties are subject to possible renegotiation downward in the event of competition from non-infringing products in Japan. With respect to the Second JCR Field, we are entitled to a double digit profit share. Royalty revenue is recognized upon the sale of the related products provided we have no remaining performance obligations under the arrangement.

For the year ended June 30, 2015, we recognized US$2.0 million commercial milestone revenue upon our partner, JCR, filing for marketing approval of its MSC-based product TEMCELL in Japan, which is a substantive milestone. We have no further performance obligations in relation to this revenue. No milestone revenue was recognized during FY2014 and FY2013.

Government Grant Revenue

Revenue from government grants is recognized in the consolidated income statement on a systematic basis over the periods in which the entity recognizes as expense the related costs for which the grants are intended to compensate in accordance with IAS 20 *Accounting for Government Grants and Disclosure of Government Assistance*.

The Australian Government replaced the research and development tax concession with the research and development tax incentive from July 1, 2011. The provisions provide refundable or non-refundable tax offsets.

The research and development tax incentive applies to expenditure incurred and the use of depreciating assets in an income year commencing on or after July 1, 2011. A refundable tax offset is available to eligible companies with an annual aggregate turnover of less than A$20 million. Eligible companies can receive a refundable tax offset for a percentage of their research and development spending. Up to June 30, 2013 the rate of the refundable tax offset was 45%, after that date the rate is 43.5%.

Our research and development activities are eligible under an Australian government tax incentive for eligible expenditure from July 1, 2011. Management has assessed these activities and expenditure to determine which are likely to be eligible under the incentive scheme. At each period end, management estimates and recognizes the refundable tax offset available to us based on available information at the time.

The receivable for reimbursable amounts that have not been collected is reflected in trade and other receivables on our consolidated balance sheets.

Business Combinations

We record business combinations in accordance with IFRS 3 *Business Combinations*.

IFRS 3 *Business Combinations* requires that the acquisition of business be accounted for under the acquisition method of accounting. The definition of a business in IFRS 3 *Business Combinations* is: a business consists of inputs and processes applied to those inputs that have the ability to create outputs.

The acquisition method of accounting is used to account for all business combinations, regardless of whether equity instruments or other assets are acquired. The consideration transferred for the acquisition of a business comprises the fair values of the assets transferred, the liabilities incurred and the equity interests issued by us. The consideration transferred also includes the fair value of any asset or liability resulting from a contingent consideration arrangement. Acquisition-related costs are expensed as incurred. Identifiable assets

acquired and liabilities and contingent liabilities assumed in a business combination are, with limited exceptions, measured initially at their fair values at the acquisition date.

The excess of the consideration transferred over the fair value of the net identifiable assets acquired is recorded as goodwill. If those amounts were to be less than the fair value of the net identifiable assets acquired and the measurement of all amounts has been reviewed, the difference would be recognized directly in the consolidated income statement as a bargain purchase.

Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value as at the date of exchange. The discount rate is determined based on required rates of returns of comparable companies (having regards to their stage of development, their size and number of projects) and the indicative rates of return required by suppliers of venture capital for investments with similar technical and commercial risks.

In October 2013 we acquired the MSC business of Osiris. In accordance with the guidance in IFRS 3 *Business Combinations* management determined that, although no equity interests were acquired, the asset purchased in this acquisition did constitute a business under the definition.

In accordance with IFRS 3 *Business Combinations* the acquisition method of accounting was used to account for the business combination. An independent valuation expert provided the fair value of the consideration paid and assets transferred, the liabilities incurred and the equity interests issued by us.

The purchase agreement also included a component of contingent consideration which was made up of certain pre-determined milestone and royalties. At acquisition this contingent consideration was recognized as a financial liability at its fair value which was provided by an independent valuation expert. See Notes 5 and 12 of our consolidated financial statements and the related notes thereto included elsewhere in this prospectus for more information regarding the contingent consideration. This financial liability is subsequently remeasured to fair value with changes in fair value recognized in the consolidated income statement.

We recognized goodwill on acquisition which was the excess of the consideration transferred over the fair value of the net identifiable assets acquired.

An independent valuation expert calculated all valuations on the basis of fair value less costs to sell by using the income approach.

Goodwill

We have recognized goodwill as a result of two separate acquisitions. Goodwill of US$118.4 million was recognized on acquisition of Angioblast Systems Inc. in 2010 and US$13.9 million was recognized on the acquisition of assets from Osiris in 2013. In the year ended June 30, 2015, there was a US$2.1 million out of period adjustment to goodwill on finalization of the MSC business combination of Osiris. In all cases the goodwill recognized represented excess in the purchase price over the net identifiable assets and in-process research and development acquired in the transaction. We have a single operating unit and all goodwill has been allocated to that unit.

The goodwill resulting from these acquisitions is tested for impairment in accordance with IAS 36 *Impairment of Assets* which requires testing be performed at any time during an annual period, provided the test is performed at the same time every year. We test for impairment annually on May 31. Additionally, assets must be tested for impairment if there is an indication that an asset may be impaired. The recoverable amounts of our assets and cash-generating units have been determined based on fair value less costs to sell calculations, which require the use of certain assumptions. See Note 6 of our consolidated financial statements and the related note thereto included elsewhere in this prospectus for more information regarding the assumptions used in determining the fair value less costs to sell.

In-Process Research and Development

IFRS requires that acquired in-process research and development be measured at fair value and carried as an indefinite life intangible asset subject to impairment reviews. We have recognized in-process research and

development as a result of two separate acquisitions. In-process research and development of US$387.0 million was recognized on the acquisition of Angioblast Systems Inc. in 2010 and US$126.7 million was recognized on the acquisition of assets from Osiris in 2013.

All in-process research and development recognized on our balance sheet is a result of a business acquisition and is considered to be an indefinite life intangible asset on the basis that it is incomplete and cannot be used in its current form. Indefinite life intangible assets are not amortized but rather are tested for impairment annually at May 31 of each year in accordance with IAS 36 *Impairment of Assets* which requires testing annually, or whenever there is an indication that an asset may be impaired.

In-process research and development will continue to be tested for impairment until the related research and development efforts are either completed or abandoned. Upon completion of the related research and development efforts, management determines the remaining useful life of the intangible assets and amortizes them accordingly. In order for management to determine the remaining useful life of the asset, management would consider the expected flow of future economic benefits to the entity with reference to the product life cycle, competitive landscape, obsolescence, market demand, any remaining patent useful life and various other relevant factors.

In the case of abandonment, the related research and development efforts are considered impaired and the asset is fully expensed.

Impairment of Assets

Goodwill and intangible assets that have an indefinite useful life are not subject to amortization and are tested annually for impairment or more frequently if events or changes in circumstances indicate that they might be impaired. Other assets are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

We impair assets in accordance with IAS 36 *Impairment of Assets*. IAS 36 *Impairment of Assets* outlines that an impairment loss must be recognized if an asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and its value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash inflows which are largely independent of the cash inflows from other assets or groups of assets (cash-generating units). The recoverable amounts of our assets and cash-generating units have been determined based on fair value less costs to sell calculations, which require the use of certain assumptions. See Note 6 of our consolidated financial statements and the related note thereto included elsewhere in this prospectus for more information regarding the assumptions used in determining the fair value less costs to sell.

Management maintains internal valuations of each asset annually (or more frequently should indicators of impairment be identified) and valuations from independent experts are requested periodically, within every three year period. The internal valuation are continually reviewed by management and consideration is given as to whether there are indicators of impairment which would warrant impairment testing.

The impairment testing completed at May 31, 2015 showed the recoverable amount of our cash generating unit, including goodwill and in-process research and development, exceeded the carrying amounts, and therefore no impairment was identified.

Investments and Other Financial Assets

We invest our cash in term deposits and other similar low risk products. We classify investments as either a cash equivalent or a short-term investment in accordance with IAS 7 *Statement of Cash Flows*. For a deposit to be classified as a cash equivalent it should be held for the purpose of meeting short-term cash commitments rather than for investment or other purposes and IAS 7 outlines that:

- It must be readily convertible to a known amount of cash (qualifies when it has a short maturity, of say, 3 months or less from the date of acquisition);
- It must be subject to insignificant risk of change of value.

We review the terms and conditions of each deposit to determine if it is a cash equivalent in accordance with IAS 7.

Deposits with maturity dates between 3 months and 12 months are classified as short term investments. The carrying amount of short-term investments approximates fair value due to the short maturities of these instruments, and there are no unrealized gains or losses associated with these instruments. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset and liability.

Fair Value Measurements

For financial instruments that are measured on the balance sheet at fair value, IFRS 7 requires disclosure of the fair value measurements by level of the following fair value measurement hierarchy:

- **Level 1**: The fair value of financial instruments traded in active markets (such as publicly traded derivatives, and trading and available-for-sale securities) is based on quoted market prices at the end of the reporting period. The quoted market price used for financial assets held by us is the current bid price. These instruments are included in level 1.
- **Level 2**: The fair value of financial instruments that are not traded in an active market (for example, foreign exchange contracts) is determined using valuation techniques which maximize the use of observable market data and rely as little as possible on entity-specific estimates. If all significant inputs required to fair value an instrument are observable, the instrument is included in level 2.
- **Level 3**: If one or more of the significant inputs is not based on observable market data, the instrument is included in level 3. This is the case for provisions (contingent consideration).

Our level 3 asset consists of an investment in unlisted equity securities in biotechnology sector. Level 3 assets were 100% of total assets measured at fair value as of June 30, 2015. There were no level 3 assets as of June 30, 2014 and 2013.

Our level 3 liabilities consist of a contingent consideration provision related to the acquisition of Osiris' MSC business. Level 3 liabilities were 100% and 99.6% of total liabilities measured at fair value as of June 30, 2015 and 2014. There were no level 3 liabilities as of June 30, 2013. There were no transfers between any of the levels for recurring fair value measurements during the year.

The following table summarizes the assumptions, techniques, and significant unobservable inputs used in level 3 fair value measurements:

Description	Fair value as of June 30, 2015	Fair value as of June 30, 2014	Valuation technique	Unobservable Inputs*	Range of inputs (weighted average) for the year ended June 30, 2015	Range of inputs (weighted average) for the year ended June 30, 2014	Relationship of unobservable inputs to fair value
Contingent consideration provision	91,890	81,247	Discounted cash flows	Risk adjusted discount rate	11%-13% (12.5%)	11%-13% (12.5%)	2015: A change in the discount rate by 0.5% would increase/decrease the fair value by 3% 2014: A change in the discount rate by 0.5% would increase/decrease the fair value by 3%
				Expected unit revenues	n/a	n/a	2015: A 10% increase in the price assumptions adopted would increase the fair value by 8% 2014: A 10% increase in the price assumptions adopted would increase the fair value by 5%

* There were no significant inter-relationships between unobservable inputs that materially affect fair values.

Net Deferred Tax Assets

We record deferred tax assets if, based upon the available evidence, it is more likely than not that we will recognize some or all of the deferred tax assets. We have had a history of net losses since inception, and as a result, we have not recognized our net deferred tax assets due to our plans to consolidate certain intellectual property assets and therefore taxable temporary differences will not be available to offset the deferred tax assets. If circumstances change and we determine that we will be able to realize some or all of these deferred tax assets in the future, we will record an adjustment for the recognition of deferred tax assets.

Currently, our pipeline is at various stages of development and our intangible intellectual property assets are held by a number of our entities across multiple jurisdictions. We are seeking to consolidate certain intellectual property assets and are currently contemplating the steps to achieve this objective.

As required under IFRS, we do not recognize the impact of any potential future corporate re-organizations to remeasure our deferred tax liabilities until they are in place. Our deferred tax liabilities are measured at the relevant rate in the relevant jurisdiction at each balance date. Any potential future changes arising from a re-organization could be material to our future operations.

Accrued Research and Development and Manufacturing Commercialization Expenses

As part of the process of preparing our financial statements, we are required to estimate our accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with our personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of the actual cost. The majority of our service providers invoice us monthly in arrears for services

performed or when contractual milestones are met. We make estimates of our accrued expenses as of each balance sheet date in our financial statements based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued expenses include fees paid to:

- CROs in connection with clinical studies;
- investigative sites in connection with clinical studies;
- vendors in connection with preclinical development activities; and
- vendors related to product manufacturing, process development and distribution of clinical supplies.

We base our expenses related to clinical studies on our estimates of the services received and efforts expended pursuant to contracts with multiple CROs that conduct and manage clinical studies on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. There may be instances in which payments made to our vendors will exceed the level of services provided and result in a prepayment of the clinical expense. Payments under some of these contracts depend on factors such as the successful enrollment of subjects and the completion of clinical study milestones. In accruing service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrual or prepaid accordingly. To date, there have been no material differences from our estimates to the amount actually incurred.

BUSINESS

Overview

We are a global leader in the field of regenerative medicine. We have leveraged our proprietary technology platform, which is based on specialized cells known as mesenchymal lineage adult stem cells, or MLCs, to establish what we believe to be the most advanced regenerative medicine product portfolio in the industry. We have what we believe to be an extensive safety profile for our product candidates, with over 1,340 patients treated. Based on outcomes in Phase 2 trials across multiple indications, we now have five MLC product candidates that are in active Phase 3 trials or are Phase 3-ready.

In September 2015, our licensee JCR Pharmaceuticals Co. Ltd, or JCR, received full approval for the first "allogeneic" cell-based product in Japan, meaning a product containing cells from a single donor expanded and used in many unrelated patients. We believe we are well positioned to have the first industrially-manufactured allogeneic stem cell product approved in the United States.

Our deep understanding of the fundamental mechanisms of action of MLCs and our proprietary manufacturing processes have been leveraged to create a portfolio of independent, non-interchangeable MLC-derived product candidates. Each of our product candidates has its own distinct technical characteristics, target indications, individual reimbursement strategy, separate commercialization potential, and unique partnering opportunities.

We have focused on significantly advanced stages of diseases where specific subpopulations of patients have high unmet medical needs, providing accelerated development pathway opportunities and the potential for attractive pricing. Our goal is to first gain broad acceptance of any approved products as treatment options for these severely ill patients, then expand the applications of such products over time to broader patient populations.

We expect a number of important clinical and commercial milestone events to occur over the next 12 to 24 months for our most advanced product candidates, including:

- By the end of 2015, we expect to announce 6 month results from the first cohort in the Phase 2 trial of our product candidate for RA. Results from the second cohort are expected during the first half of 2016. We believe positive results from this trial would support progression towards Phase 3 and potential partnering discussions.
- During the first quarter 2016, we expect that our licensee JCR will launch TEMCELL® Hs. Inj. (JR-031), or TEMCELL, its MSC-based product for aGVHD in Japan. Under our agreement with JCR, we are entitled to receive milestone payments on product regulatory approvals, escalating double-digit royalties in the twenties and other payments at pre-defined thresholds of cumulative net sales.
- During the first quarter 2016, we expect to announce the outcome of the first interim analysis of safety and efficacy from the Phase 3 trial of our product candidate for Class II/III CHF. This product candidate is partnered on a global basis with Teva Pharmaceutical Industries, Ltd., or Teva.
- During the second half 2016, we expect to announce top-line results of a Phase 3 trial for our MLC product candidate for aGVHD. Interim analysis may support BLA filing by the end of 2016.
- During the third quarter 2016, we expect to complete enrollment of the first Phase 3 trial for our product candidate for CLBP. We expect the second Phase 3 trial to be fully enrolled by the first quarter 2017.

Proprietary Platform and Scalable Manufacturing

MLCs are present around blood vessels in all tissues, where they can respond to signals associated with tissue damage. This response includes the secretion of a variety of biomolecules that affect various reparative and immunomodulatory mechanisms responsible for maintaining tissue health. Understanding the mechanisms of action by which these biomolecules induce tissue restoration has broad applicability in treating diseases for which current standards of care are inadequate or for which no approved therapy currently exists. Our lead MLC product candidates have been developed through proprietary manufacturing processes to optimize expression of certain

biomolecules. The expressed biomolecules are those implicated in the mechanisms of action by which the MLC product candidate is thought to modify outcomes for the target condition for which it is being developed.

MLCs have two additional distinct characteristics that, when combined with our proprietary manufacturing processes, enable allogeneic or "off-the-shelf" use of our product candidates. First, we have developed proprietary methods that enable the isolation of MLCs from healthy donors and their large-scale expansion while maintaining their ability to produce key biomolecules associated with tissue health and repair. In addition, unlike other categories of stem cells, MLCs are "immune privileged" in that they do not express specific cell surface co-stimulatory molecules that would otherwise initiate an immune response when administered to unrelated patients. These characteristics allow us to produce large quantities of off-the-shelf MLC-based product candidates from a few donors for use in thousands of unrelated recipients, with consistent, well-defined therapeutic properties, batch-release criteria and established potency assays, all with accompanying manufacturing and distribution economies-of-scale.

We have developed multiple distinct product candidates derived from our MLC platform by applying an approach that we refer to as "Product-by-Process" in which we modify the manufacturing, formulation, dosage and route of administration for each product to optimize an MLC-derived product for a specific target condition. For example, products for treating systemic inflammatory or immunologic conditions are delivered intravenously, while products for tissue repair and regeneration are delivered locally, and differences in formulation give rise to distinct disc repair and spinal fusion product candidates. This allows for the development of independent, non-interchangeable products, each of which has distinct pricing and strategic partnering opportunities. We have also established what we believe to be a leading intellectual property position covering compositions, uses and methods of manufacturing of MLCs, which we believe provides us with substantial competitive advantages for the commercial development of regenerative medicine products.

Lead Product Candidates

We have prioritized our portfolio into tiers based on stage of development, largest market opportunities and anticipated time to market. Tier 1 programs represent our lead programs where we focus the majority of our time and resources. Tier 2 programs are also in development and may advance to Tier 1 depending on the merit of newly generated data, market opportunity or partnering options. Additionally, we have a significant pipeline of earlier-stage programs.

We expect a number of important clinical milestone events to occur over the next 12 to 24 months for our most advanced product candidates in both Tier 1 and Tier 2. By the end of 2015, we expect to report data from our ongoing Phase 2 trial in patients with biologic-refractory rheumatoid arthritis. In 2016, we expect to report outcomes from two Phase 3 trials and a Phase 2 trial.

For each product candidate, we evaluate whether to pursue development and commercialization on our own or with a strategic collaborator who can provide the appropriate resources and expertise to maximize each opportunity. Teva is our global collaborator for the late-stage clinical development and commercialization of certain cardiovascular, central nervous system and bone marrow transplant fields, and is currently enrolling a Phase 3 program in patients with advanced CHF. JCR is our collaborator in Japan for the treatment of aGVHD.

A summary of our lead programs, their corresponding stage of development and our strategic collaboration status, are captured in the tables below.

Tier 1 Programs

Product Candidates	Programs	Collaborator/ Geographic Rights	Stage of Development	Anticipated Milestones
MPC-150-IM	Class II/III CHF	Teva (Global)	• Phase 2 trial completed • Phase 3 trial enrollment ongoing • Enrollment of the patients for first interim analysis completed	• Outcome of first Phase 3 interim analysis for safety and efficacy in first quarter 2016 • Second interim analysis for futility, resizing and possible overwhelming efficacy in first quarter 2017 • Phase 3 trial complete in 2018 with potential to accelerate based on second interim analysis
	End-stage CHF	Teva (Global)	• Phase 2a trial completed • Phase 2b trial ongoing, funded by the NIH	• Phase 2b trial results expected in middle 2017
MPC-06-ID	CLBP	Proprietary (Global)	• Phase 2 trial completed • Phase 3 trial enrollment ongoing	• Complete enrollment of first Phase 3 trial in third quarter 2016 • Complete enrollment of second Phase 3 trial in first quarter of 2017 • Design being finalized for interim analysis in second half 2016
TEMCELL/MLC product candidate	Acute GVHD	JCR (Japan)	• JCR received full approval in September 2015	• Launch in Japan in first quarter 2016
	Acute steroid-refractory GVHD	Proprietary (Global, ex-Japan)	• Enrollment ongoing for U.S. pediatric Phase 3 trial	• U.S. Phase 3 pediatric trial top-line results in second half 2016 • Interim analysis may support BLA filing by end 2016
MPC-300-IV	Rheumatoid arthritis (biologic refractory)	Proprietary (Global)	• Phase 2 trial ongoing • First cohort enrollment completed • Second cohort enrolling	• 6 month data for first cohort by the end of 2015 • Second cohort results in first half 2016
	Diabetic kidney disease	Proprietary (Global)	• Phase 2 trial ongoing, enrollment completed	• Phase 2b/3 trial design ongoing

All time periods refer to calendar year periods.

Tier 2 Programs

Product Candidates	Programs	Collaborator/ Geographic Rights	Stage of Development/ Anticipated Milestones
MPC-25-IC	Acute cardiac ischemia	Teva (Global)	• Phase 2 trial ongoing
MPC-25-Osteo	Spinal fusion	Proprietary (Global)	• Phase 2 trial completed • Phase 3 trial design ongoing
MPC-CBE	Bone marrow transplantation (BMT)	Teva (Global)	• Phase 3 trial ongoing
MSC-100-IV	Crohn's disease (biologic refractory)	Proprietary (Global)	• Phase 3 trial ongoing

All time periods refer to calendar year periods.
* For product registration purposes, Phase 3 programs may require more than one trial.

Our Competitive Strengths

We have a leadership position in regenerative medicine due to our MLC platform, broad portfolio of product candidates targeting attractive markets, stem cell manufacturing capabilities, intellectual property portfolio, key strategic alliances and experienced management team.

Disruptive technology platform

Our proprietary MLC platform allows us to develop product candidates that have the potential to significantly improve the treatment of a number of serious and debilitating conditions due to the MLCs' ability to secrete biomolecules that induce tissue repair through multiple diverse mechanisms. Regenerative medicines aim to restore affected cells and tissues, and therefore may have broad applicability in treating diseases where current standards of care are often inadequate or where no approved therapy currently exists.

Our MLC platform has two additional technical advantages that are not shared by other cell types. The first is that we use proprietary processes to isolate MLCs from a few healthy donors and significantly expand them in culture, while maintaining their innate therapeutic characteristics. The second is that MLCs do not materially activate the immune system. Together, these two unique characteristics enable MLCs to be used as allogeneic, off-the-shelf therapies that can be developed from a small number of donors and administered to many patients, with batch-to-batch consistency, commercial scale capabilities and predictable therapeutic properties, all without any material immune responses in patients.

Broad portfolio of distinct and advanced product candidates

While all of our product candidates are based on our MLC platform, our Product-by-Process approach allows for the development of distinct, non-interchangeable products, each of which has distinct pricing and partnering opportunities. Using this approach, we have created a broad portfolio of product candidates that target a wide range of diseases, including five Phase 3 or Phase 3-ready product candidates, and potentially the first industrially manufactured culture-expanded allogeneic stem cell product to be approved in the United States. We have an extensive patient safety data file on our MLC-based product candidates.

Target markets with high unmet needs where technology shows greatest prospects

Our strategy is to develop product candidates that target significantly advanced stages of certain diseases where specific sub-populations have high unmet needs. These include advanced CHF, moderate to severe CLBP, aGVHD, and rheumatoid arthritis and diabetic kidney disease. As a result, if our clinical trials prove successful at demonstrating improved safety and efficacy against existing treatment options, we believe we may benefit from accelerated development pathways, potentially attractive pricing and reimbursement, and enhanced likelihood of entering into commercial partnerships. As any of our products obtain market approval and acceptance in the medical community, we believe we will have the opportunity to expand over time into broader patient populations with less severe stages of a targeted disease.

Scalable manufacturing capabilities

We have developed proprietary manufacturing processes that we expect will enable production at commercial scale with reproducibility and batch-to-batch consistency, supported by robust quality assurance procedures and lot release assays. Our manufacturing processes have met stringent criteria required by international regulatory agencies, including the FDA. We have built an internal team with significant experience in the production of cell therapy products and the commercial production of approved biopharmaceuticals.

We have established a strategic alliance with Lonza, a global leader in biopharmaceutical manufacturing, which includes exclusive access to their large-scale biologics production facility in Singapore, a major international hub for biopharmaceutical development and manufacturing, for cell therapy products. Our exclusive long-term access to this Singapore facility allows us to utilize our proprietary manufacturing processes in a controlled environment.

Intellectual property leadership

We have a large patent portfolio of issued and pending claims covering compositions of matter and methods of use for MLCs, irrespective of the tissue source for donated MLCs (e.g., our patents cover MLCs from bone marrow, adipose, placenta, umbilical cord and dental pulp tissues). Our patents also cover elements of our manufacturing processes. As of August 31, 2015, we had 72 patent families, including 661 patents or patent applications. We maintain trade secrets covering a significant body of know-how and proprietary information related to our core product candidates and technologies. As a result, we believe we have a leading intellectual property position in the MLC space, that provides us with substantial competitive advantages for the commercial development of regenerative medicine products.

Strategic alliances

We have established strategic relationships with several industry leaders to support the development and potential commercialization of our product candidates. Our collaborators provide clinical development, manufacturing and commercial capabilities as well as financial support to enhance the potential for the success of our product candidates, which mitigates our capital obligations and commercial risk.

Teva is our global collaborator for the late-stage clinical development and commercialization of certain cardiovascular, central nervous system and bone marrow transplant fields, and is currently enrolling a Phase 3 program in patients with advanced CHF. JCR is our collaborator in Japan for the treatment of aGVHD. Lonza is our collaborator for cell therapy manufacturing. Our relationship with the Singapore Economic Development Board, or EDB, provides us with various financial incentives associated with our activities in Singapore.

Experienced management team

Our CEO, Dr. Silviu Itescu, is a pioneer in the study and clinical development of stem cell therapeutics, and a globally recognized leader in the field of regenerative medicine. Our broader management team, through prior employment at leading drug development companies and regulatory agencies, has substantial experience in the clinical development, manufacturing, regulatory management and commercialization of biopharmaceuticals.

Our Strategic Alliances

We have established strategic alliances to provide clinical development, manufacturing and commercial capabilities, which mitigates our capital obligations and commercial risk. Key terms of these strategic alliances are summarized below. We will evaluate and, where appropriate, enter into additional collaborations with biopharmaceutical or other organizations to further advance our product candidate portfolio and to gain access to scientific expertise or funding support.

Teva/Cephalon, Inc.—Cardiovascular, Neurological and Bone Marrow Collaboration

In December 2010, we entered into a development and commercialization agreement, or DCA, with Cephalon, Inc., now a wholly-owned subsidiary of Teva. We refer in this discussion to Cephalon and Teva together as Teva. Under the DCA, which will continue in existence for so long as Teva or its affiliates or sublicensees are developing any product covered by the DCA, we and Teva are collaborating to develop certain MPC-based product candidates, including MPC-150-IM for CHF. The collaboration is limited to certain specified indications within cardiovascular, central nervous system, and BMT. Teva has the right and responsibility to fund late-stage clinical development (Phase 2b and Phase 3 clinical trials) and to commercialize certain of our product candidates for specified indications throughout the world. The most advanced of the programs is our CHF program, and Teva is currently enrolling a Phase 3 trial in this indication.

In conjunction with signing the DCA, Teva has paid us US$130 million and purchased A$197 million of our ordinary shares. Under the DCA, Teva has agreed to pay us up to an additional US$1.7 billion in milestone payments for certain of our product candidates that are approved in specified indications in certain major jurisdictions. In addition, Teva agreed to pay us a transfer price for our supply of commercial quantities of certain of our product candidates equal to a percentage of its global annual net sales, commencing in the twenties and up to 40%, based on achieving over US$2 billion in annual global net sales.

In September 2013, we and Teva amended the DCA. As a result of the amendment, the ongoing Phase 3 clinical trial for MPC-150-IM in CHF, which Teva is conducting and funding, now includes two interim analyses of efficacy and/or safety. Subject to the trial reaching specified enrollment rates, Teva is obligated to conduct and fund the Phase 3 clinical trial for CHF at least until the first interim analysis is completed.

All activities under the DCA are overseen by a joint steering committee with an equal number of representatives appointed by us and Teva. Generally, we are responsible for development costs for product candidates through Phase 2a clinical studies, except that Teva is obligated to reimburse us for a certain portion of our costs related to the development of such product candidates for the central nervous system field. Generally, Teva is responsible for development costs beyond Phase 2a clinical studies. We are the exclusive supplier for each of our product candidates for development and commercialization activities for the specified indications. Teva is responsible for obtaining and maintaining regulatory approvals as well as for all commercialization costs.

During the term of the DCA, we and Teva agreed to mutual non-compete obligations with respect to stem cell therapeutic products in the specified indications. However, any entities that we may acquire or may acquire us may continue any existing competing activities subject to certain requirements to keep those activities separate from our collaboration with Teva, and in such circumstances, Teva would have the right to take over sole control of the development of our covered product candidates for the specified indications under the DCA.

With the exception of the cardiovascular field, in which Teva committed to conduct and fund the Phase 3 clinical trial in CHF at least through the first interim analysis, Teva has the right to terminate the DCA upon advance notice to us. We have the right to terminate the DCA in the event Teva materially breaches the DCA and has not cured within certain time periods, except that once Teva has received regulatory approval for any covered product in any of the U.S., the EU or Asia, we may not terminate with respect to that same geographic location.

JCR Pharmaceuticals Co., Ltd—Hematological Malignancies and Hepatocytes Collaboration in Japan

In October 2013, we acquired all of Osiris Therapeutics, Inc.'s business and assets related to culture expanded MSCs. These assets included assumption of a collaboration agreement with JCR, or the JCR Agreement, which will continue in existence until the later of 15 years from the first commercial sale of any product covered by the agreement and expiration of the last Osiris patent covering any such product. JCR is a research and development oriented pharmaceutical company in Japan. Under the JCR Agreement, JCR has the right to develop our MSCs in two fields for the Japanese market: exclusive in conjunction with the treatment of hematological malignancies by the use of HSCs derived from peripheral blood, cord blood or bone marrow, or the First JCR Field; and non-exclusive for developing assays that use liver cells for non-clinical drug screening and evaluation, or the Second JCR Field. Under the JCR Agreement, JCR obtained rights in Japan to our MSCs, for the treatment of aGVHD. JCR also has a right of first negotiation to obtain rights to commercialize MSC-based products for additional orphan designations in Japan. We retain all rights to those products outside of Japan.

The Japanese Pharmaceuticals and Medical Devices Agency granted TEMCELL orphan drug status in December 2013. JCR received full approval in September 2015. TEMCELL is the first allogeneic cell-based product to be approved in Japan. During the first quarter 2016, we expect that JCR will launch TEMCELL in Japan.

Under the JCR Agreement, JCR is responsible for all development and manufacturing costs including sales and marketing expenses. With respect to the First JCR Field, we are entitled to payments of up to US$6.5 million in the aggregate when JCR reaches certain development and commercial milestones and to escalating double-digit royalties in the twenties. These royalties are subject to possible renegotiation downward in the event of competition from non-infringing products in Japan. With respect to the Second JCR Field, we are entitled to a double digit profit share in the fifties.

Intellectual property is licensed both ways under the JCR Agreement, with JCR receiving exclusive and non-exclusive rights as described above from us and granting us non-exclusive, royalty-free rights (excluding in the First JCR Field and Second JCR Field in Japan) under the intellectual property arising out of JCR's development or commercialization of MSC-based products licensed in Japan.

JCR has the right to terminate the JCR Agreement for any reason, and we have a limited right to terminate the JCR Agreement, including a right to terminate in the event of an uncured material breach by JCR. In the event of a termination of the JCR Agreement other than for our breach, JCR must provide us with its owned product registrations and technical data related to MSC-based products licensed in Japan and all licenses of our intellectual property rights will revert to us.

Lonza—Manufacturing Collaboration

In September 2011, we entered into a manufacturing services agreement, or MSA, with Lonza Walkersville, Inc. and Lonza Bioscience Singapore Pte. Ltd., collectively referred to as Lonza, a global leader in biopharmaceutical manufacturing. Under the MSA, we pay Lonza on a fee for service basis to provide us with manufacturing process development capabilities for our product candidates, including formulation development, establishment and maintenance of master cell banks, records preparation, process validation, manufacturing and other services.

Under the MSA, as long as we continue to meet certain annual spending commitments with respect to activities in Singapore, Lonza agreed not to supply third parties with allogeneic cell therapy products from Singapore, including from its existing biologics production facility, subject to certain exceptions. During the term of the MSA, we will have access to this facility, which allows us to utilize our proprietary manufacturing processes in this controlled environment.

We have agreed to order a certain percentage of our clinical requirements and commercial requirements from Lonza. Lonza has agreed not to manufacture or supply commercially biosimilar versions of any of our product candidates to any third party, during the term of the MSA, subject to our meeting certain thresholds for sales of our products.

We can trigger a process requiring Lonza to construct a purpose-built manufacturing facility exclusively for our product candidates. In return if we exercise this option, we will purchase agreed quantities of our product candidates from this facility. We also have a right to buy out this manufacturing facility at a pre-agreed price two years after the facility receives regulatory approval.

The MSA will expire on the later of December 31, 2020 or the three year anniversary of the date of the first commercial sale of product supplied under the MSA, unless it is sooner terminated. We have the option of extending the MSA for an additional 10 years, followed by the option to extend for successive three-year periods subject to Lonza's reasonable consent. We may terminate the MSA with two years prior written notice, and Lonza may terminate with five years prior written notice. The MSA may also terminate for other reasons, including if the manufacture or development of a product is suspended or abandoned due to the results of clinical trials or guidance from a regulatory authority. In the event we request that Lonza construct the manufacturing facility described above, neither we nor Lonza may terminate before the third anniversary of the date the facility receives regulatory approval to manufacture our product candidates, except in certain limited circumstances. Upon expiration or termination of the MSA, we have the right to require Lonza to transfer certain technologies and lease the Singapore facility or the portion of such facility where our product candidates are manufactured, subject to good faith negotiations.

We currently rely, and expect to continue to rely, on Lonza for the manufacture of our product candidates for preclinical and clinical testing, as well as for commercial manufacture of our product candidates if marketing approval is obtained.

Singapore Economic Development Board (EDB)—Singapore Operations

In May 2014, the Economic Development Board of Singapore, or EDB, granted us certain financial incentives tied to revenues generated by our Singapore operations, among other things. These incentives include two separate 15-year periods (each broken into five-year increments) of potential incentives, one related primarily to non-manufacturing activities and the other related to manufacturing activities. We will be eligible for these incentives if we meet certain investment or activity thresholds in Singapore, including employment levels, amounts of business or manufacturing related expenses, and the performance of various services including

business development, planning, manufacturing, intellectual property management, marketing and distribution. For example, in order to obtain full financial benefits from the EDB for our manufacturing-related incentives, we must manufacture at least 50% of the global volume of our first three commercial products in Singapore (subject to certain exceptions), and we would be required to construct and operate a manufacturing facility in Singapore, and hire and maintain a specified number of professionals (including supply chain personnel) in connection with the operation of that facility. The activities under our MSA with Lonza could be used to fulfill all or part of the requirements to obtain the EDB financial incentives.

Cell-Based Therapeutics

We are a global leader in the development of regenerative medicine product candidates due in large part to the therapeutic and commercial advantages offered by our MLC-based platform.

Introduction to Mesenchymal Lineage Stem Cells

Stem cells can be characterized as either embryonic or adult in origin. Embryonic stem cells, or ESCs, are pluripotent, and differentiate during embryonic and fetal development into all specialized tissues in the body, including nerve, muscle, skin, blood, and bone. ESCs and the related induced-pluripotent stem cells have two characteristics that complicate use as therapeutic products. First, ESCs have a relatively high proliferative capacity that can give rise to certain cancers called teratomas. Secondly, ESCs can activate the immune system of treated patients and may require co-administration of immunosuppressive agents. In contrast, we develop products based on MLCs, which are adult stem cells that play an important role in tissue repair and organ maintenance throughout life, have less proliferative potential, are more restricted in their differentiation properties, and to date have not been shown to cause teratomas. The number and quality of MLCs progressively decline with advancing age, which we believe may be associated with the development of degenerative conditions. As such, we obtain our MLCs from young, healthy adults.

MLCs are present around blood vessels in all tissues where they can respond effectively to various signals associated with tissue damage. This response includes the secretion by MLCs of a variety of biomolecules, including growth factors, cytokines, chemokines and immunomodulatory biomolecules, that affect various reparative mechanisms associated with the maintenance of tissue health. The coordinated beneficial effects of these biomolecules on damaged tissues include:

- Blood vessel function and regeneration. MLCs play a central role in the maintenance, repair and regeneration of blood vessels. This is achieved in large part through the secretion of growth factors which act on neighboring endothelial cells to promote blood vessel regeneration and function.
- Tissue repair. MLCs represent a key cellular constituent of stem cell niches in multiple adult tissues such as the bone marrow, heart and brain where they facilitate endogenous tissue repair by multiple mechanisms, including promotion of survival and function of mature cells within a given tissue or of the endogenous stem cells with which they are associated in niches within these tissues. This is achieved by secretion of a broad repertoire of bioactive molecules, including chemokines, growth factors and enzymes, that promote survival and proliferation together with remodeling of the extracellular matrix of the tissue.
- Immunomodulation. Located at the interface between the circulation and the tissues, MLCs play a physiological role in modulating immune responses via their ability to alter the effector functions of extravasated white blood cells by up-regulation of a battery of secreted immunomodulatory proteins.

Our MLC technology platform enables development of a broad product range based on distinct cell types derived from or that are the progeny of the earliest precursors of the mesenchymal cell lineage in adult tissues. Mesenchymal precursor cells, or MPCs, constitute the earliest known cell type in the MLC lineage in vivo. MPCs can be isolated using monoclonal antibodies and culture-expanded using methods that enable efficient expansion without differentiation. Mesenchymal stem cells, or MSCs, are defined biologically in culture following density gradient separation from other tissue cell types and following culture by plastic adherence.

MSCs presumably represent culture-expanded in vitro progeny of the undifferentiated MPCs present in vivo. The different functional characteristics of each cell type enables distinct product development for different targeted diseases.

Mechanisms of Action Underpin Product Development

The unique combination of properties based on secretion of diverse biomolecules underscores the importance of MLCs as a platform for the development of cell based regenerative medicine therapies.

Our lead MLC product candidates have been developed through proprietary manufacturing processes optimized to express certain biomolecules implicated in the mechanisms of action by which the MLC product candidate is thought to modify outcomes for the target condition for which it is being developed. Examples of these biomolecules as they relate to characterization of our products are as follows:

- *MPC-150-IM:* this product candidate is designed for local delivery to damaged heart muscle and to allow our MLCs to secrete biomolecules involved in enhanced myocardial neovascularization, cardiomyocyte survival, cardiomyocyte precursor migration and proliferation, and reduction in fibrosis and myocardial scar. These biomolecules include stromal cell-derived factor 1, or SDF-1, Angiopoietin-1, vascular endothelial growth factor, or VEGF, hepatocyte growth factor, or HGF, and matrix metalloproteinases, or MMPs.
- *MPC-06-ID:* this product candidate is designed for local delivery to degenerating intervertebral discs and to allow our MLCs to secrete biomolecules involved in enhanced migration and proliferation of intervertebral disc progenitor cells, and in enhanced proteoglycan and collagen synthesis in the disc nucleus and annulus. These biomolecules include Angiopoietin-1 and transforming growth factor beta, or TGF-beta.
- *MPC-300-IV, TEMCELL and MSC-100-IV:* these product candidates have been designed for intravenous delivery in systemic conditions of excessive inflammation, and to allow our MLCs to secrete biomolecules involved in immunomodulation, particularly prostaglandin E2, or PGE2, and indoleamine 2, 3-dioxygenase, or IDO, in response to activation by pro-inflammatory cytokines such as tumor necrosis factor-alpha, or TNF-alpha, and interleukin-1, or IL-1. Release of immunomodulatory biomolecules by these MLC products acts to polarize pro-inflammatory M1 monocytes to anti-inflammatory M2 monocytes, and to switch activated T helper cells 1 and 17, or Th1 and Th17, respectively, to Th2 cells and FOXP3 T regulatory cells.
- *MPC-25-Osteo:* This product is designed to allow our MLCs secrete biomolecules involved in osteoblast migration and bone vasculature, both features of new bone formation; these biomolecules include various bone morphogenic proteins, or BMPs, and VEGF.

While our MLCs play very active roles in tissue repair, our products have what we believe to be a uniquely extensive safety profile. We have an extensive patient safety data file on our MLC-based product candidates as a result of having now treated approximately 1,340 patients.

Allogeneic, Off-the-Shelf, Commercially Scalable Products

Our proprietary MLC-based products have two distinct technical properties that enable their use for allogeneic purposes, meaning cells from one donor can be expanded to treat many unrelated recipients.

- Expansion. We have developed proprietary methods that enable the large scale expansion of our MLCs while maintaining their ability to produce key biomolecules associated with tissue health and repair. This allows us to produce a cellular product with consistent, well-defined therapeutic properties, batch release criteria and established potency assays, all with accompanying manufacturing economies of scale.
- Immune Privilege. Unlike other categories of stem cells or mature cell lineages, MLCs are immune privileged, in that they do not express specific cell surface co-stimulatory molecules that would otherwise initiate an immune response when administered to unrelated patients.

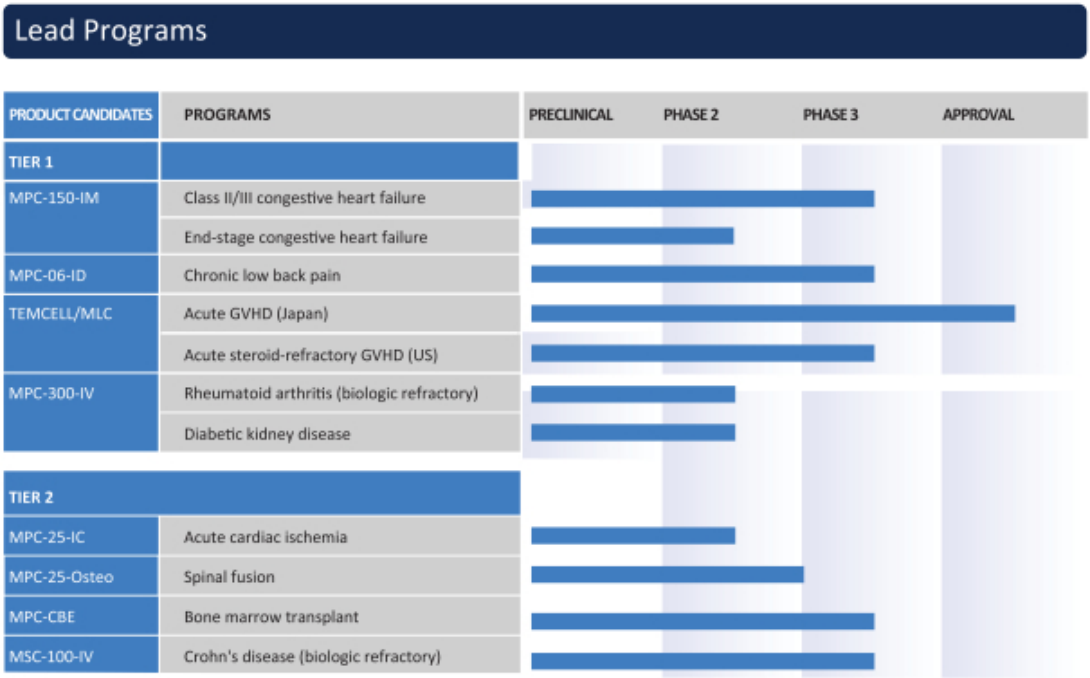
In contrast, autologous stem cell products, which are produced from the patient's own stem cells, require individual product regulatory testing and do not benefit from manufacturing economies of scale. Moreover, autologous therapies are vulnerable to significant patient-to-patient variability, resulting in a corresponding variability in the results derived from clinical use.

Despite these weaknesses, many autologous products have been advanced into clinical trials by academic and industry developers, who may understand the therapeutic potential of MLCs, but who may not have the requisite intellectual property or manufacturing capabilities and infrastructure needed to facilitate cost-effective allogeneic product development.

Our Product Candidates

We have prioritized our therapeutic programs into tiers based on stage of development, largest market opportunities and nearest term revenue potential. Tier 1 programs represent our lead programs where we focus the majority of our time and resources. Tier 2 programs are continually evaluated, and we may advance these programs into Tier 1 depending on merit of clinical data generated, market opportunity or collaboration opportunity. These product candidates will be discussed in detail below. We are developing additional product candidates that have the potential to advance into Tier 1 and Tier 2 going forward.

We expect a number of important clinical milestone events to occur over the next 12 to 24 months for our most advanced product candidates in both Tier 1 and Tier 2. By the end of 2015, we expect to report data from our ongoing Phase 2 trial in RA. In 2016, we expect to report outcomes from two Phase 3 trials and a Phase 2 trial.



This chart is figurative and does not purport to show individual trial progress within a clinical program. For product registration purposes, Phase 3 programs may require more than one trial.

Tier 1 Programs

MPC-150-IM for the Treatment of Class II, III and End-Stage Congestive Heart Failure (CHF)

Overview

MPC-150-IM for the treatment of chronic CHF is our product candidate partnered with Teva. MPC-150-IM consists of 150 million MPCs administered by direct cardiac injection in patients suffering from chronic heart failure and progressive loss of heart function following damage to the heart muscle caused by a heart attack, coronary artery disease, hypertension, genetic factors, or other causes.

MPCs release a range of factors when triggered by specific receptor-ligand interactions within damaged tissue. Based on preclinical data, it is believed that the factors released from the MPCs induce functional cardiac recovery by simultaneous activation of multiple pathways, including induction of endogenous vascular network formation, reduction in harmful inflammation, reduction in cardiac scarring and fibrosis, and regeneration of heart muscle through activation of tissue precursors.

Our unit dose of 150 million cells was based on multiple preclinical large animal studies in ischemic and non-ischemic heart failure models which identified an optimal cell dose above 110 million, and a Phase 2 dose-ranging study in patients with heart failure of either ischemic or non-ischemic etiology which identified the 150 million dose as the most effective for both improvement in left ventricular volumes and remodeling and in prevention of heart failure related hospitalizations or death.

Market Opportunity

CHF is a chronic condition characterized by an enlarged heart and insufficient blood flow to the organs and extremities of the body. The condition progresses over time and can be caused by many factors that put an excess demand on the heart muscle, including high blood pressure, incompetent valves, infections of the heart muscle or valves, or congenital heart problems.

The American Heart Association reports 5.7 million adults in the United States with diagnosed CHF, or about 2% of the adult population, with 870,000 new cases diagnosed each year. CHF prevalence is expected to grow 46% by 2030, affecting more than 8 million Americans. The estimated annualized cost for CHF care in the United States is approximately $32 billion, and is projected to grow to approximately $77 billion by 2030.

CHF is classified in relation to the severity of the symptoms experienced by the patient. The most commonly used classification system for severity of heart failure, established by the New York Heart Association, or NYHA, is as follows:

- Class I (mild): patients experience no or very mild symptoms with ordinary physical activity
- Class II (mild): patients experience fatigue and shortness of breath during moderate physical activity
- Class III (moderate): patients experience shortness of breath during even light physical activity
- Class IV or end-stage (severe): patients are exhausted even at rest

Risk for recurrent heart failure-related hospitalizations and death increases progressively with increase in left ventricular volumes, reduction in ejection fraction, and progression in NYHA grade. About 30% of all heart failure patients have a low ejection fraction (<35-40%), NYHA Class II, III or IV CHF, and are at considerable risk of repeated hospitalizations and death despite maximal drug therapy.

Patients with advanced or Class III/IV disease continue to represent the greatest unmet medical need despite recent advances in new therapeutic agents for heart failure. In contemporary studies, Class III/IV heart failure patients, characterized by heart failure hospitalizations in the previous 12 months, severely impaired baseline cardiac function, increased systolic and diastolic volumes, and elevated B-type natriuretic peptide, or BNP, levels, have been reported to have an incidence of death or cardiovascular hospitalization approaching 50% over a median period of 16.6 months.

The definitive method of treating end-stage disease currently is a heart transplant or implanting a mechanical assist device. Although there are many patients awaiting a transplant, due to limited supply there were only 2,378 transplants performed in the United States in 2012.

Results from our Phase 2 trials in patients with Class II/III CHF and in patients with end-stage CHF requiring assisted mechanical assist devices have shown that our MPCs appear to have the greatest efficacy in patients with the most advanced forms of CHF. We believe that targeting advanced heart failure patients with the most unmet need can provide us with the shortest Phase 3 program, the fastest time to market, and the opportunity for the most attractive pricing.

Current Status and Anticipated Milestones

Teva is conducting a double-blinded, 1:1 randomized, placebo-controlled Phase 3 trial to evaluate a single dose of MPC-150-IM in advanced CHF patients across multiple sites in North America. The enrollment criteria for this trial, including a prior heart failure hospitalization within the previous 9 months and high levels of NT-proBNP, a protein used in diagnosis and screening of CHF, are expected to result in enrichment for patients with substantial left ventricular contractile abnormality, advanced heart failure and higher risk of recurrent hospitalizations and death. The ongoing Phase 3 trial continues to recruit well.

Teva recently completed discussions with the FDA, during which important changes to the Phase 3 program for advanced CHF using MPC-150-IM were agreed to. In particular, the total number of subjects to be recruited for the ongoing Phase 3 trial, using a time to first event analysis of HF-MACE as the primary endpoint, will be reduced from approximately 1,730 to 1,165. Additionally, a second interim analysis will be performed in the ongoing Phase 3 trial when 50% of the HF-MACE have occurred. We expect this second interim analysis for futility, resizing and possible overwhelming efficacy to occur in the first quarter of 2017.

A confirmatory study is planned to be conducted in parallel in a similar patient population of approximately 500 subjects using recurrent HF-MACE as the primary endpoint. The use of recurrent HF-MACE as a primary endpoint in the confirmatory study is supported by a new analysis of the completed Phase 2 trial, where patients treated with MPC-150-IM had no HF-MACE over 36 months of follow-up, compared with 11 recurrent HF-MACE in the control group ($p<0.001$, log rank test). Based on our discussions with the FDA, we believe that positive clinical data from these two studies will be sufficient for product approval.

We have completed enrollment of the patients to be evaluated in the first interim analysis of the ongoing Phase 3 trial. This interim analysis will be conducted after these patients complete six months of follow-up and will include results for changes in left ventricular volumes and ejection fraction as surrogate parameters of heart failure. We expect the outcome of this first interim analysis in the first quarter of 2016. We believe that positive results from this interim analysis will reinforce and validate the Phase 3 trial design assumptions that we made based on our Phase 2 trial results. We expect that our Phase 3 trial of 1,165 patients will be complete in 2018, subject to a potential early stop based on overwhelming efficacy.

A Phase 2b trial in patients with end-stage advanced heart failure whose circulation is supported mechanically by a left ventricular assist device, or LVAD, has commenced enrollment and will be funded by the NIH. We expect that results from this trial will be available in mid-2017. This trial will be conducted by a multi-center team of researchers within the NIH-funded Cardiothoracic Surgical Trials Network, or CSTN, led by Icahn School of Medicine at Mount Sinai, New York. The same investigative group conducted an earlier pilot trial in MPCs for this patient population.

Program for Class II/III CHF

Completed Phase 2 Trial in NYHA Class II/III CHF Patients

Trial Design

The primary objective of the Phase 2 study was to evaluate the safety and tolerability of 3 increasing doses (25, 75, or 150 million cells) of MPCs in patients with heart failure due to left ventricular systolic dysfunction of either ischemic or non-ischemic etiology. The secondary objectives were to look at efficacy via multiple parameters, and to identify an optimal effective dose and the optimal target population for MPC treatment.

Patients with NYHA Class II or III heart failure who had a left ventricular ejection fraction, or LVEF, of less than 40% by baseline screening echocardiogram were recruited across multiple sites. All patients were between 20 and 80 years old, had either non-ischemic or ischemic cardiomyopathy that was not amenable to further percutaneous or surgical revascularization, and were on a prescribed regimen of maximally tolerated heart failure medications.

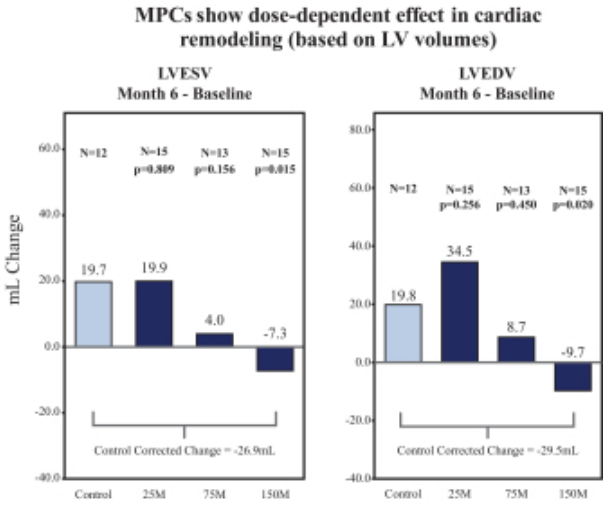
Patients were randomized to either an injection of 25, 75 or 150 million MPC by endomyocardial catheter or scripted mock injections (control group) in the catheterization laboratory. MPCs were administered into the left ventricle (approximately 15-20 injections of 0.2ml/injection) using the J&J Myostar™ injection catheter and NOGASTAR™ Mapping Catheter system that identifies viable/hibernating myocardium based on electrical voltage, theoretically making targeting of healthy but at risk tissue easier. We believe this catheter has the largest safety profile for this application and has been used in over 1,000 patients across multiple trials. Measurement of functional efficacy involved left ventricular end systolic volume, or LVESV, and left ventricular end diastolic volume, or LVEDV, measurements as well as left ventricular ejection fraction, or LVEF. An additional time-to-first event analysis of heart failure-related major adverse cardiac events, or HF-MACE, was performed. HF-MACE was defined as a composite of cardiac related death or resuscitated cardiac death, or non-fatal decompensated heart failure events.

Trial Results

Endomyocardial injections of MPCs in patients with chronic heart failure were feasible and safe. The incidence of adverse events was similar across all groups, and there was no clinically significant immune response in any patients who received MPCs.

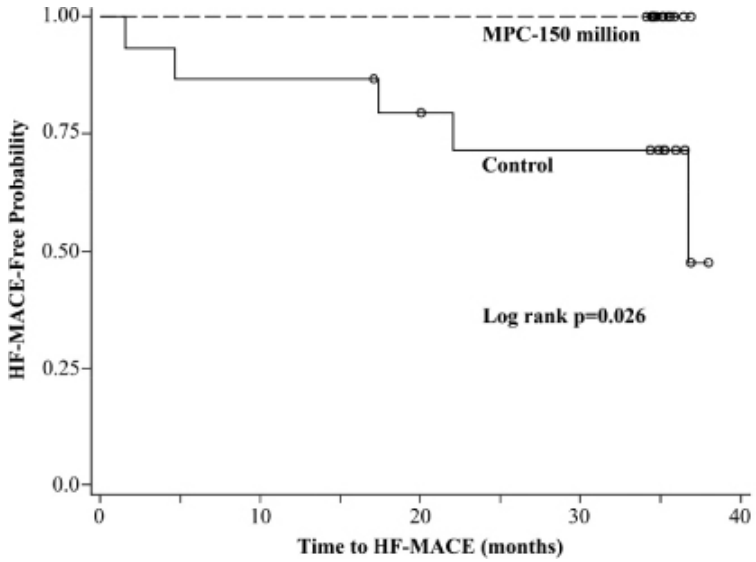
The 150 million cell dose showed the greatest effect on left ventricular remodeling and functional capacity and a threshold benefit for reducing HF-MACE long-term. More specifically:

- There was a dose-related effect on both LVESV and LVEDV, with the 150 million cell dose showing the greatest effect compared to controls for LV remodeling (LVESV and LVEDV both $p<0.02$) at month 6 post treatment and functional exercise capacity as measured by six minute walk test (6MTW: $p=0.062$) at month 12 post treatment. A p-value is a probability, ranging in value from 0 to 1, which indicates the likelihood that the results of a study are different between treatment and control groups. The lower the p-value, the harder it would be to see the results by chance alone. P-values below 0.05 are typically referred to as statistically significant.



- An independent blind adjudication of potential HF-MACE was conducted post-hoc. Over 36 months of follow up, the 150 million cell dose was associated with a significantly greater probability of remaining free of HF-MACE events compared to the control group (0% versus 33% HF-MACE by Kaplan-Meier, p=0.026 by log-rank). The 25 and 75 million doses were not statistically different than controls with respect to this measure. On the basis of these results, the optimal dose for therapeutic benefit was considered to be the 150 million MPC dose.

HF-MACE by Kaplan-Meier Curve-36 Months Post-Treatment



In order to identify the most appropriate target population for the 150 million MPC dose, we evaluated whether optimal responders to MPC therapy were in the groups with more or less advanced heart failure. A further post-hoc analysis was performed in a blinded manner stratifying controls or 150 million MPC treated patients into those with a baseline LVESV of either less than or greater than 100 ml as a surrogate for significant myocardial contractile abnormality and advanced heart failure. The 100 ml LVESV threshold was chosen because it falls more than 3 standard deviations above normal LVESV. In the Phase 2 trial, 60% of patients met this criterion. A further sensitivity analysis across every decile in baseline LVESV between 70 ml and 120ml confirmed the findings seen in the stratification using a LVESV greater than 100 ml.

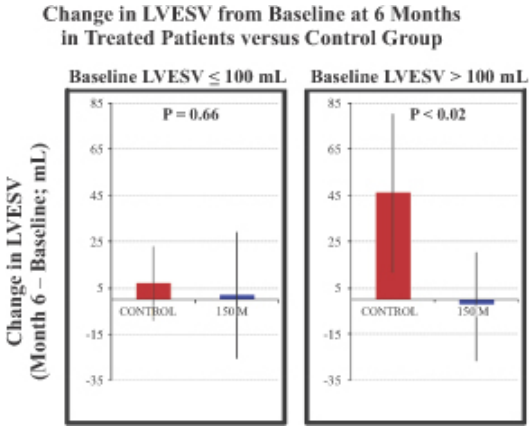
This analysis demonstrated that:

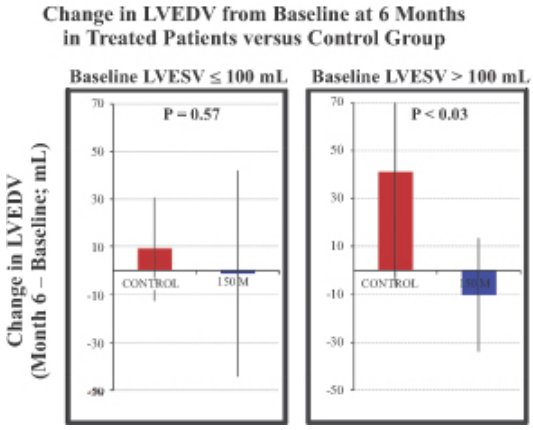
- the therapeutic benefit of the 150 million dose on parameters of LV remodeling were markedly amplified by focusing on the target population with substantial baseline LV contractile abnormality and advanced heart failure (LVESV greater than 100 ml).

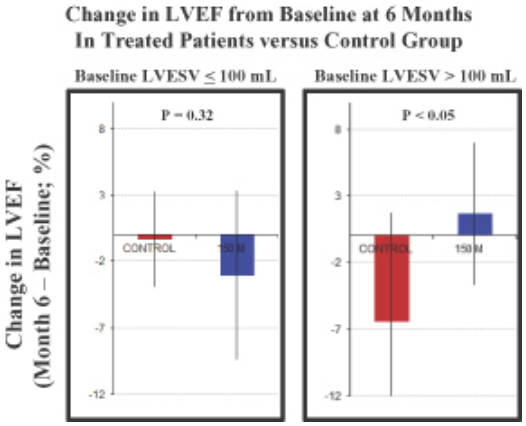
Comparison of All Subjects versus Subjects With LVESV > 100 mL

	Change (Entire Cohort) Baseline to Month 6			Change (LVESV > 100 mL Cohort) Baseline to Month 6			
	Control (n=15)	MPC-IM-150 (n=15)	Change Relative to Control	Control (n=7)	MPC-IM-150 (n=11)	Change Relative to Control	P-values
LVESV (mL)	**+20**	**-7**	**-27**	**+46**	**-8**	**-54**	**<0.02**
LVEDV (mL)	**+20**	**-10**	**-30**	**+41**	**-10**	**-51**	**<0.03**
LVEF (%)	**-2.3**	**+0.6**	**+2.9**	**-6.4**	**+1.7**	**+8.1**	**<0.05**

- control patients with advanced heart failure (baseline LVESV > 100 ml) were the fastest progressors over 6 months in terms of significant worsening in LVESV and LVEDV volumes, and loss of LVEF.
- over a 6 month follow-up period, the 150 million MPC dose had a substantial cardioprotective effect on LVESV (p<0.02), LVEDV (p<0.03) and LVEF (p<0.05) in Class II/III patients with substantial baseline LV contractile abnormality (i.e. those with baseline LVESV > 100 ml).

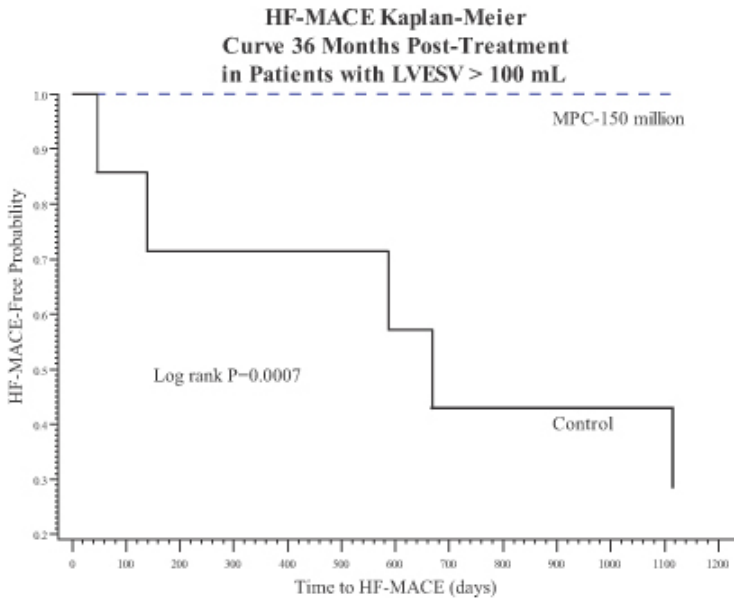






- all of the HF-MACE events over 36 months of follow-up occurred exclusively in the controls with advanced heart failure.
- the annualized HF-MACE rate in these fast progressors was 24%, compared with 11% in all of the controls in the Phase 2 trial.
- more specifically, among 18 Class II/III CHF patients with baseline LVESV > 100 ml, 5/7 (71%) placebo-treated versus 0/11 150 million MPC-treated experienced one or more HF-MACE events over 36 months (p=0.0007).

- therefore, the effect of the 150 million MPC dose on overall HF-MACE in the Phase 2 trials was markedly amplified in those patients with advanced heart failure and a high rate of progression and this may represent the optimal target patient population for MPC therapy.



Ongoing Phase 3 Clinical Trial

The Phase 3 trial is being conducted by our partner Teva and is actively enrolling in the United States. The clinical protocol was designed after consultation with both the FDA and the European Medicines Agency. The Phase 3 trial design is a double-blinded, 1:1 randomized, sham-procedure-controlled study evaluating a single dose of 150 million MPCs, delivered via endomyocardial injection catheter to the left ventricle, in NYHA Class II/III heart failure patients with an ejection fraction of less than 40%.

The primary efficacy endpoint of the trial is a time-to-first-event analysis of HF-MACE, defined as a composite of cardiac related death or resuscitated cardiac death, or non-fatal decompensated heart failure events. These non-fatal decompensated heart failure events require use of intravenous diuretics during an in-hospital stay or during an outpatient visit. Adjudication of HF-MACE will be performed by an independent, blinded clinical endpoint committee. The trial is an event-driven trial.

In order to enrich the trial for advanced heart failure patients, additional enrollment criteria for this trial are high NT-proBNP levels, and a heart failure-related hospitalization within the past nine months. The trial is enrolling according to plan, and baseline characteristics of initial enrolled patients have shown that they resemble the subset in the Phase 2 trial with substantial left ventricular contractile abnormality and advanced heart failure. While initially powered for an estimated annualized HF-MACE event rate of 20%, we expect that the annualized HF-MACE event rate in this enriched population is in fact likely to be closer to the 24% seen in our own Phase 2 trial and contemporary cohorts in other studies.

Teva recently completed discussions with the FDA, during which important changes to the Phase 3 program for advanced CHF using MPC-150-IM were agreed to. In particular, the total number of subjects to be recruited for the ongoing Phase 3 trial, using a time to first event analysis of HF-MACE as the primary endpoint, will be reduced from approximately 1,730 to 1,165. Additionally, a second interim analysis will be performed in the ongoing Phase 3 trial when 50% of the HF-MACE have occurred, which will include a test for superiority allowing for the possibility of stopping of the trial early based on overwhelming efficacy.

A confirmatory study is planned to be conducted in parallel in a similar patient population of approximately 500 subjects using recurrent HF-MACE as the primary endpoint. The use of recurrent HF-MACE as a primary endpoint in the confirmatory study is supported by a new analysis of the completed Phase 2 trial, where patients treated with MPC-150-IM had no HF-MACE over 36 months of follow-up, compared with 11 recurrent HF-MACE in the control group ($p<0.001$, log rank test). Based on our discussions with the FDA, we believe that positive clinical data from these two studies will be sufficient for product approval.

We have completed enrollment of the patients to be evaluated in the first interim analysis of MPC-150-IM for the treatment of Class II/III CHF. This interim analysis will be conducted after these patients complete six months of follow-up and will include results for left ventricular volumes and ejection fraction as surrogate parameters of heart failure.

If MPC-150-IM is successful in this difficult-to-treat population facing high risk of hospitalization or death, we should be well-positioned for potential product approval and a target population that remains underserved despite maximal standard of care. If our clinical trials prove successful at demonstrating improved safety and efficacy against existing treatment option, we believe this may also lead to attractive pricing and reimbursement.

Program for End-Stage CHF

Completed Pilot Phase 2a Trial in Patients With Advanced Heart Failure Requiring Mechanical Support

Trial Design

A multi-center, randomized, double-blind, sham-procedure controlled trial evaluated 30 patients 2:1 randomized to endomyocardial injection of 25 million MPCs or medium (control) during LVAD implantation for either bridge-to-transplant or as a destination therapy. The primary safety endpoint was incidence of infectious myocarditis, myocardial rupture, neoplasm, hypersensitivity reaction, and immune sensitization (90 days post-randomization). The key efficacy endpoints are functional status and ventricular function, while temporarily weaned from LVAD support (90 days post-randomization). Patients were followed until transplant or 12 months post-randomization, whichever came first. The two treatment groups were similar with respect to baseline characteristics. The mean age was 57.4 years (±13.6) and 83.3% were male. The mean LVEF was 18.1% (± 4.3), 36.7% had ischemic cardiomyopathy, and all patients were implanted with HeartMate II® LVADs (Thoratec Corp.), 66.7% of which were implanted for destination therapy indication.

Trial Results

The preliminary results of this trial were presented at the American Heart Association Scientific Sessions 2013 and published in *Circulation* in June 2014.

No patients developed a primary safety event at the trial's 90-day primary endpoint, nor during the 12-month follow-up period.

At the 90 day primary endpoint analysis of the trial, 50% of MPC treated patients were able to successfully tolerate weaning off of LVAD support for 30 minutes compared to 20% in the control group. At 90 days, there were three deaths (30%) in the control group and none in the MPC group. Over the 12 month follow-up period, eighty-five percent (85%) of MPC patients tolerated one or more temporary LVAD weans, compared to 40% of control patients.

Based on these results, the posterior probability that a single injection of the 25 million low-dose of MPCs increased the likelihood of successful weaning is 93%. The duration of temporary LVAD wean, for those who tolerated it, was greater in MPC than control patients at each time point.

This trial has to date demonstrated feasibility and safety, and suggested that a single low-dose MPC injection improved cardiac function and had an early benefit on survival. We hypothesize that a higher MPC dose may further enhance the ability to wean LVAD recipients off support, and may show a more prolonged survival benefit and which is the basis of the Phase 2b study discussed below.

Phase 2b Trial of MPC-150-IM in Patients With Advanced Heart Failure Requiring Mechanical Support

A 120-patient trial, to be conducted by the NIH-funded CSTN, will evaluate the effects of a single injection of MPC-150-IM into the hearts of patients with end-stage heart failure. This is a prospective, multi-center, double-blind, 2:1 randomized, single dose cohort, sham procedure controlled trial to evaluate the safety and efficacy of injecting a dose of 150 million MPCs into the native myocardium of LVAD recipients. Patients with advanced CHF, implanted with an FDA-approved LVAD as either bridge-to-transplant or destination therapy may be eligible to participate in the trial. All patients will be followed until 12 months post randomization.

The primary objectives of this trial are to evaluate the safety and efficacy of injecting 150 million MPCs into the native myocardium of LVAD recipients. The primary efficacy endpoint of this study is survival over six months, and the co-primary endpoint is functional status, while temporarily weaned from LVAD support, over the six months post randomization. Functional status is defined by the ability to tolerate wean from LVAD support to low flow for 30 minutes. Secondary endpoints will include physiological parameters (which include echocardiography assessment of cardiac function and remodeling) and neurocognitive assessments.

CSTN is currently completing submissions and interactions with the FDA and Health Canada. CSTN has initiated enrollment for the trial, and results are expected in mid-2017.

MPC-06-ID for the Treatment of Chronic Low Back Pain

Overview

MPC-06-ID is our proprietary Phase 3 product candidate for the treatment of CLBP caused by DDD. MPC-06-ID comprises a unit dose of 6 million MPCs by injection directly into a targeted damaged disc.

In CLBP, damage to the disc is the result of a combination of factors related to aging, genetics, and micro-injuries, which compromises the disc's capacity to act as a fluid-filled cushion between vertebrae and to provide anatomical stability. Damage to the disc also results in an inflammatory response with ingrowth of nerves that results in chronic pain. The combination of anatomic instability and nerve ingrowth results in CLBP and functional disability.

With respect to mechanisms of action in CLBP, extensive pre-clinical studies have established that MLCs have anti-inflammatory effects and secrete multiple paracrine factors that stimulate new proteoglycan and collagen synthesis by chondrocytes *in vitro* and by resident cells in the nucleus and annulus *in vivo*. These effects together offer the potential to strengthen the load bearing function of the disc by increasing its water content, improving disc anatomy, and improving disc stability, while also reducing inflammation and pain.

Market Opportunity

Over four million patients in the U.S. alone suffer from CLBP. After failure of conservative measures (medication, injections, physical therapy, etc.), there is no treatment that prevents progression of disc degeneration, reduces pain and improves function over a sustained period of 6 to 12 months. When disc degeneration has progressed to a point that pain and loss of function can no longer be managed by conservative means, major invasive surgery such as spinal fusion is the only remaining option.

All therapies for progressive, severe and debilitating pain due to degenerating intervertebral discs treat the symptoms of the disease, but are not disease-modifying and thus do not address the underlying cause of the disease. Surgical intervention is not always successful in addressing the patient's pain and functional deficit. Surgeons estimate that between 50% to 70% of patients ultimately fail back surgery, with failure defined as either not achieving at least a 50% reduction of symptoms within four months or experiencing new-onset pain and spasm. Total costs of low back pain are estimated to be between US$100 billion and US$200 billion annually with two thirds of attributed to patients' decreased wages and productivity.

As a result, we believe that the most significant unmet need and commercial opportunity in the treatment of CLBP is a therapy that has the ability to reverse, halt or slow the progression of the disease. MPC-06-ID is being developed to target the population of patients suffering from moderate to severe chronic low back pain due to moderately degenerated discs. The target patient population has exhausted conservative treatment options, may have failed epidural steroid injections to alleviate pain and has no treatment option other than invasive and costly surgical interventions.

Current Status and Anticipated Milestones

We originally filed an investigational new drug, or IND, application to begin a Phase 2 trial for CLBP in 2011. In September 2014, after an end of Phase 2 meeting with the FDA where full 12 month results were presented, we amended the IND and filed our Phase 3 clinical study protocol. This Phase 3 program was initiated in the fourth quarter 2014.

At the start of the first quarter 2015, we announced 24-month results from the Phase 2 trial of MPC-06-ID. These results demonstrated that the treatment benefit seen at 12 months largely persists for 24 months. We believe this evidence of sustained clinical treatment effect for 24 months against existing treatment options should support attractive pricing and reimbursement, and our ability to enter into a commercial partnership.

Enrollment of two confirmatory Phase 3 trials is expected to take approximately 24 months to complete, with enrollment of the first trial expected to be completed in the third quarter of 2016 and enrollment of the second trial expected to be completed in the first quarter of 2017.

Phase 2 Clinical Trial

The primary objective of our Phase 2 study was to evaluate the safety of MPCs in CLBP. Secondary objectives were to evaluate efficacy parameters such as radiographic, low back pain, function/disability, medication usage, work status and quality of life improvement measures. Patients were evaluated at 1, 3, 6 and 12 months after treatment with longer term follow-up evaluations continuing at 24 and 36 months. Full 6, 12 and 24 month data are now available.

Eligible subjects were at least 18 years of age with chronic lumbar back pain for 6 months or greater duration due to moderate DDD with one painful lumbar vertebral level between L1 and S1. Subjects had to have failed at least 3 months of non-operative management with exposure to physical therapy. The study evaluated intra-discal injection of two separate doses: 6 million MPCs, which is MPC-06-ID, and 18 million MPCs with both MPC doses administered with HA, and compared to saline (placebo control) or HA alone (vehicle control) injection. 100 subjects across 15 sites were randomized with 20 receiving saline, 20 receiving HA, 30 receiving MPC-06-ID with HA, and 30 receiving 18 million MPCs with HA. The mean duration of DDD in these patients was approximately 6 years. Baseline pain, function scores, and radiographic scores were similar among all groups.

Phase 2 Clinical Trial Results

With respect to the primary endpoint, allogeneic MPC treatment, including MPC-06-ID, was well tolerated with the most frequently reported adverse event, back pain, occurring across all patient groups.

With respect to primary efficacy endpoints, the FDA has provided guidelines on how to evaluate patient response, utilizing a composite endpoint based on achieving minimally important clinical differences, or MICD, in both pain and function from baseline. Such a composite endpoint for restorative or replacement disc therapies is different than that typically used by pharmacologic agents developed solely for palliative improvement in symptoms, such as analgesics, where short term improvement in mean pain scores between groups is sufficient to support a label for short term pain reduction. The FDA and key opinion leaders, or KOLs, have deemed that for restorative or replacement disc therapies the MICD for pain reduction should be at least a 30% improvement from baseline and for functional improvement at least a 30% improvement or 10 point improvement from baseline using a 100-point functional scale. We believe that achieving success in long-term improvement in both pain and function using even higher threshold levels than the MICD with durable outcomes for up to two years from a single dose should support a broad label for disc restoration and attractive pricing and reimbursement from payors.

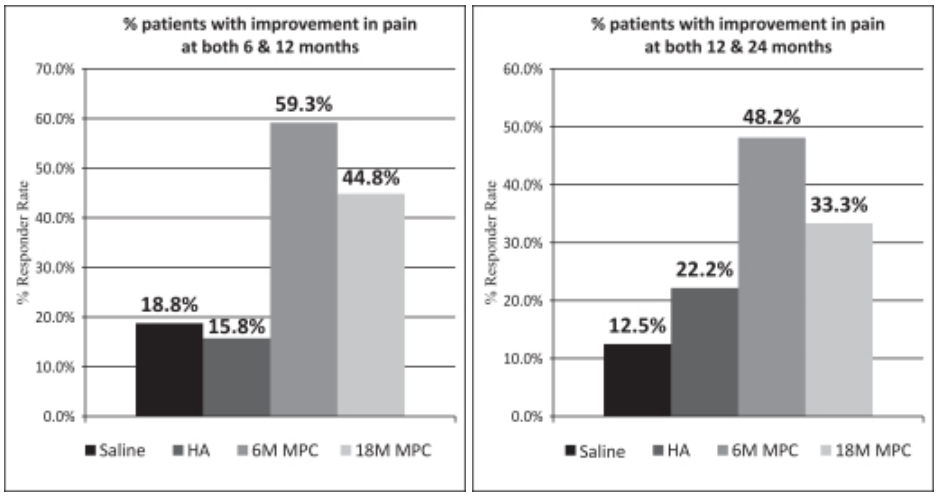
We have utilized this composite-based endpoint and associated guidelines, among other measures, in the evaluation of our Phase 2 results.

- *Improvement in chronic low back pain*. At 12 months, a responder analysis showed that there was clear separation between both treatment groups and both control groups at every decile increase in response beyond the MCID of 30% reduction in pain from baseline. In line with guidance from KOLs and from

payers, a responder analysis was performed targeting at least 50% reduction in pain from baseline. At both 6 and 12 months, a reduction in pain from baseline of 50% or more, without any additional intervention, was seen in 59.3% of the MPC-06-ID group, 44.8% of the 18 million MPC group, 18.8% of the saline group, and 15.8% of the HA group, as measured by visual analog scale, or VAS ($p = 0.006$ across all four groups, $p<0.05$ for 6 million MPC against each of saline and HA). At both 12 and 24 months, 48.2% of the MPC-06-ID group achieved a 50% reduction in back pain without intervention compared with 12.5% of saline controls ($p = 0.02$) and 22.2% of HA controls. Statistical significance denotes the mathematical likelihood that the results observed are real and not due to chance.

MPC groups have a greater proportion of patients with at least a 50% improvement in back pain over 24 months relative to controls

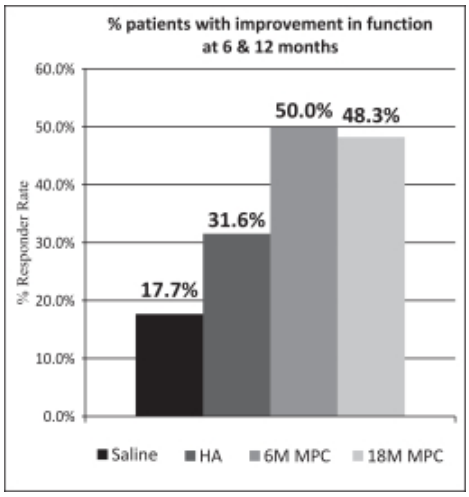
% patients with 50% VAS reduction from baseline and no intervention

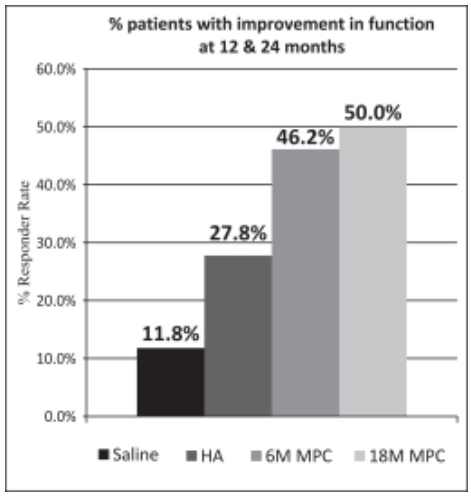


- *Improvement in function*: At 12 months, a responder analysis showed that there was clear separation between both treatment groups and both control groups at every decile increase in response at or beyond the MICD of 30% improvement in function from baseline. In line with historical FDA preference for spine fusion and artificial disc replacement marketing application approvals, a responder analysis was performed targeting at least a 15 point improvement in function through 24 months from baseline. At both 6 and 12 months, an improvement in function from baseline of 15 points or more, as measured by Oswestry Disability Index, or ODI, without any additional intervention, was seen in 50.0% of the MPC-06-ID group. 48.3% of the 18 million MPC group, 31.6% of the HA group, and 17.7% of the saline group ($p=0.05$ MPC-06-ID versus saline, $p=0.06$ 18 million MPC versus saline). At both 12 and 24 months, both MPC dose groups had a greater proportion of patients with 15 point or more improvement in function from baseline, without any additional intervention, compared to control groups, as measured by ODI (MPC-06-ID: 46.2%, 18 million 50.0%, saline 11.8%, HA 27.8%, $p=0.05$ across all four groups; 6 million MPC against saline $p=0.02$; 18 million v. saline, $p=0.01$).

MPC groups have a greater proportion of patients with at least a 15 point improvement in function from baseline as measured by ODI over 24 months, relative to controls

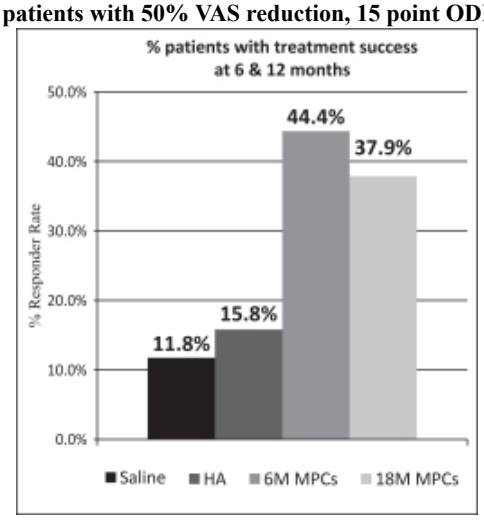
% patients with 15 point ODI improvement and no intervention

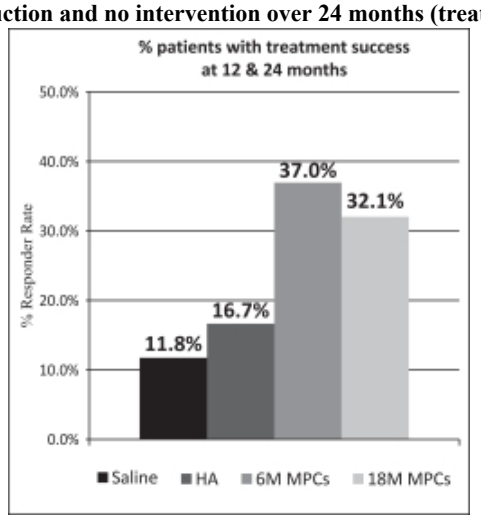




- *Reduced need for additional surgical and non-surgical interventions*: MPC-treated patients had a significantly reduced need for additional interventions at the treated disc level, including surgical intervention (spinal fusion, discectomy or artificial disc replacement) or injection (epidural steroid injection, rhizotomy or transforaminal injections), than saline controls. By 12 months, 25% of patients in the saline control group had undergone an additional intervention, compared with 15% of patients in the HA control group, 6.9% of patients in the MPC-06-ID group and only 3.3% of patients who received 6 or 18 million MPCs. By Kaplan-Meier analysis of time to a first additional treatment intervention, treatment with either MPC-06-ID or 18 million MPC significantly reduced the need for additional interventions compared with saline treatment (p=0.024 and p=0.010, respectively).
- *Radiographic measurements*: In patients with early disc degeneration (Pfirrmann MRI degenerative grades below 5), increased translational movement of the disc is a potential indicator of instability associated with early disc degeneration and annular fissures seen on MRI and pathologic examination. This is an FDA validated measurement that has previously been used in Phase 3 trials of surgical devices for discogenic back pain. At 12 months, MPC-treated patients demonstrated a reduction in radiographically-determined translational movement of the disc, suggesting a treatment effect on disc degeneration, anatomy, and improved disc stability. The 18 million MPC group had a mean translational movement of only 1.3%, the MPC-06-ID group 2.0%, the HA group 2.5%, and the saline group 3.5% (p=0.021 between groups). In this study, 85% of patients had early disc degeneration as evidenced by Pfirrmann grade <5 on MRI. At 12 months, no significant differences were seen between groups in overall Pfirrmann grade by MRI.
- *Composite endpoint*: Based on precedent and FDA feedback from our end-of-Phase 2 meeting, we developed a composite endpoint requiring at least a 50% improvement in low back pain, 15 point improvement in ODI and no treatment intervention (surgical or injection) that we believe would be sufficient to meet FDA's requirements for approval. Utilizing this composite endpoint in a post-hoc analysis of Phase 2 data, separation between treatment and control arms was first seen at 3 months, maximal at 6 months, and sustained for at least 12 months. More specifically, the MPC-06-ID group, the 18 million MPC group, the HA control and the saline control groups had 44.4%, 37.9%, 15.8% and 11.8% of subjects meet the composite endpoint criteria at both 6 and 12 months. (MPC-06-ID vs. saline p<0.05). The MPC-06-ID group had three times (3x) the proportion of patients achieving treatment success at 12 and 24 months compared with saline controls (37.0% versus 11.8%, p=0.09).

Proportion of patients with 50% VAS reduction, 15 point ODI reduction and no intervention over 24 months (treatment success)





This sustained treatment benefit in the MPC-06-ID group suggests a disc regenerative mechanism of action rather than a simple analgesic effect, which would not have been sustained without repeated treatment. We believe the ability to meet this composite endpoint at both 12 and 24 months would demonstrate a robust and durable benefit for the patient rather than a transient or temporary response.

Phase 3 Design

Based on an end-of-Phase 2 meeting with the FDA, we initiated the first of two Phase 3 clinical trials in 2014 that will use a composite primary end point of pain relief and improved function, consisting of a 50% reduction in lower back pain as measured by VAS and a 15 point improvement in ODI with no intervention. Our Phase 3 program will evaluate the same approach but will also add an arm to evaluate a single 6 million MPC dose with no HA carrier. The studies will be double-blinded, and include approximately 330 patients each. The Phase 3 program is planned to be international in scope including sites in the U.S., Australia, Canada and potentially Europe. Total recruitment time is expected to be approximately 24 months, with 12 and 24 months of follow-up.

TEMCELL/MLC product candidate for the Treatment of acute Graft versus Host Disease (aGVHD)

Overview

In a BMT, donor cells may attack the recipient, causing aGVHD. The donor T-cell mediated inflammatory response involves secretion of TNF-alpha and IFN-gamma, resulting in activation of pro-inflammatory T-cells and tissue damage in the skin, gut and liver which is often fatal.

MLCs are thought to counteract the inflammatory processes by down-regulating the production of pro-inflammatory cytokines, increasing production of anti-inflammatory cytokines, and enabling recruitment of endogenous anti-inflammatory cells to involved tissues.

Currently there are no approved therapies for patients with acute steroid-refractory graft versus host disease, or SR-aGVHD, in the U.S., and off-label options have demonstrated mixed efficacy with high toxicity. As such, we believe there is a significant need for effective treatment with a favorable risk/benefit profile.

TEMCELL, an intravenously administered MSC-based product, has been developed in Japan for the treatment of aGVHD by our partner, JCR. TEMCELL received full approval in Japan in September 2015. Mesoblast is developing an intravenously delivered MLC product candidate for the treatment of aGVHD globally, outside Japan. Mesoblast's product candidate has been used for the treatment of aGVHD in children in the U.S., Canada and several European countries under an expanded access program, or EAP. This program enrolled more than 240 patients suffering from SR-aGVHD.

Available data from clinical dose ranging studies identified an effective dose to be 2 x 106 MLCs/kg, body weight, to be administered repeatedly for at least four weeks after diagnosis of aGVHD.

Market Opportunity

According to the Center for International Blood and Marrow Transplant Research, there are approximately 30,000 allogeneic BMTs globally per year for diseases including hematological cancers, with 25% of all cases in the pediatric population. Nearly 50% of all allogeneic BMT patients develop aGVHD. Liver or gastrointestinal involvement occur in up to 40% of all patients with aGVHD and are associated with the greatest risk of death, with mortality rates of up to 85%.

The aGVHD market requires a small, targeted commercial footprint. The target audience for aGVHD will primarily be board-certified in hematology-oncologists who perform hematopoietic stem cell transplants. In the U.S., there are approximately 75 centers that perform pediatric transplants, with 50% of all transplants occurring at approximately 15 centers. Similarly, there are approximately 110 centers that perform adult transplants with half of those transplants occurring at approximately 20 centers. In the U.S., there were more than 8,300 allogeneic BMTs in 2013, of which 50% developed aGVHD. In Japan, there were 4,807 BMTs in 2010, 67.5% of which were allogeneic. Assuming a 3% growth rate per annum, the projected number of allogeneic BMT patients in 2015 is 3,700, of whom 40% will develop aGVHD.

Current Status and Anticipated Milestones

Japan. Our licensee, JCR, received full approval for its aGVHD MSC based product TEMCELL in Japan in September 2015. During the first quarter 2016, we expect that JCR will launch TEMCELL in Japan. TEMCELL is the first allogeneic cell-based product approved in Japan. Under our agreement with JCR, we are entitled to receive milestone payments on product regulatory approvals, escalating double-digit royalties in the twenties and other payments at pre-defined thresholds of cumulative net sales.

U.S. For the pediatric indication, we have initiated a Phase 3 trial and expect to report top-line results of this trial in the second half of 2016. A pre-specified interim analysis may support a BLA filing by the end of 2016. Based on our discussions with the FDA, we believe positive data from this trial will be sufficient for conditional approval in the United States, and an additional pediatric or adult Phase 3 will be required for full product approval. During the conduct of our pediatric Phase 3 trial, we expect to have discussions with the FDA regarding the trial design for a potential Phase 3 trial to support approval of this product for adults with liver or gut aGVHD.

Completed Clinical Trials/EAP

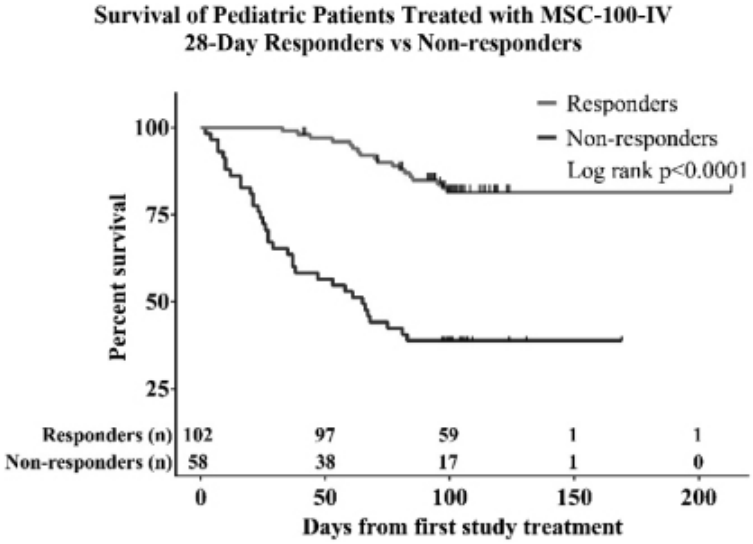
Pediatric Population

Since 2008 an expanded access program, or EAP, called Protocol 275, has been conducted for a group of pediatric patients with SR-aGVHD treated with an MLC product candidate consisting of 100 million MLCs/unit dose (MSC-100-IV). An EAP provides investigational therapy to patients outside of a clinical trial in a country that has not received marketing approval for the product candidate being evaluated. It is intended for the treatment of serious or life-threatening conditions for which there is no available alternative treatment and where there is existing evidence of safety as well as signals of efficacy in order to establish that the patient may benefit from the therapy. An EAP may be offered on an individual basis or for a group of patients. Although some of our EAP participants previously participated in controlled clinical trials, none of the patients in our EAP are currently participating in our controlled clinical trials and the EAP itself is not a controlled trial.

Our Protocol 275 includes defined eligibility and treatment plan, controlled data and safety collection and pre-specified endpoints and data analysis. All trial components are designed to assure the conduct is consistent and data are valid for interpretation. It is an open label program with single arm design so all patients enrolled receive the treatment.

Over 240 pediatric patients with SR-aGVHD have been treated on this protocol. As such, we believe that the results from the Protocol 275 EAP provide us with valuable data which may support possible product approval. The results of the first 75 patients from Protocol 275 were published in 2013, and additional analysis of data from

the first 160 patients has recently been completed. Use of our MSC-100-IV, resulted in a clear, significant survival benefit among responding pediatric BMT recipients with SR-aGVHD. Of the 160 children treated, 64% achieved a response at day 28. Among responders, 81% were alive at day 100, compared to 39% survival at 100 days among non-responders (p<0.0001, log rank test). Day 28 response to MLC treatment was a significant predictor of improved day 100 survival (p<.001). The EAP protocol and data generated MSC-100-IV represent the largest prospective program of its kind in pediatric patients with SR-aGVHD.



In this Protocol 275 the FDA has acknowledged that the results provide a substantial safety experience and likely evidence of a treatment effect. The FDA has also acknowledged that given the prior results with mesenchymal lineage stem cells in this indication, and the unmet medical needs, that a randomized controlled study is neither feasible or ethical. However, given the number of additional therapies received by many of the EAP patients (often 2-4 prior therapies), additional data in the absence of confounding additional therapies has been requested by the FDA. We expect to provide this additional data through a single-arm, open-label Phase 3 study of 60 pediatric patients with SR-aGVHD treated with our MLC product candidate. These patients will not receive other line therapies thus allowing the treatment effect of our MLC product candidate to be clearly observed.

Supporting the notion that our MLC product candidate may be effective as first line therapy in SR-aGVHD, in a subset analysis of 28 pediatric patients recruited in Protocol 280 (a randomized, placebo controlled trial of MSC-100-IV as first-line therapy in SR-aGVHD, discussed further below) overall response was significantly improved in treated children. Moreover, in 32 children with SR-aGVHD within the 275 EAP protocol, where MSC-100-IV was administered as first-line therapy, a similar proportion responded as was seen in the overall EAP program.

MSC-100-IV as first line therapy in children with SR-aGVHD

Response at Day 28	Protocol 275 (All Grades)	Protocol 280 (All Grades)	
		MSC-100-IV	Placebo
Responder	25/32 (78.1%)	9/14 (64.3%)	3/14 (21.4%)
Non-responder	7/32 (21.9%)	5/14 (35.7%)	11/14 (78.6%)
		p-value = 0.0014	

Compared with placebo control patients, MSC-100-IV produced markedly superior overall response at day 28, a clinically meaningful endpoint, with both Protocol 275 and Protocol 280 showing similarly high OR rates

(P=0.0014). The between group comparison in protocol 280 showed a significant treatment benefit for MSC-100-IV relative to placebo (p=0.024).

The FDA has indicated that should the 60 patient Phase 3 trial meet its designated endpoints, the resulting data from this trial will be the basis for an accelerated approval pathway for a BLA filing using our MLC product candidate.

Adult Population

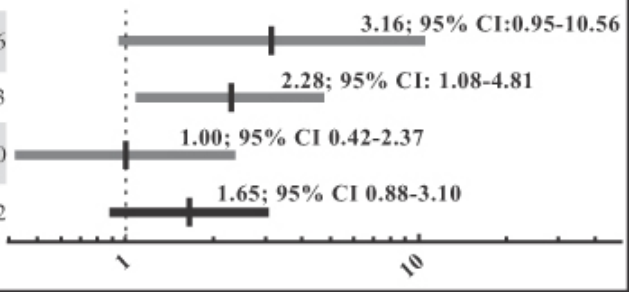
Protocol 280 was a Phase 3 trial of MSC-100-IV conducted between 2006 and 2009 in 260 adult (n=232) and pediatric patients (n=28) with Grades B-D SR-aGVHD. This trial included patients with skin, liver and lower GI complications. This trial had a rigorous primary endpoint of complete and durable response, meaning complete resolution of all clinical signs of aGVHD that had to be maintained for at least 28 consecutive days (durable complete response, or DCR). Additional efficacy endpoints included overall response for each organ at day 28 and day 100; survival at 100 and 180 days post first infusion; time to complete response; and cumulative steroid usage. Overall, treatment with MSC-100-IV was safe and resulted in improved clinical responses, particularly in patients with generally more serious visceral organ involvement. Overall clinical response correlated with improved survival, as was also demonstrated in the ongoing pediatric EAP.

In the per-protocol population, MSC-100-IV outperformed placebo on the primary endpoint, with a DCR rate of 40% versus 28% (p=0.087), but did not reach statistical significance. In the pre-specified modified intention-to-treat, or mITT, subgroup analysis, MSC-100-IV treated patients showed significant improvements in overall response rates in the difficult to treat liver and lower GI aGVHD subgroup: in subjects with liver aGVHD, MSC-100-IV improved day 100 overall response to 78% versus 53% in controls (p=0.06, n=58); for subjects with lower-GI aGVHD, MSC-100-IV improved day 100 overall response to 83% versus 68% in controls (p=0.03, n=170).

The incidence of adverse events observed in this study were what would otherwise be expected for patients recovering from BMT and battling SR-aGVHD, with no difference reported between the MSC-100-IV and placebo treatment groups overall.

Patient Response By Day 100 By Organ (Odds Ratio)

	Remestemcel-L	Placebo	P-value
Liver	32/41 (78.0%)	9/17 (52.9%)	0.06
GI	94/113 (83.2%)	39/57 (68.4%)	0.03
Skin	72/90 (80.0%)	40/50 (80.0%)	1.00
All	133/161 (81.6%)	59/81 (72.8%)	0.12



Phase 3 Trials

During the conduct of our open-label Phase 3 study of approximately 60 children, we expect to have discussions with the FDA regarding the trial design for a potential Phase 3 trial of our MLC product candidate to support approval of this product for adults with liver or gut aGVHD.

MPC-300-IV for Immune Mediated Diseases

The diverse and potent anti-inflammatory properties of MPCs are the foundation for their usefulness in immune-mediated diseases such as rheumatoid arthritis, insulin resistance, and the end-organ complications of diabetes, where monocytes, macrophages and activated pro-inflammatory T cells play a very active and destructive role in disease pathogenesis through activation of multiple pro-inflammatory cytokine pathways.

More specifically, MPC-300-IV was designed for intravenous delivery to treat systemic and localized conditions of excessive inflammation, whereby our MPCs can counteract inflammatory processes by down-regulating the production of pro-inflammatory cytokines, increasing production of anti-inflammatory cytokines, and enabling recruitment of anti-inflammatory cells to involved tissues. For example, MPCs produce immunomodulatory biomolecules such as prostaglandin E2, or PGE2 and indoleamine2, 3-dioxygenase, or IDO, in response to activation by pro-inflammatory cytokines such as tumor necrosis factor-alpha, or TNF-alpha; interleukin-1, or IL-1; interleukin-6, or IL-6; interleukin-17, or IL-17. These MPC-released biomolecules act along multiple pathways, such as polarizing pro-inflammatory M1 monocytes to anti-inflammatory M2 monocytes, neutralizing harmful macrophages, and switching activated T helper cells 1 and 17, or Th1 and Th17, respectively, to Th2 cells and FOXP3 T regulatory cells.

MPC-300-IV for the Treatment of Rheumatoid Arthritis (RA) (Biologic Refractory)

Overview

MPC-300-IV is our proprietary Phase 2 product candidate being developed for biologic-refractory rheumatoid arthritis, or RA. The product candidate is being evaluated at both 1 and 2 million MPC/kg dose(s) via intravenous infusion.

Proinflammatory monocytes/macrophages and activated T cells are involved in the pathogenesis of RA via activation of multiple pro-inflammatory cytokine pathways, including TNF-alpha, interleukin-6, and interleukin-17. Existing biologic therapies target any one of these cytokine pathways individually, however none target all of these pathways concomitantly. As a result, various segments of patients with RA will show moderate response to one or other of these biologic agents, but very few patients will have sustained remission due to continued expression of pro-inflammatory cytokines. In pre-clinical large animal trials, we have shown that a single intravenous injection of our proprietary allogeneic MPCs results in concomitant inhibition of TNF-alpha, IL-6 and IL-17 inflammatory pathways in the inflamed joints resulting in substantial amelioration in clinical disease. Additionally, we have shown that MPCs can reduce inflammation and reverse abnormal function of blood vessels, including the coronary arteries, in a sheep model of RA. A single intravenous infusion of allogeneic MPCs significantly reduced the systemic inflammation present in a sheep model of RA, increased circulating levels of the anti-inflammatory cytokine interleukin-10, or IL-10, and reversed the abnormal endothelial dysfunction present in the coronary arteries and the digital arteries in these animals. Since patients with RA have an approximately 50% higher risk of death from cardiovascular disease than the general population, these results suggest that the anti-inflammatory effect of MPC therapy may have an additional benefit in reducing cardiovascular risk associated with RA.

Market Opportunity

RA is a disease that affects approximately 1.7 million people in the U.S. The incidence increases with age, climbing from 8.7 per 100,000 for those 18-34 years of age, to 89 per 100,000 for those 65-74 years of age. Rheumatoid arthritis is responsible for approximately 250,000 hospitalizations and 9 million physician visits per year in the U.S. If left untreated, RA can lead to joint destruction, deformity, disability, and decreased quality of life. Existing biologic therapies have made major inroads to the treatment of RA, often by targeting single pathways of inflammation in a disease that is driven by multiple inflammatory cytokine pathways. Despite the variety of options currently available, approximately one third of patients either do not respond or cannot tolerate these therapies. Such patients are in need of effective treatment. Additionally, these therapies have been associated with significant risk of opportunistic infections or malignancies. As doses are pushed in order to achieve acceptable response, such as ACR 50, ACR 70, or remission, such risks are increased. There is therefore a segment of the population who would benefit from an alternative therapeutic approach which is both safe and effective.

Ongoing Phase 2 Trial

We initiated a Phase 2 trial to evaluate the safety, tolerability and effectiveness of a single intravenous infusion of either of two MPC dose levels for the treatment of active RA in patients who have failed at least one TNF-alpha inhibitor. This randomized, double-blind placebo-controlled sequential dose escalation trial is

currently enrolling, with recruitment already completed for 24 patients in cohort 1 who received a single dose of 1 million MPCs per kg. These patients continue to be followed-up, while patients in the second cohort receive an MPC dose of 2 million per kg. The results of the Phase 2 program will guide the future direction of this program.

Current Status and Anticipated Milestones

Our Phase 2 trial of MPC-300-IV for the treatment of biologic refractory RA is ongoing and is evaluating in a 2:1 randomization trial design two doses ranges versus placebo. The first dose cohort has completed six months of follow-up and the second dose cohort is actively enrolling. We expect to announce top-line 6 month results from this Phase 2 placebo-controlled, dose-ranging study for the first cohort in this study by the end of 2015 and results from the second cohort during the first half of 2016. If we see a positive treatment effect following a single intravenous injection of MPC-300-IV, we will be in a position to discuss Phase 2b/3 clinical trial designs with the FDA and we believe we will be in a position to have discussions with potential strategic partners.

MPC-300-IV for the Treatment of Diabetic Complications, Including Kidney Disease

Overview

MPC-300-IV for the treatment of diabetic complications, including diabetic nephropathy, is our proprietary Tier 1 product candidate, consisting of up to 300 million MPCs delivered intravenously.

The aberrant activation of the immune system that occurs in type 2 diabetes patients is associated with inflammation of various organs, including kidney, liver and fat tissues, resulting in resistance to the effects of insulin in the fat tissues, and poor glucose control. Inflammation in the kidneys and liver results in diabetic nephropathy and diabetes-related non-alcoholic steatohepatitis, or NASH. We are developing a high-dose product for intravenous administration to target the polyvascular complications of patients with type 2 diabetes, including diabetic nephropathy, NASH and retinopathy.

In small and large animal models of diabetes, a single intravenous injection of MPCs resulted in sustained improvement in glucose control. Additionally, in multiple small animal models of diabetic nephropathy, intravenous MPC infusions reduced inflammation in the kidneys and improved renal function and reduced albuminuria.

Current Status and Anticipated Milestones

In June 2015, we announced the three month primary endpoint as well as six-month results of a placebo-controlled, dose-ranging study (2 doses) in 30 grade 3b diabetic nephropathy patients using MPC-300-IV. Both treatment cohorts are being followed up per protocol through 60 weeks. The positive treatment effect we observed following a single intravenous injection of MPC-300-IV will facilitate discussions regarding adaptive Phase 2b/3 clinical trial designs with the FDA and potential strategic partner discussions.

Market Opportunity

While all classes of current anti-diabetic agents are effective at improving glucose control, they are not effective in preventing or potentially reversing the renal complications in type 2 diabetes, which affect approximately 40 to 50% of people with diabetes. Diabetic nephropathy is the single leading cause of end-stage renal disease, accounting for nearly half of all end-stage renal disease cases in the US. The prevalence of moderate to severe diabetic nephropathy in 2013 was estimated to be approximately 1.96 million.

The current standard of care of diabetic nephropathy (rennin-angiotensin system inhibition with angiotensin converting enzyme inhibitors of angiotensin II receptor blockers) only slows the rate of progression of the disease to renal failure by 16-25%, leaving a large residual risk for end-stage renal disease. For subjects that reach end-stage renal disease the only treatment option is renal replacement (dialysis or kidney transplantation) at high cost in the US with medical costs of $100,000 for dialysis and $250,000 for kidney transplant. Due to a severe shortage of kidneys, in 2012 approximately 92,000 persons in the US died while on the renal transplant list. Furthermore, for those on dialysis the mortality rate is high with an approximately 40% fatality rate within 2 years after initiation of dialysis. To the extent MPC-300-IV can be shown to be effective in this population, additional applications would be possible for the over 20 million people in the U.S. who are estimated to have chronic kidney disease.

Results for Diabetes Type 2 Diabetes Phase 2 Trial

As a first step in developing an MPC-based immunomodulatory therapy for the treatment of type 2 diabetes and its complications, we performed a dose-ranging study which evaluated three escalating doses in patients with type 2 diabetes and poor glycemic control, without kidney disease. The Phase 2 randomized, single-blind, placebo-controlled, dose escalation trial was conducted across 18 sites in the United States and evaluated the effects of a single intravenous infusion of 0.3, 1.0 or 2.0 million MPCs/kg or placebo over 12 weeks in 61 patients with a mean diabetes duration of 10 years. These patients had normal renal function.

The results of the trial were presented at the 74th Annual Meeting of the American Diabetes Association in 2014 and have been published in the peer-reviewed journal of the American Diabetes Association, *Diabetes Care*. The results support the safety and tolerability of a single intravenous infusion of MPCs in type 2 diabetes. Additionally, there was an improvement in glycemic control as evidenced by reduction in hemoglobin A1c (HbA1c) which, according to the FDA Guidance for Industry 2008, is the primary endpoint of choice for glycemic control in subjects with type 2 diabetes. These results may be consistent with an immunomodulatory mechanism of action of the MPCs on diabetes disease pathogenesis.

Key findings in the trial were:

- The MPCs were safe and well tolerated with no treatment-related adverse events, meeting the trial's primary endpoint.
- Following a single intravenous MPC infusion, overall HbA1c levels were reduced over the 12-week study period when compared to placebo.
- The highest dose showed the greatest overall reduction in HbA1c, with a peak decrease of 0.4% at 8 weeks compared with placebo ($p<0.05$), and a decrease of 0.3% at 12 weeks.
- In the less well-controlled subjects, as defined by a baseline HbA1c >8.0%, a 0.6% decrease in HbA1c was seen at 8 weeks in the high dose cohort compared with placebo.
- In those with baseline HbA1c <8%, a target of HbA1c <7% at week 12 was achieved in 63% (5/8) of high-dose treated subjects compared with 0/7 placebo controls ($p<0.05$).

Having established the safety of a single intravenous infusion of MPCs at up to 2.0 million cells/kg in diabetic patients without kidney disease, we moved forward with a Phase 2 trial evaluating 150 million or 300 million MPCs as a single intravenous infusion in patients with diabetes and advanced kidney disease.

Ongoing Phase 2 Trial for Kidney Disease Complicating Type 2 Diabetes

Diabetic nephropathy is thought to be caused by ongoing monocyte inflammation and endothelial dysfunction, or abnormal blood vessels, in the kidneys. Our bone marrow-derived MPCs are potent modulators of monocyte inflammation, and have been shown in preclinical studies to reduce monocyte infiltration in diabetic kidneys and to reverse endothelial dysfunction. Consequently, we are developing MPC-300-IV for intravenous delivery in the treatment of diabetic nephropathy.

In June of 2015, at the 75th annual meeting of the American Diabetes Association, we announced the results of a Phase 2 trial in patients with diabetic nephropathy. The results showed that at the trial's primary endpoint of 12 weeks, a single infusion of MPC-300-IV had a safety profile similar to placebo, reduced damaging inflammation, and preserved or improved renal function. These results were sustained for at least 24 weeks. As such, MPC-300-IV is potentially useful in patients with moderate to severe diabetic nephropathy.

This trial of MPC-300-IV was a double-blind, randomized, placebo-controlled, dose-escalating Phase 2 trial of 30 patients with type 2 diabetes and moderate to severe renal impairment, stage 3b-4 chronic kidney disease, or CKD, who were already on a stable regimen of the standard of care therapy for diabetic nephropathy, which consist of renin-angiotensin system inhibition with angiotensin converting enzyme inhibitors or angiotensin II receptor blockers. Patients received a single infusion of 150 million MPCs, 300 million MPCs, or saline control.

The objectives of the trial were to evaluate safety and to explore potential efficacy signals of MPC treatment on renal function. The pre-specified primary efficacy endpoint was to evaluate effects of MPC treatment relative to placebo on renal functional decline at 12 weeks, as defined by change in glomerular filtration rate, or GFR, measured both by direct isotope scan and by serum-creatinine based estimation, and then for an additional 48 weeks of follow-up. Pre-specified secondary analyses included GFR differences between treatment and placebo groups with baseline GFR>30ml/min/1.73m2 (stage 3b CKD, accounting for 60% of enrolled patients), and treatment-related effects on the monocyte-derived cytokine interleukin-6, or IL-6, a major inflammatory marker associated with renal failure progression and adverse cardiovascular outcomes.

The primary efficacy endpoint of decline or change in GFR was in line with the 2012 joint workshop held by the United States Food and Drug Administration and the National Kidney Foundation which recommended that time to 30%-40% decline in GFR is an acceptable primary endpoint for evaluating potential benefits of new therapies for this patient population. This joint workshop recognized the significant unmet medical need and urgency to make new therapies accessible to patients who may benefit from them. This revised endpoint could make new treatments available earlier to patients with chronic renal failure by reducing trial size and duration, compared with the previously accepted composite endpoint of time to first occurrence of doubling of serum creatinine (equivalent to a 57% reduction in GFR), renal replacement or death.

Key findings at 12 and 24 weeks in the MPC-300-IV trial were:

- Safety profile for MPC treatment was similar to placebo, with no treatment-related infusion or other events.
- Efficacy testing showed that MPC-treated subjects had improved renal function relative to placebo, as defined by preservation or improvement in GFR at both 12 and 24 weeks; these effects were seen even though this trial was not powered to show statistical significance of treatment.
- While all three groups had similar mean GFR at baseline, 34.6, 35.7 and 34.6 ml/min/1.73m2, at 12 weeks the placebo group showed a decline in measured GFR of 4.0 ml/min/1.73m2 and 3.9 ml/min/1.73m2 relative to the groups receiving a single infusion of either 150M MPC or 300M MPC, respectively; the difference in creatinine-based estimated GFR decline between placebo and the 150M group reached significance (p=0.05).
- By isotope-measured GFR, in patients with GFR>30 ml/min/1.73m2 at baseline, the placebo group showed a GFR decline at 12 weeks of 6.2 ml/min/1.73m2 relative to the pooled MPC-treated patients (p=0.07).
- By creatinine-based estimated GFR, the placebo group with GFR>30 ml/min/1.73m2 at baseline showed a GFR decline at 12 weeks of 4.5 ml/min/1.73m2 and at 24 weeks of 4.6 ml/min/1.73m2 relative to the pooled MPC treated patients (p=0.04 and p=0.13, respectively).
- There was a correlation between increased baseline IL-6 levels and improvement at 12 weeks in both serum creatinine and GFR (r=0.57, p=0.008) in MPC-treated patients.
- MPC treatment was associated with a dose-dependent inhibition of IL-6 increase over 12 weeks; serum IL-6 levels increased by 2.5 pg/dl at 12 weeks in the placebo group compared to a reduction of 0.2 pg/dl in the 300M MPC group (p=0.01).

In sum, the safety profile and the potential efficacy signals of allogeneic MPC therapy for prevention or reversal of renal functional decline in diabetic nephropathy supported advancing the clinical program in patients with the highest medical need, e.g. rapid progression towards dialysis or renal transplantation, defined as an annual GFR decline of >5ml/min/1.73m2, and high risk of cardiovascular events.

In addition, in any future trials, positive response to MPC therapy may be enhanced by the presence of viable, but at risk, renal tissue and an aberrant pro-inflammatory milieu in the kidney. Also, baseline GFR>30 ml/min/1.73 m2 and high IL-6 levels may be biomarkers that predict efficacy with MPC treatment.

More broadly, the reduction in IL-6 levels seen in this trial suggests that the mechanism of action by MPCs may involve reduction of pro-inflammatory M1 monocyte cytokines in the diabetic kidney. As such, it is possible that MPC therapy may have applications in diverse renal conditions where inflammation plays a central role.

Tier 2 Programs

MPC-25-IC for the Treatment of Acute Cardiac Ischemia

Overview

MLCs release factors that induce functional cardiac recovery by simultaneous regeneration of endogenous vascular network formation as well as of endogenous cardiomyocytes or cardiomyocyte precursors. In preclinical studies, when injected into ischemic myocardium, MLCs are very potent inducers of large caliber arteriogenesis compared to only small vessel angiogenesis obtained with hematopoietic stem cells which only give rise to the endothelium of capillaries. Based on this mechanism, and positive results of a sheep intracoronary preclinical study, we commenced the Phase 2 Allogeneic MPC Infusion in myoCardial Infarction, or AMICI trial, of MPC-25-IC, the first clinical study to evaluate an allogeneic cellular therapy for AMI delivered by intracoronary infusion.

Market Opportunity

The majority of heart attack patients undergo angioplasty and stent procedures successfully. However, a high risk subset of patients progress over the ensuing two years to develop heart failure despite maximal therapy. For these patients, a therapy that can protect at-risk heart muscle cells from dying by delivery via intra-coronary administration at the time of the angioplasty, could prevent this major complication.

Current Status

Our Phase 2 trial for MPC-25-IC for the treatment of acute myocardial infarction is ongoing.

Phase 2 Design

The AMICI trial is a prospective, randomized, placebo-controlled, double blind clinical trial that will analyze the effect of intracoronary infusion of MPCs in patients with an ST-elevation myocardial infarction of the anterior wall. The therapy will be initiated directly following revascularization of the left anterior descending artery, along with standard therapies for AMI. Up to 225 patients with a first anterior wall AMI will be enrolled. After successful revascularization, the patients will be 1:1:1 randomized to receive 12.5 or 25 million MPC or placebo via intracoronary infusion. The primary safety endpoint is defined as the occurrence of major adverse cardiac events, or MACE, at 30 days follow up. The secondary efficacy endpoint is defined as reduction in the left ventricular end-systolic volume. Additional efficacy parameters from cardiac magnetic resonance and echocardiography will also be evaluated. The Phase 2a/2b trial is actively recruiting in Europe, Australia, and New Zealand.

MPC-25-Osteo for Spinal Fusion

Overview

MPC-25-Osteo for spinal fusion is a proprietary Phase 3-ready product candidate. All doses of MPC-25-Osteo for the treatment of spinal fusion consist of 25 million MPCs delivered on a collagen ceramic carrier material into the disk space with stabilizing hardware.

Market Opportunity

According to Millennium Research Group, or MRG, in the U.S. there were approximately 392,000 thoracolumbar spinal fusion procedures performed in 2012 of which lumbar fusion procedures form a significant part. MRG estimates the overall worldwide market for bone graft substitutes to be nearly $1.6 billion in 2012 with the majority of bone graft revenues, approximately 70%, coming from spinal fusion procedures.

Current Status

Our Phase 2 trial for MPC-25-Osteo for the treatment of spinal fusion is completed and our Phase 3 trial design is ongoing. We view MPC-25-Osteo as a potential collaboration or partnership opportunity.

Phase 2 Design

We conducted a 24 patient Phase 2 study of MPCs (implanted into intervertebral disc space) undergoing 1 or 2-level lumbar interbody fusion via posterior procedures (TLIF, PLIF). Patients were randomized to 25 million MPC dose (n=8), 75 million MPC dose (n=8) or autograft from the hip (n=8).

Phase 2 Top Line Results

Treatment with MPC-25-Osteo was equivalent to hip autograft, the gold standard for this procedure, at 12 months in terms of fusing the spinal segment, reducing pain and improving function, without the need for a second surgical procedure to harvest the patient's own bone, which can cause blood loss, infection and chronic pain at the bone harvest site.

Importantly, there were no cell-related serious adverse events such as excessive bone formation or nerve compression, which have been reported with other biologic therapies in lumbar spinal fusion.

Phase 3 Design

We have had an end-of-Phase 2 meeting with the FDA, and as a result of that meeting there is a consensus regarding the scope and design of a Phase 3 program using MPC-25-Osteo for the treatment of lumbar spinal fusion. While we prepare this product for Phase 3, we intend to continue our analysis of strategic options for the development and distribution of this product, which include a potential collaboration or partnering options.

MPC-CBE for Use in Bone Marrow Transplant (BMT)

Overview

MPC-CBE for BMT is a proprietary Phase 3 product candidate. All doses of MPC-CBE for use in BMT consist of hematopoietic stem cells expanded *ex vivo* by incubation with MPCs, administered intravenously.

Market Opportunity

BMT is the primary treatment option for many patients who have undergone treatment for advanced blood cancers, such as acute myeloid leukemia. At present, approximately 30,000 allogeneic BMTs are performed globally each year. The vast majority of these transplants use adult donor sources.

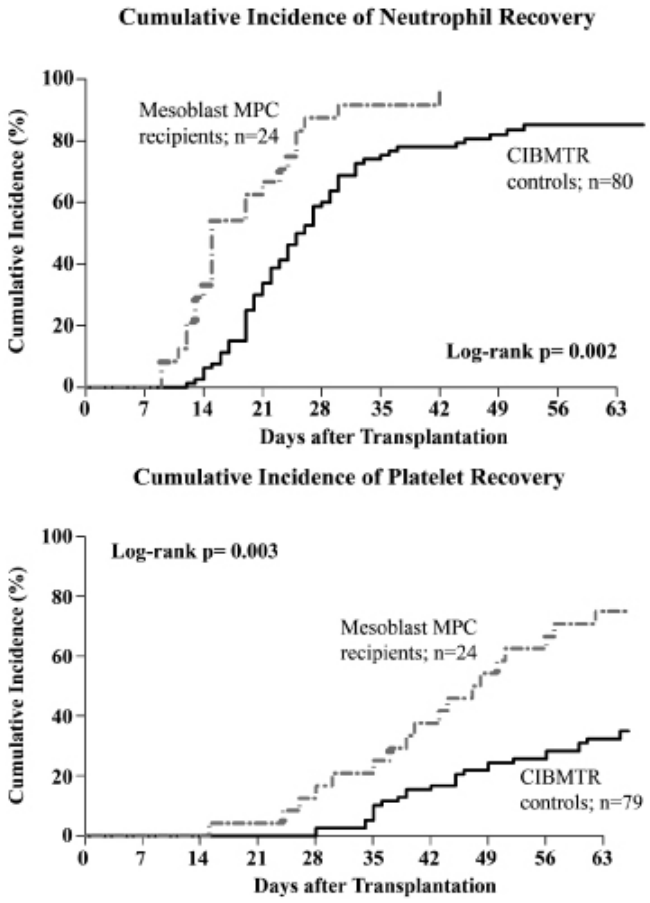
We believe the number of BMTs performed could be significantly increased if there was a safe alternative to the existing donor match material used to treat these patients. Our Phase 3 clinical trial using MPCs to expand hematopoietic precursors from cord blood for transplantation in cancer patients is ongoing. If this product is successful, it has the potential to increase the total number of unrelated donor transplants, and provide therapy for patients with malignant diseases for which transplantation is the only option for a potential successful treatment. We expect to complete our Phase 3 trial for BMT in 2018. This product falls under the Teva collaboration.

Current Status

Our Phase 3 trial for MPC-CBE for use in BMT patients is ongoing.

Phase 2 Design

A 24 patient Phase 2 trial was conducted where patients were given MPC-expanded cord blood cells. Targeted patients were adults with hematologic cancers.



Phase 2 Top-Line Results

MPC-expanded cord blood significantly improved engraftment. Median time to neutrophil engraftment was 15 versus 24 days with unexpanded cord blood. Median time to platelet engraftment was 42 days for patients receiving MPC-CBE versus 49 days with expanded cord blood.

Ongoing Phase 3 Trial

A 240 patient Phase 3 study comparing patients receiving a cord blood unit expanded with our MPCs (MPC-CBE) (active arm) versus patients receiving an unexpanded cord blood unit (control arm), in evaluating reconstitution of bone marrow after high-dose chemotherapy is ongoing. Primary endpoint is time to neutrophil and platelet recovery.

Tier 2 Programs

MSC-100-IV for the Treatment of Crohn's Disease (Biologic Refractory)

Overview

MSC-100-IV for the treatment of Crohn's disease refractory to steroids and immune suppressants is a proprietary product candidate currently being evaluated in a Phase 3 trial. All doses of MSC-100-IV for the treatment of Crohn's disease consist of 100 to 200 million MSCs delivered intravenously in a multiple dose regime. An additional pivotal Phase 3 program will be needed for approval.

MSC-100-IV has demonstrated immunomodulatory properties to regulate T-cell mediated inflammatory responses by inhibiting T-cell proliferation and down-regulating the production of the pro-inflammatory cytokines, including tumor necrosis factor-alpha, or TNF-alpha, and interferon gamma. More critically, MLCs have been shown to be capable of effective down-regulation of Th17 cells, reduction in IL-17 levels, and induction of FOXP3 regulatory T cells. These inflammatory pathways are acknowledged to be central to the pathogenesis of Crohn's disease and other inflammatory conditions.

Market Opportunity

Crohn's Disease, or CD, is a chronic inflammatory disorder of the gastrointestinal tract, characterized by periods of remission and symptomatic relapse. The burden of CD is substantial, accounting for more than 1 million cases in the seven major pharmaceutical markets in 2012.

The U.S. has the highest prevalence of the disease, with more than 600,000 people afflicted and approximately 20,000 new cases diagnosed each year. Of the 600,000 U.S. patients, studies have shown that approximately 8-20% are unresponsive, resistant or intolerant to existing treatments, which include corticosteroids, immunosuppressants and biologics. The global CD therapeutics market was estimated to be worth $4.4 billion in 2012.

A treatment to induce rapid remission is highly needed, particularly in high-risk patients such as those with biologic-resistant disease and those with fistulas, a complication of CD which occurs in 20-40% of patients and often requires invasive surgical procedures.

Current Status

Our Phase 3 trial for MSC-100-IV for the treatment of CD is ongoing.

Clinical Data and Design

A 9 patient pilot Phase 1/2 study was conducted in 2006, where there was a statistically significant decrease in mean Crohn's Disease Activity Index, or CDAI, scores of 105 points (reduced from 341 to 236) in MSC-100-IV treated patients by day 28 post-treatment, compared to control (p=0.004). The CDAI is a research tool used to quantify the symptoms of patients with Crohn's disease.

Based on those results, a 330 patient Phase 3 multi-centered, double-blind, randomized, placebo-controlled was initiated in 2007. The focus of this trial is on the safety and efficacy of MSC-100-IV in moderate to severe CD in patients who are refractory to steroid, immunosuppressant and biologic therapy. The primary endpoint is the proportion of patients experiencing disease remission within 28 days of treatment, compared to those patients receiving placebo, as defined by an absolute CDAI score below 150.

An interim analysis in 2009 suggested that one of the doses reached statistical significance for disease remission in the targeted population. As a result of that analysis, enrollment was restarted in 2010 utilizing only the best-performing (but undisclosed) dose and placebo.

This trial is ongoing, and when complete, we will evaluate whether the primary endpoint of day 28 remission in biologic-refractory patients has been achieved, whether there is evidence of efficacy in high-risk groups such as those with fistulizing disease and multi-drug refractory patients, and whether maintenance dosing can result in longer duration of effect.

Complementary Technologies

In addition to establishing what we believe to be the most advanced regenerative medicine product portfolio in the industry, we have also strategically targeted the acquisition of rights to technologies that are complementary to and synergistic with our MLC platform. The aim of this activity is to maintain what we see as our technology leadership position in the regenerative medicine space, while simultaneously expanding our targeted disease applications and managing the life-cycle of our current lead programs.

Our complementary technologies and additional product candidates include:

- Additional types of MLCs, including dental pulp stem cells and periodontal stem cells, that hold promise in regenerative applications for neurological networks and in dental applications.
- Cell surface modification of MLCs using ex vivo fucosylation to improve homing characteristics to sites of inflammation.
- Cell payloading technology, which allows us to load our MLCs and other cell types with molecules or nucleotides that can either (i) enhance the natural function of our cells (e.g., increase persistence or homing and engraftment) or (ii) be delivered directly to sites of inflammation and tissue damage by our MLCs.
- Protein technologies, which are focused primarily on proteins naturally produced by our MLCs, that can be developed independently or in combination with our MLCs. For example, we are developing a product candidate based on a molecule known as stromal cell derived factor 1, or SDF-1, that has shown various tissue regeneration capabilities in preclinical studies. We have a proprietary variant of SDF-1 that has been engineered to be resistant to enzymatic cleavage and that has a longer half-life in vivo compared to the native molecule.
- Gene targeting technologies, that allow us to target various helpful or harmful genes related to a given disease indication.

Manufacturing and Supply Chain

Overview

Our manufacturing strategy for our cellular product candidates focuses on the following important factors: (i) clear product delineation to protect pricing and partner markets by creating distinct products using discrete manufacturing processes, culture conditions, formulations, routes of administration, and/or dose regimens; (ii) establishing proprietary commercial scale-up and supply to meet increasing demand; (iii) implementing efficiencies and yield improvement measures to reduce cost-of-goods; (iv) maintaining regulatory compliance with best practices; and (v) establishing and maintaining multiple manufacturing sites for product supply risk mitigation.

The stem cell manufacturing and distribution process generally involves five major steps:

- Procure bone marrow—acquire bone marrow from healthy adults with specific FDA-defined criteria, which is accompanied by significant laboratory testing to establish the usability of the donated tissues.
- Create master cell banks—isolate MLCs from the donated bone marrow and perform a preliminary expansion to create master cell banks. Each individual master cell bank comes from a single donor.
- Expand to therapeutic quantities—expand master cell banks to produce therapeutic quantities, a process that can yield thousands of doses per master cell bank, with the ultimate number depending on the dose for the respective product candidate being produced.
- Formulate, package and cryopreserve.
- Distribution—with the exception of procurement and creation of master cell banks, our manufacturing is conducted in Lonza's Singapore facility, and products will be frozen, then shipped to Lonza or other storage sites in the U.S. and other jurisdictions via cryoshippers. Those distribution centers then send the products on to treatment centers in cryoshippers. Treatment centers either move the products into their own freezers, or receive the cryoshipper in "real time" and product stays in the cryoshipper until thawed for patient use within a well-defined window. We intend to continue utilizing this approach in the future, except that we intend to settle on a new network of distributors in various regions.

Our product candidates are currently manufactured in two-dimensional, or 2D, planar, 10-layer cell factories, using media containing fetal bovine serum, or FBS.

The relatively small patient numbers and orphan drug designation for our MLC product candidate for aGVHD led us to believe that 2D manufacturing will provide commercial cost of goods for this product candidate if fully approved. We also believe that 2D manufacturing is commercially feasible for Phase 3 trial supply and the initial launch of MPC-06-ID for CLBP.

For other future product candidates, we are transitioning the manufacturing processes to three-dimensional, or 3D, bioreactors with greater capacity to improve efficiency and yields, with resulting lower-cost of goods.

Our manufacturing activities have met stringent criteria set by international regulatory agencies, including the FDA. By using well-characterized cell populations, our manufacturing processes promote reproducibility and batch-to-batch consistency for our allogeneic cell product candidates. We have developed robust quality assurance procedures and lot release assays to support this reproducibility and consistency.

Key Manufacturing Activities

The following represent current key manufacturing activities:

- Establishment of commercial manufacturing processes: we are currently manufacturing clinical grade MLC products in Lonza's Singapore facility, and are establishing a commercial process in this facility.
- Introduction of defined FBS-free media: we have developed a proprietary FBS-free media that has the potential to greatly enhance the yields achieved in production. We have made substantial progress in this development effort, and once complete, we intend to conduct "comparability" studies to illustrate that products produced with this media are equivalent to those produced using FBS based media.
- Establishment of 3D bioreactor production: we have made significant advances in the development of 3D bioreactor processes. When finalized, our proprietary 3D bioreactor process will be used solely for our clinical and commercial production. We expect to evaluate products produced in 3D bioreactors in our Phase 3 clinical trials.

While we remain confident in our ability to deliver successful outcomes from each of these activities, any unexpected issues or challenges faced in doing so could delay our programs or prevent us from continuing our programs.

Intellectual Property

We have a large patent portfolio of issued and pending claims covering compositions of matter, uses for our MLC cell-based technologies and other proprietary regenerative product candidates and technologies, as well as for elements of our manufacturing processes, with over 72 patent families, including 661 patents or patent applications as of August 31, 2015.

One of our major objectives is to continue to protect and expand our extensive estate of patent rights and trade secrets, which we believe enables us to deliver commercial advantages and long-term protection for our product candidates based on our proprietary technologies, and support our corporate strategy to target large, mature and emerging healthcare markets for our exploratory therapeutic product candidates.

More specifically, our patent estate includes issued patent and patent applications in major markets, including, but not limited to, the United States, Europe and Japan. The patents that we have obtained, and continue to apply for, cover MLC technologies and product candidates derived from these technologies, irrespective of the tissue source, including bone marrow, adipose, placenta, umbilical cord and dental pulp.

These patents cover, among other technology areas, a variety of MLCs (including MPCs and MSCs), and the use of MLC for expansion of hematopoietic stem cells, or HSCs. Among the indication-specific issued or pending patents covering product candidates derived from our MLCs are those which provide commercial support for our Tier 1 product candidates: CLBP, CHF, aGVHD and chronic inflammatory conditions such as RA and DKD. We also have issued and pending patents covering all of our Tier 2 and pipeline indications, including inflammatory bowel disease (e.g., Crohn's disease), neurologic diseases, eye diseases and orthopedic diseases.

Our patent portfolio also includes issued and pending coverage of proprietary manufacturing processes that are being used with our current two-dimensional manufacturing platform as well as the 3D bioreactor manufacturing processes currently under development. These cell manufacturing patents cover isolation, expansion, purification, scale up, culture conditions, aggregates minimization, cryopreservation, release testing and potency assays. In addition, we maintain as a trade secret, among other things, our proprietary FBS-free media used in our 3D bioreactor manufacturing processes.

We maintain trade secrets covering a significant body of know-how and proprietary information relating to our core product candidates and technologies. We protect our confidential know-how and trade secrets in a number of ways, including requiring all employees and third parties that have access to our confidential information to sign non-disclosure agreements, limiting access to confidential information on a need-to-know basis, maintaining our confidential information on secure computers, and providing our contract manufacturers with certain key ingredients for our manufacturing process.

In addition, in many major jurisdictions there are other means that may be available to us by which we would be able to extend the period during which we have commercial exclusivity for our product candidates, which include, but are not limited to the exclusive right to reference our data, orphan drug exclusivity and patent term extensions.

As part of our strategy, we seek patent protection for our product candidates and technologies in major jurisdictions including the United States, Europe, Japan, and Australia and file independent and/or counterpart patents and patent applications in other jurisdictions globally that we deem appropriate under the circumstances, including China, Taiwan, India, Canada, Hong Kong, Israel, Korea, New Zealand, and Singapore. Our patent portfolio includes the following patents and patent applications in the following major jurisdictions: 59 granted U.S. patents and 48 pending U.S. patent applications; 20 granted Japanese patents and 43 pending Japanese patent applications; 19 granted European patents and 44 pending European patent applications; and 37 granted Australian patents and 28 pending Australian patent applications.

We recently strengthened and extended the coverage of our MLC patent portfolio by acquiring the MSC assets of Osiris in October 2013. These assets included a significant number of new patent families. As a result, our current patent portfolio now includes 72 patent families. Over the past year alone, we have been granted an additional 34 new patents including 6 Japanese patents, 9 United States patents, 5 Chinese patents, and 14 in other jurisdictions. As of August 31, 2015, our worldwide patent portfolio includes the following:

- 141 patents or patent applications (filed in the U.S., Europe, Australia, Canada, China, Japan, South Korea, India, Argentina, Brazil, South Africa, Mexico, New Zealand and Hong Kong) are related to specific compositions-of-matter or methods of purifying our MLCs as follows:
    - 58 patents or patent applications that we own related to MPC compositions of matter or methods of isolation, expansion or manufacture of MPCs. Granted patents under this portion of the current portfolio will begin to expire in 2020 and extend until approximately 2029 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2020 and extend until approximately 2026 (worldwide, excluding possible patent term extensions).
    - 51 granted patents that we own related to MSC compositions or manufacture of MSCs. Granted patents under this portion of the current portfolio will, if the appropriate maintenance, renewal, annuity, or other governmental fees are paid, begin to expire in 2018 and extend until approximately 2029 (excluding possible patent term extensions). Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will include patent coverage which will begin to expire in 2027 and extend until approximately 2035.
    - 32 patents or patent applications that we have in-licensed from the NIH related to dental pulp stem cells, or DPSCs. Granted patents under this portion of the current portfolio will begin to expire in

2021 and extend until approximately 2024 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2021 and extend until approximately 2024 (worldwide, excluding possible patent term extensions).

- 382 patents or patent applications (filed in the U.S., Europe, Australia, Canada, China, Japan, South Korea, India, Brazil, Singapore, Israel and Hong Kong) are related to specific therapeutic applications of our MLC-based product candidates broken down as follows:
  - 100 patents or patent applications that we own related to therapeutic applications of our MLC-based products for treatment of immunologic/inflammatory disorders (including Type 2 diabetes and complications thereof, RA, Crohn's disease and asthma, and which we believe cover uses of our product candidates MPC-300-IV for the treatment of RA and diabetic kidney disease and MSC-100-IV for the treatment of Crohn's disease). Granted patents under this portion of the current portfolio will begin to expire in 2019 and extend until approximately 2025 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2025 and extend until approximately 2035 (worldwide, excluding possible patent term extensions).
  - 69 patents or patent applications that we own related to therapeutic applications of our MLC-based products for treatment of cardiovascular disorders (including CHF and acute myocardial infarction and ischemic stroke, and which we believe cover our product candidates MPC-150-IM for the treatment of CHF and MPC-25-IC for the treatment of acute cardiac ischemia). Granted patents under this portion of the current portfolio will begin to expire in 2018 and extend until approximately 2024 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2018 and extend until approximately 2024 (worldwide, excluding possible patent term extensions).
  - 65 patents or patent applications that we own related to therapeutic applications of our MLC-based products for treatment of orthopedic disorders, which we believe cover uses of our product candidates MPC-06-ID for CLBP and MPC-25-Osteo for spinal fusion. Granted patents under this portion of the current portfolio will begin to expire in 2017 and extend until approximately 2029 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will include patent coverage which will begin to expire in 2029 and extend until approximately 2032 (worldwide, excluding possible patent term extensions).
  - 96 patents or patent applications that we own related to therapeutic applications of our MLC-based products for oncology/hematology (including GVHD and bone marrow transplantation, and which we believe cover uses of our product candidates MSC-100-IV for GVHD and MPC-CBE for bone marrow transplantation). Granted patents under this portion of the current portfolio will begin to expire in 2019 and extend until approximately 2029 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2029 and extend until approximately 2030 (worldwide, excluding possible patent term extensions).
  - 52 patents or patent applications that we own related to other additional therapeutic applications of our MLC-based product candidates (including treatment of CNS disorders, genetic disorders and

eye diseases). Granted patents under this portion of the current portfolio will begin to expire in 2027 and extend until approximately 2029 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2027 and extend until approximately 2032 (worldwide, excluding possible patent term extensions).

- 138 patents or patent applications (filed in the U.S., Europe, Australia, Canada, China, Japan, South Korea, India, Hong Kong, Israel, New Zealand and Singapore) are related to complementary technologies and additional product candidates as follows:
  - 63 patents or patent applications that we own related to cell-based complementary technologies supporting our cell-based pipeline and lifecycle management. Granted patents under this portion of the current portfolio will begin to expire in 2017 and extend until approximately 2022 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid. Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will include patent coverage which will begin to expire in 2017 and extend until approximately 2030 (worldwide, excluding possible patent term extensions).
  - 27 patents or patent applications that we own related to compositions of matter comprising improved forms of SDF-1 or uses thereof. Granted patents under this portion of the current portfolio will expire in 2027 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid . Patent applications filed under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2027 and extend until approximately 2032 (worldwide, excluding possible patent term extensions).
  - 48 patents or patent applications that we have exclusively licensed from the Trustees of Columbia University in relation to uses of various factors derived from MLCs or other biological agents for treatment of cardiovascular diseases or other fibrotic conditions. Granted patents under this portion of the current portfolio will begin to expire in 2021 and extend until approximately 2024 (worldwide, excluding possible patent term extensions) if appropriate maintenance, renewal, annuity, or other governmental fees are paid . Patent applications under this portion of the current portfolio, if granted and the appropriate maintenance, renewal, annuity, or other governmental fees are paid, will begin to expire in 2021 and extend until approximately 2023 (worldwide, excluding possible patent term extensions).

We anticipate filing additional patent applications covering our product candidates and other cellular products under development, and core technologies such as manufacturing.

Our policy is to patent the technology, inventions and improvements that we consider important to the development of our business, only in those cases in which we believe that the costs of obtaining patent protection is justified by the commercial potential of the technology and associated product candidates, and typically only in those jurisdictions that we believe present significant commercial opportunities to us. In those cases where we choose neither to seek patent protection nor protect the inventions as trade secrets, we may publish the inventions so that it defensively becomes prior art in order for us to secure a freedom to operate position and to prevent third parties from patenting the invention.

We also seek to protect as trade secrets our proprietary and confidential know-how and technologies that are either not patentable or where we deem it inadvisable to seek patent protection. To this end, we generally require all third parties with whom we share confidential information and our employees, consultants and advisors to enter into confidentiality agreements prohibiting the disclosure of confidential information. These agreements with our employees and consultants engaged in the development of our technologies require disclosure and assignment to us of the ideas, developments, discoveries and inventions, and associated intellectual property

rights, important to our business. Additionally, these confidentiality agreements, among others, require that our employees, consultants and advisors do not bring to us, or use without proper authorization, any third party's proprietary technology.

License Agreements

Central Adelaide Local Health Network Incorporated—Mesenchymal Precursor Cell Intellectual Property

In October 2004, we, through our wholly-owned subsidiary, Angioblast Systems Inc., now Mesoblast, Inc., acquired certain intellectual property relating to our MPCs, or Medvet IP, pursuant to an Intellectual Property Assignment Deed, or IP Deed, with Medvet Science Pty Ltd, or Medvet. Medvet's rights under the IP Deed were transferred to Central Adelaide Local Health Network Incorporated, or CALHNI, in November 2011. In connection with our use of the Medvet IP, we are obligated to pay CALHNI, as successor in interest to Medvet, (i) certain aggregated milestone payments of up to US$2.5 million and single-digit royalties on net sales of products covered by the Medvet IP, for cardiac muscle and blood vessel applications and bone and cartilage regeneration and repair applications, subject to minimum annual royalties beginning in the first year of commercial sale of those products and (ii) and single-digit royalties on net sales of the specified products for applications outside the specified fields. Additionally, we are obligated to pay CALHNI a double-digit percentage in the teens of any revenue that we receive in exchange for a grant of a sublicense to the Medvet IP in the specified fields. Under the IP Deed, we also granted to Medvet a non-exclusive, royalty-free license to the Medvet IP for non-commercial, internal research and academic research.

Pursuant to the IP Deed, we were assigned the rights in three U.S. patents or patent applications (including all substitutions, continuations, continuations-in-part, divisional, supplementary protection certificates, renewals, all letters patent granted thereon, and all reissues, reexaminations, extensions, confirmations, revalidations, registrations and patents of addition and foreign equivalents thereof) and all future intellectual property rights, including improvements, that might arise from research conducted at Medvet related to mesenchymal precursor cells and methods of isolating, culturing and expanding mesenchymal precursor cells and their use in any therapeutic area. We also acquired all related materials, information and know-how.

Case Western Reserve University—Mesenchymal Stem Cell Intellectual Property

In October 2013, our wholly owned subsidiary, Mesoblast International Sàrl, acquired certain MSC-based assets from Osiris including a technology transfer and license agreement between Osiris and Case Western Reserve University, or CWRU. Pursuant to the technology transfer and license agreement, or CWRU Agreement, we (i) were assigned certain patent rights relating to MSCs, or CWRU Assigned Patents, and (ii) obtained an exclusive, worldwide, sublicensable license to (A) information and know-how relating to MSCs, or CWRU Technology, and (B) certain patents relating to (x) MSCs, or CWRU Licensed Patents, and (y) the CWRU Assigned Patents, to the extent the CWRU Assigned Patents are not owned by us (collectively, with the CWRU Technology and CRWU Licensed Patents, the CWRU Licensed Technology and Patents).

Pursuant to the CWRU License, we acquired sole and exclusive worldwide sublicensable rights to more than ten U.S. patents or patent applications (including any divisions, continuations, continuations-in-part, reissues, reexaminations or extensions thereof along with all foreign equivalents) and related technologies. These patents and technologies generally relate to isolated human mesenchymal stem cells, methods for isolating, purifying, and culturally expanding human mesenchymal stem cells without having them differentiate, and characterization of and uses of mesenchymal stem cells including related research reagents, diagnostics and therapeutic uses for such cells and other related materials, methods and subject matter.

CWRU retained a right to use the CWRU Licensed Technology and Patents for nonclinical research, testing or educational purposes, including research funded by a commercial entity unless the commercial entity obtains a license or ownership of the research results. Under the CWRU Agreement, we are obligated to pay single-digit royalties on net sales of product covered by the CWRU Licensed Patents and a double-digit percentage of royalties received from a sublicensee of the CWRU Licensed Patents. Additionally, we are obligated to pay single-digit royalties on products covered by certain of the CWRU Assigned Patents. The royalties that we are

obligated to pay to CWRU on sales of products are not due for an initial period of sales of each such product, and are subject to a reduction in the event we have to pay royalties to a third party for the sale of those products. The royalties that we owe under the CWRU License on sales of products will also be reduced for costs arising from an infringement suit against us by a third party based on sales of covered products and for costs arising from any suit we file against a third party to protect any intellectual property right granted under the CWRU Agreement. Our payment obligations under the CWRU Agreement are subject to a minimum annual payment.

Either we or CWRU may initiate a suit based on the infringement of the CWRU Licensed Technology and Patents. In the event CWRU notifies us that a third party desires to obtain a sublicense to the CWRU Licensed Technology and Patents in a field that we are not practicing, we are obligated to negotiate in good faith a sublicense with the third party subject to certain limitations that protect our commercial interests.

The CWRU Agreement continues until at least expiration of all of the patents within the CWRU Licensed Technology and Patents, unless the CWRU Agreement is terminated at an earlier time. The last patent in this portfolio expires in July 2020. We have a right to terminate the CWRU License upon advance written notice to CWRU. CWRU has a more limited right to terminate the CWRU License that includes a right to terminate the CWRU License in the event we have materially breached the CWRU License and have not cured the breach within a specified time period.

Osiris Acquisition—Continuing Obligations

In October 2013, we and Osiris entered into a purchase agreement, as amended, or the Osiris Purchase Agreement, under which we acquired all of Osiris' business and assets related to culture expanded MSCs. Pursuant to the Osiris Purchase Agreement, we also agreed to make certain milestone and royalty payments to Osiris pertaining to MSC-100-IV for the treatment of aGVHD and Crohn's disease. Each milestone payment is for a fixed dollar amount and may be paid in cash or our ordinary shares or ADSs, at our option. The maximum amount of future milestone payments we may be required to make to Osiris is US$50 million. Any ordinary shares or ADSs we issue as consideration for a milestone payment will be subject to a contractual one year holding period, which may be waived in our discretion. In the event that the price of our ordinary shares or ADSs decreases between the issue date and the expiration of any applicable holding period, we will be required to make an additional payment to Osiris equal to the reduction in the share price multiplied by the amount of issued shares under that milestone payment. This additional payment can be made either wholly in cash or 50% in cash and 50% in our ordinary shares, in our discretion. We have also agreed to pay varying earnout amounts as a percentage of annual net sales of acquired products, ranging from low single-digit to 10% of annual sales in excess of US$750 million. These royalty payments will cease after the earlier of a ten year commercial sales period and the first sale of a competing product.

Competition

The biotechnology and pharmaceutical industries are highly competitive and are characterized by rapidly advancing technologies and a strong emphasis on proprietary products. Any product candidates that we and our collaborators successfully develop and commercialize will compete with existing products and new products that may become available in the future.

We believe that we are a leader in the development of regenerative medicine products, and that we do not have any direct competitors which are currently capable of operating at a similar scale to develop products based on stem cells. As a result, we believe our competition is more indirect and general in nature, and falls into two broad categories:

- ***Biopharmaceutical companies who may develop their own approach to regenerative medicine.*** As adult stem cell therapies advance in human clinical trials and potentially gain market approvals, we expect larger biotechnology and pharmaceutical companies may become more interested in regenerative medicine. Certain of these companies, including Celgene Corporation and Johnson & Johnson, have filed patent applications relating to the use of genetically modified cells to treat disease, disorder or injury. In the future, large biopharmaceutical companies may decide to significantly increase their efforts to internally develop their own approaches, or acquire other companies or technologies, in the field of regenerative medicine.

- ***Biopharmaceutical companies who may develop competing products using other technologies.*** Products developed using our MLC platform technology will face competition in the market, including from products which have been developed using traditional biotechnology and pharmaceutical approaches. This includes both products that are already approved and distributed, as well as products currently under development or those that will begin development in the future.

We believe that a number of our potential competitors, particularly large biopharmaceutical companies, have significantly greater financial resources and general expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Our market has been characterized by significant consolidation by pharmaceutical and biotechnology companies, which is likely to result in even more resources being concentrated among a smaller number of our potential competitors.

Government Regulation

We are developing cellular therapy product candidates. All of our product candidates are regulated as biological products by the FDA. Within the FDA, the Center for Biologics Evaluation and Research, or CBER, regulates biological products. In the United States, biological products are subject to federal regulation under the FDCA, the Public Health Service Act, or PHS Act, and other federal, state, local and foreign statutes and regulations. Both the FDCA and the PHS Act, as applicable, and their corresponding regulations govern, among other things, the testing, manufacturing, safety, efficacy, labeling, packaging, storage, record keeping, distribution, import, export, reporting, advertising and other promotional practices involving drugs and biological products. Before clinical testing of a new drug or biological product may commence, the sponsor of the clinical study must submit an application for investigational new drug exemption, or IND, to FDA, which must include, among other information, the proposed clinical study protocol. To obtain marketing authorization once clinical testing has concluded, a BLA must be submitted for FDA approval. The process of obtaining regulatory authorizations and approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources and we may not be able to obtain the required regulatory approvals.

U.S. Product Development Process

The process required by the FDA before a biological product may be marketed in the U.S. generally involves the following:

- completion of nonclinical laboratory studies, meaning in vivo or in vitro experiments in which an investigational product is studied prospectively in a test system under laboratory conditions to determine its safety, must be conducted according to FDA's cGLP regulations, as well as, in the case of nonclinical laboratory studies involving animal test systems, in accordance with applicable requirements for the humane use of laboratory animals or other applicable regulations;
- submission to the FDA of an application for an IND, which must become effective before human clinical studies may begin;
- performance of adequate and well-controlled human clinical studies according to the FDA's cGCPs and any other applicable regulatory requirements for the protection of human research subjects and their health information, to establish the safety, purity and potency of the proposed product for its intended use;
- submission to the FDA of a BLA for marketing approval demonstrating the safety, purity and potency of the product which must be supported by substantial evidence from adequate and well-controlled clinical investigations;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities where the product is produced to assess compliance with cGMP to assure that the facilities, methods and controls are adequate to preserve the product's identity, strength, purity and potency;

- potential FDA inspection of the nonclinical and clinical study sites that generated the data in support of the BLA; and
- FDA review and approval of the BLA.

Human testing of a biological product candidate is preceded by preclinical testing, including nonclinical laboratory studies in which the product candidate is studied prospectively in a test system under laboratory conditions to determine its safety. A test system may include any animal, plant, microorganism, or subparts thereof to which the test or control article is administered or added for study. Nonclinical laboratory studies that support research or marketing applications must be done in accordance with FDA's cGLP regulations.

The clinical study sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data, any available clinical data or literature and a proposed clinical protocol, to the FDA as part of the IND. Some preclinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA places the clinical study on a clinical hold within that 30-day time period. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical study can begin. The FDA may also impose clinical holds on a product candidate at any time during clinical studies due to safety concerns or non-compliance. If the FDA imposes a clinical hold, studies may not recommence unless FDA removes the clinical hold and then only under terms authorized by the FDA. Accordingly, we cannot be sure that submission of an IND will result in the FDA allowing clinical studies to begin, or that, once begun, issues will not arise that suspend or terminate such studies.

Clinical studies involve the administration of the biological product candidate to subjects under the supervision of qualified investigators, generally physicians not employed by or under the study sponsor's control. Clinical studies are conducted under protocols detailing, among other things, the objectives of the clinical study, dosing procedures, subject selection and exclusion criteria, and the parameters to be used to monitor subject safety, including stopping rules that assure a clinical study will be stopped if certain adverse events, or AEs, should occur. Each new protocol and certain amendments to the protocol must be submitted to the FDA. Clinical studies must be conducted and monitored in accordance with the FDA's cGCP regulations and guidance, including the requirement that written informed consent to participate in the study be obtained from all participants. Further, each clinical study must be reviewed and approved by an independent Institutional Review Board, or IRB, at or servicing each institution at which the clinical study will be conducted. An IRB is charged with protecting the welfare and rights of study participants and considers such items as whether the risks to individuals participating in the clinical studies are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the form and content of the informed consent document that must be signed by each clinical study subject or his or her legal representative and must monitor the clinical study until completed.

Human clinical studies are typically conducted in three sequential phases that may in some cases overlap or be combined:

- Phase 1. The biological product is initially introduced into a small number of human subjects. In the case of cellular therapy products, the initial human testing is conducted in patients with the disease or condition targeted by the biological product candidate. Phase 1 studies are intended to determine the metabolism and pharmacologic actions (including adverse reactions), the side effects associated with increasing doses, and, if possible, to gain early evidence of on effectiveness. The information obtained in Phase 1 should be sufficient to permit the design of well-controlled, scientifically valid Phase 2 studies.
- Phase 2. Controlled clinical studies are conducted to evaluate the effectiveness of the drug for a particular indication or indications in patients with the disease or condition under study, to assess side effects and risks, and
- Phase 3. Assuming preliminary evidence suggesting effectiveness has been obtained, controlled studies are conducted in a larger group of subjects to gather additional information about effectiveness and safety in order to evaluate the overall benefit-risk relationship of the drug and to provide an adequate basis for physician labeling.

Post-approval clinical studies, sometimes referred to as Phase 4 clinical studies, may be conducted after initial marketing approval. In some cases FDA may require a Phase 4 study to be performed as a condition of product approval. Sponsors also can voluntarily conduct Phase 4 studies to gain additional experience from the treatment of patients in the intended therapeutic indication, particularly for long-term safety follow-up. FDA regulations extend to all phases of clinical development, and apply to sponsors and investigators of clinical studies. FDA oversight includes inspection of the sites and investigators involved in conducting the studies.

Concurrent with clinical studies, companies usually complete additional animal studies and must also develop additional information about the physical characteristics of the biological product as well as finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. To help reduce the risk of the introduction of adventitious agents with use of biological products, the PHS Act emphasizes the importance of manufacturing control for products whose attributes cannot be precisely defined. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things; the sponsor must develop methods for testing the identity, purity and potency of the final biological product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the biological product candidate does not undergo unacceptable deterioration over its shelf life.

U.S. Review and Approval Processes

After the completion of clinical studies of a biological product, FDA approval of a BLA must be obtained before commercial marketing of the biological product. The BLA must include results of product development, laboratory and animal studies, human studies, information on the manufacture and composition of the product, proposed labeling and other relevant information. In addition, under the Pediatric Research Equity Act, or PREA, a BLA or supplement to a BLA must contain data to assess the safety and effectiveness of the product for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any biological product for an indication for which orphan designation has been granted. The testing and approval processes require substantial time and effort and there can be no assurance that the FDA will accept the BLA for filing and, even if filed, that any approval will be granted on a timely basis, if at all.

Under the Prescription Drug User Fee Act, or PDUFA, as amended, each BLA must be accompanied by a substantial user fee. PDUFA also imposes an annual product fee for biologics and an annual establishment fee on facilities used to manufacture prescription biologics. Fee waivers or reductions are available in certain circumstances, including a waiver of the application fee for the first application filed by a small business. Additionally, an application fee is not assessed on BLAs for products designated as orphan drugs, unless the product also includes a non-orphan indication.

Within 60 days following submission of the application, the FDA reviews the BLA submitted to determine if it is substantially complete before the agency accepts it for filing. The FDA may refuse to file any marketing application that it deems incomplete or not properly reviewable at the time of submission and may request additional information. In this event, the BLA must be resubmitted with the additional information. The resubmitted application also is subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review of the BLA. The FDA reviews the application to determine, among other things, whether the proposed product is safe and potent, or effective, for its intended use, and has an acceptable purity profile, and whether the product is being manufactured in accordance with cGMP to assure and preserve the product's identity, safety, potency and purity. The FDA may refer applications for novel products or products that present difficult questions of safety or efficacy to an advisory committee, typically a panel that includes clinicians and other experts, for review, evaluation and a recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions. During the product approval process, the FDA also will determine whether a Risk Evaluation and Mitigation Strategy, or REMS, is necessary to assure the safe use of the product. If the FDA concludes a REMS is needed, the sponsor of the BLA must submit a proposed REMS; the FDA will not approve the application without a REMS, if required.

Before approving a BLA, the FDA will typically inspect the facilities at which the product is manufactured. The FDA will not approve the product unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. Additionally, before approving a BLA, the FDA will typically inspect one or more clinical sites to assure that the clinical studies were conducted in compliance with IND study requirements and cGCP requirements. To assure cGMP and cGCP compliance, an applicant must incur significant expenditure of time, money and effort in the areas of training, record keeping, production, and quality control.

Notwithstanding the submission of relevant data and information, the FDA may ultimately decide that the BLA does not satisfy its regulatory criteria for approval and deny approval. Data obtained from clinical studies are not always conclusive and the FDA may interpret data differently than we interpret the same data. If the agency decides not to approve the marketing application, the FDA will issue a complete response letter that usually describes all of the specific deficiencies in the application identified by the FDA. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. Such recommended actions could include the conduct of additional studies. If a complete response letter is issued, the applicant may either resubmit the BLA, addressing all of the deficiencies identified in the letter, or withdraw the application.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. The FDA may impose restrictions and conditions on product distribution, prescribing, or dispensing in the form of a risk management plan, or otherwise limit the scope of any approval. In addition, the FDA may require post-approval clinical studies, sometimes referred to as Phase 4 clinical studies, designed to further assess a product's safety and effectiveness, and testing and surveillance programs to monitor the safety of approved products that have been commercialized.

One of the performance goals agreed to by the FDA under the PDUFA is to complete its review of 90% of standard BLAs within 10 months from filing and 90% of priority BLAs within six months from filing, whereupon a review decision is to be made. The FDA does not always meet its PDUFA goal dates and its review goals are subject to change from time to time. The review process and the PDUFA goal date may be extended by three months if the FDA requests or the application sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date.

Post-Approval Requirements

Maintaining substantial compliance with applicable federal, state, and local statutes and regulations requires the expenditure of substantial time and financial resources. Rigorous and extensive FDA regulation of biological products continues after approval, particularly with respect to cGMP. We will rely, and expect to continue to rely, on third parties for the production of clinical and commercial quantities of any products that we may commercialize. Manufacturers of our products are required to comply with applicable requirements in the cGMP regulations, including quality control and quality assurance and maintenance of records and documentation. Other post-approval requirements applicable to drug and biological products, include reporting of cGMP deviations that may affect the identity, potency, purity and overall safety of a distributed product, record-keeping requirements, reporting of adverse effects, reporting updated safety and efficacy information, and complying with electronic record and signature requirements. After a BLA is approved, the product also may be subject to official lot release. As part of the manufacturing process, the manufacturer is required to perform certain tests on each lot of the product before it is released for distribution. If the product is subject to official release by the FDA, the manufacturer submits samples of each lot of product to the FDA together with a release protocol showing a summary of the history of manufacture of the lot and the results of all of the manufacturer's tests performed on the lot. The FDA also may perform certain confirmatory tests on lots of some products before releasing the lots for distribution by the manufacturer. In addition, the FDA conducts laboratory research related to the regulatory standards on the safety, purity, potency, and effectiveness of drug and biological products.

We also must comply with the FDA's advertising and promotion requirements, such as those related to direct-to-consumer advertising, the prohibition on promoting products for uses or in patient populations that are not described in the product's approved labeling (known as "off-label use"), industry-sponsored scientific and educational activities, and promotional activities involving the internet. Discovery of previously unknown problems or the failure to comply with the applicable regulatory requirements may result in restrictions on the marketing of a product or withdrawal of the product from the market as well as possible civil or criminal sanctions. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process or after approval, may subject an applicant or manufacturer to administrative or judicial civil or criminal sanctions and adverse publicity. Sanctions authorized under FDA's legal authorities could include refusal to approve pending applications, withdrawal of an approval, clinical hold, warning or untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, mandated corrective advertising or communications with doctors, debarment, restitution, disgorgement of profits, or civil or criminal penalties. Violations of the FDCA may serve as a basis for the refusal of, or exclusion from, government contracts, including federal reimbursement programs, as well as other adverse consequences including lawsuits and actions by state attorneys general. Any agency or judicial enforcement action could have a material adverse effect on us. Drug and biological product manufacturers and other entities involved in the manufacture and distribution of approved drug or biological products are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMPs and other laws. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance. Discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved BLA, including withdrawal of the product from the market. In addition, changes to the manufacturing process or facility generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

U.S. Patent Term Restoration and Marketing Exclusivity

Depending upon the timing, duration and specifics of the FDA approval of the use of our product candidates, some of our U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an new drug application, or NDA, or BLA plus the time between the submission date of an NDA or BLA and the approval of that application. Only one patent applicable to an approved product is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration.

A drug or biological product can obtain pediatric market exclusivity in the U.S. Pediatric exclusivity, if granted, adds six months to existing exclusivity periods and patent terms. This six-month exclusivity, which runs from the end of other exclusivity protection or patent term, may be granted based on the voluntary completion of a pediatric study in accordance with an FDA-issued "Written Request" for such a study.

The Biologics Price Competition and Innovation Act of 2009 created an abbreviated approval pathway for biological products shown to be similar to, or interchangeable with, an FDA-licensed reference biological product. Biosimilarity, which requires that there be no clinically meaningful differences between the biological product and the reference product in terms of safety, purity, and potency, can be shown through analytical studies, animal studies, and a clinical study or studies. Interchangeability requires that a product is biosimilar to the reference product and the product must demonstrate that it can be expected to produce the same clinical results as the reference product and, for products administered multiple times, the biologic and the reference biologic may be switched after one has been previously administered without increasing safety risks or risks of diminished efficacy relative to exclusive use of the reference biologic. However, complexities associated with the

larger, and often more complex, structure of biological products, as well as the process by which such products are manufactured, pose significant hurdles to implementation that are still being worked out by the FDA.

A reference biologic is granted 12 years of exclusivity from the time of first licensure of the reference product. On February 2, 2015, President Obama released his proposed budget for fiscal year 2016 and proposed to cut this 12-year period of exclusivity down to seven years. He also proposed to prohibit additional periods of exclusivity for reference biologics due to minor changes in product formulations, a practice often referred to as "evergreening." The first biologic product submitted under the abbreviated approval pathway that is determined to be interchangeable with the reference product has exclusivity against other biologics submitted under the abbreviated approval pathway for the lesser of (i) one year after the first commercial marketing, (ii) 18 months after approval if there is no legal challenge, (iii) 18 months after the resolution in the applicant's favor of a lawsuit challenging the biologics' patents if an application has been submitted, or (iv) 42 months after the application has been approved if a lawsuit is ongoing within the 42-month period.

Government Regulation Outside of the U.S.

In addition to regulations in the U.S., we will be subject to a variety of regulations in other jurisdictions governing, among other things, clinical studies and any commercial sales and distribution of our products. In particular, we view the EU and Japan as important jurisdictions for our business. The EU has vested centralized authority in the EMA and Committee on Proprietary Medicinal Products to standardize review and approval across EU member nations. Any product candidates we seek to commercialize in the EU are subject to review and approval by the EMA. In Japan, the Pharmaceuticals and Medical Device Agency, or PDMA, a division of the Ministry of Health, Labour and Welfare, or MHLW, regulates the development and commercialization of medical therapies. Recently, Japan's parliament enacted new legislation to promote the safe and accelerated development of treatments using stem cells. The new Pharmaceuticals, Medical Devices and Other Therapeutic Products Act, or PMD Act, took effect in November 2014 in Japan. The PMD Act establishes a framework for expedited approval in Japan for certain regenerative medical products. Whether or not we obtain FDA approval for a product, we must obtain the requisite approvals from regulatory authorities in foreign countries prior to the commencement of clinical studies or marketing of the product in those countries. Certain countries outside of the U.S. have a similar process that requires the submission of a clinical study application much like the IND prior to the commencement of human clinical studies. In the EU, for example, a clinical trial application, or CTA, must be submitted to each country's national health authority and an independent ethics committee, much like the FDA and the IRB, respectively. Once the CTA is approved in accordance with a country's requirements, clinical study development may proceed.

The requirements and process governing the conduct of clinical studies, product licensing, coverage, pricing and reimbursement vary from country to country. In all cases, the clinical studies are conducted in accordance with cGCP and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki.

European Union Regulation

To obtain regulatory approval of an investigational biological product under EU regulatory systems, we must submit a marketing authorization application, or MAA. The application used to file the BLA in the U.S. is similar to that required in the EU, with the exception of, among other things, country-specific document requirements. The EU also provides opportunities for market exclusivity. For example, in the EU, upon receiving marketing authorization, new chemical entities generally receive eight years of data exclusivity and an additional two years of market exclusivity. If granted, data exclusivity prevents regulatory authorities in the EU from referencing the innovator's data to assess a generic application. During the additional two-year period of market exclusivity, a generic marketing authorization can be submitted, and the innovator's data may be referenced, but no generic product can be marketed until the expiration of the market exclusivity. However, there is no guarantee that a product will be considered by the EU's regulatory authorities to be a new chemical entity, and products may not qualify for data exclusivity. Products receiving orphan designation in the EU can receive 10 years of market exclusivity, during which time no similar medicinal product for the same indication may be placed on the

market. An orphan product can also obtain an additional two years of market exclusivity in the EU for pediatric studies. No extension to any supplementary protection certificate can be granted on the basis of pediatric studies for orphan indications.

The criteria for designating an "orphan medicinal product" in the EU are similar in principle to those in the U.S. Under Article 3 of Regulation (EC) 141/2000, a medicinal product may be designated as orphan if (1) it is intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition; (2) either (a) such condition affects no more than five in 10,000 persons in the EU when the application is made, or (b) the product, without the benefits derived from orphan status, would not generate sufficient return in the EU to justify investment; and (3) there exists no satisfactory method of diagnosis, prevention or treatment of such condition authorized for marketing in the EU, or if such a method exists, the product will be of significant benefit to those affected by the condition, as defined in Regulation (EC) 847/2000. Orphan medicinal products are eligible for financial incentives such as reduction of fees or fee waivers and are, upon grant of a marketing authorization, entitled to 10 years of market exclusivity for the approved therapeutic indication. The application for orphan drug designation must be submitted before the application for marketing authorization. The applicant will receive a fee reduction for the marketing authorization application if the orphan drug designation has been granted, but not if the designation is still pending at the time the marketing authorization is submitted. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process.

The 10-year market exclusivity may be reduced to six years if, at the end of the fifth year, it is established that the product no longer meets the criteria for orphan designation, for example, if the product is sufficiently profitable not to justify maintenance of market exclusivity. Additionally, marketing authorization may be granted to a similar product for the same indication at any time if:

- The second applicant can establish that its product, although similar, is safer, more effective or otherwise clinically superior;
- The applicant consents to a second orphan medicinal product application; or
- The applicant cannot supply enough orphan medicinal product.

Japanese Regulation

The Pharmaceuticals, Medical Devices and Other Therapeutic Products Act, or PMD Act, took effect on November 25, 2014 in Japan. The PMD Act established a framework for expedited approval in Japan for certain regenerative medical products. We intend to seek expedited conditional approvals in Japan for our cell therapy product candidates by capitalizing on our clinical data generated to date, our strong intellectual property, and our manufacturing know how.

Key takeaways of the PMD Act for us are:

- Conditional product approvals will be based on existing Phase 2 trial results demonstrating probable efficacy and safety with bridging studies in Japanese patients;
- Conditional approvals will allow sales of each product candidate for up to 7 years;
- Conditionally approved products will be covered by health insurance;
- Conditional approvals will cover allogeneic cell therapy product candidates manufactured under GMP outside of Japan; and
- Full approval is expected to require further confirmation of safety and efficacy in a larger population.

The PMD Act may enable us to make our cell therapy product candidates available sooner to patients with unmet medical needs, and to achieve nearer term revenues in Japan ahead of other major jurisdictions.

For other countries outside of the EU and Japan, such as countries in Eastern Europe, Latin America or Asia, the requirements governing the conduct of clinical studies, product licensing, coverage, pricing and reimbursement vary from country to country. In all cases, again, the clinical studies are conducted in accordance with cGCP and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki.

If we fail to comply with applicable foreign regulatory requirements, we may be subject to, among other things, fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution.

Pharmaceutical Coverage, Pricing and Reimbursement

Significant uncertainty exists as to the coverage and reimbursement status of any product candidates for which we obtain regulatory approval. In the U.S. and markets in other countries, sales of any products for which we receive regulatory approval for commercial sale will depend, in part, on the availability of coverage and adequate reimbursement from third-party payors. Third-party payors include government programs such as Medicare or Medicaid, managed care plans, private health insurers, and other organizations. These third-party payors may deny coverage or reimbursement for a product or therapy in whole or in part if they determine that the product or therapy was not medically appropriate or necessary. Third-party payors may attempt to control costs by limiting coverage to specific drug products on an approved list, or formulary, which might not include all of the FDA-approved drug products for a particular indication, and by limiting the amount of reimbursement for particular procedures or drug treatments.

The cost of pharmaceuticals and devices continues to generate substantial governmental and third party payor interest. We expect that the pharmaceutical industry will experience pricing pressures due to the trend toward managed healthcare, the increasing influence of managed care organizations and additional legislative proposals. Third-party payors are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of our products, in addition to the costs required to obtain the FDA approvals. Our product candidates may not be considered medically necessary or cost-effective. A payor's decision to provide coverage for a drug product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development.

Some third-party payors also require pre-approval of coverage for new or innovative devices or drug therapies before they will reimburse healthcare providers who use such therapies. While we cannot predict whether any proposed cost-containment measures will be adopted or otherwise implemented in the future, these requirements or any announcement or adoption of such proposals could have a material adverse effect on our ability to obtain adequate prices for our product candidates and to operate profitably.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. There can be no assurance that our products will be considered medically reasonable and necessary for a specific indication, that our products will be considered cost-effective by third-party payors, that coverage or an adequate level of reimbursement will be available or that the third-party payors' reimbursement policies will not adversely affect our ability to sell our product profitably.

Healthcare Reform

In the U.S. and foreign jurisdictions, there have been a number of legislative and regulatory changes to the healthcare system that could affect our future results of operations. In particular, there have been and continue to be a number of initiatives at the U.S. federal and state levels that seek to reduce healthcare costs. In the U.S., the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or the Medicare Modernization Act, changed the way Medicare covers and pays for pharmaceutical products. The Medicare Modernization Act expanded Medicare coverage for drug purchases by the elderly by establishing Medicare Part D and introduced a

new reimbursement methodology based on average sales prices for physician administered drugs under Medicare Part B. In addition, this legislation provided authority for limiting the number of drugs that will be covered in any therapeutic class under the new Medicare Part D program. Cost reduction initiatives and other provisions of this legislation could decrease the coverage and reimbursement rate that we receive for any of our approved products. While the Medicare Modernization Act applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own reimbursement rates. Therefore, any reduction in reimbursement that results from the Medicare Modernization Act may result in a similar reduction in payments from private payors.

In March 2010, the President signed into law the ACA, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against healthcare fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on pharmaceutical and medical device manufacturers and impose additional health policy reforms. Among other things, the ACA revises the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states. Further, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. Substantial new provisions affecting compliance have also been enacted, which may affect our business practices with healthcare practitioners and a significant number of provisions are not yet, or have only recently become, effective. Although it is too early to determine the full effect of the ACA, the new law appears likely to continue the downward pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. For example, on August 2, 2011, the President signed into law the Budget Control Act of 2011, which, among other things, created the Joint Select Committee on Deficit Reduction to recommend to Congress proposals in spending reductions. The Joint Select Committee on Deficit Reduction did not achieve a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, starting in 2013. Sequestration cuts went into effect on April 1, 2013, and the Bipartisan Budget Act of 2013 extended sequestration for Medicare for another two years, through 2023. A bill signed by the President on February 15, 2014, further extended these cuts for an additional year, through fiscal year 2024. On January 21, 2014, President Obama signed the fiscal year 2014 omnibus appropriations bill, modifying for fiscal year 2014 and fiscal year 2015 the cuts that went into effect under the sequester on March 1, 2013. On January 2, 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, reduced Medicare payments to several providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on our customers and accordingly, our financial operations.

We expect that the ACA, as well as other healthcare reform measures that have been and may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any approved product, and could seriously harm our future revenue. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our products.

In addition, different pricing and reimbursement schemes exist in other countries. In the European Community, governments influence the price of pharmaceutical products through their pricing and reimbursement rules and control of national healthcare systems that fund a large part of the cost of those products to consumers. Some jurisdictions operate positive and negative list systems under which products may be marketed only once a reimbursement price has been agreed upon. Some of these countries may require, as condition of obtaining reimbursement or pricing approval, the completion of clinical trials that compare the cost-effectiveness of a particular product candidate to currently available therapies. Other member states allow companies to fix their own prices for medicines, but monitor and control company profits. The downward

pressure on healthcare costs in general, particularly prescription drugs, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products. In addition, in some countries, cross-border imports from low-priced markets exert a commercial pressure on pricing within a country.

Other Healthcare Laws and Compliance Requirements

In the U.S., the research, manufacturing, distribution, sale and promotion of drug products, including biologics, and medical devices are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, divisions of the U.S. Department of Health and Human Services, including the Office of Inspector General and the Centers for Medicare and Medicaid Services, the U.S. Department of Justice, state Attorneys General, and other state and local government agencies. For example, sales, marketing and scientific/educational grant programs must comply with fraud and abuse laws such as the federal Anti-Kickback Statute, as amended, the federal False Claims Act, as amended, and similar state laws. Pricing and rebate programs must comply with the Medicaid Drug Rebate Program requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, and the Veterans Health Care Act of 1992, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. All of these activities are also potentially subject to federal and state consumer protection and unfair competition laws.

The federal Anti-Kickback Statute prohibits any person, including a prescription drug manufacturer (or a party acting on its behalf), from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce or reward either the referral of an individual, or the furnishing, recommending, or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers, and formulary managers on the other. The term “remuneration” has been broadly interpreted to include anything of value, including for example, gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests and providing anything at less than its fair market value. Although there are a number of statutory exceptions and regulatory safe harbors protecting certain business arrangements from prosecution, the exception and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing or recommending may be subject to scrutiny if they do not qualify for an exception or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from federal Anti-Kickback Statute liability. The reach of the Anti-Kickback Statute was broadened by the recently enacted ACA, which, among other things, amends the intent requirement of the federal Anti-Kickback Statute such that a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the ACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal False Claims Act (discussed below) or the civil monetary penalties statute, which imposes fines against any person who is determined to have presented or caused to be presented claims to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. Additionally, many states have adopted laws similar to the federal Anti-Kickback Statute, and some of these state prohibitions apply to the referral of patients for healthcare items or services reimbursed by any third-party payor, including private payors, and in at least some cases, these state laws do not contain safe harbors.

The federal False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The qui tam provisions of the False Claims Act allow a private individual to bring civil actions on behalf of the federal government and share in any recovery. In recent years, the number of suits brought by private individuals has increased dramatically. In addition, various states have enacted false claims laws analogous to the False Claims Act. Many of these state laws apply where a claim is submitted to any third-party payor and not merely a federal healthcare program. There are many potential bases for liability under the False Claims Act. Liability arises, primarily, when an entity knowingly submits, or causes another to submit, a false claim for reimbursement to the federal government. The False Claims Act has been used to assert liability on the basis of inadequate care, kickbacks and other improper referrals, improperly reported government pricing metrics such as Best Price or

Average Manufacturer Price, improper use of Medicare numbers when detailing the provider of services, improper promotion of off-label uses (i.e., uses not expressly approved by FDA in a drug's label), and allegations as to misrepresentations with respect to the services rendered.

Our future activities relating to the reporting of discount and rebate information and other information affecting federal, provincial, state and third party reimbursement of our products, and the sale and marketing of our products and our service arrangements or data purchases, among other activities, may be subject to scrutiny under these laws. We are unable to predict whether we would be subject to actions under the False Claims Act or a similar state law, or the impact of such actions. However, the cost of defending such claims, as well as any sanctions imposed, could adversely affect our financial performance. Also, the Health Insurance Portability and Accountability Act of 1996, or HIPAA, created several new federal crimes, including healthcare fraud, and false statements relating to healthcare matters. The healthcare fraud provision of HIPAA prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors. The false statements provision prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

In addition, we may be subject to, or our marketing activities may be limited by, data privacy and security regulation by both the federal government and the states in which we conduct our business. For example, HIPAA and its implementing regulations established uniform federal standards for certain "covered entities" (healthcare providers, health plans and healthcare clearinghouses) governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of protected health information. The American Recovery and Reinvestment Act of 2009, commonly referred to as the economic stimulus package, included expansion of HIPAA's privacy and security standards called the Health Information Technology for Economic and Clinical Health Act, or HITECH, which became effective on February 17, 2010. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to "business associates"—independent contractors or agents of covered entities that create, receive, maintain, or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions.

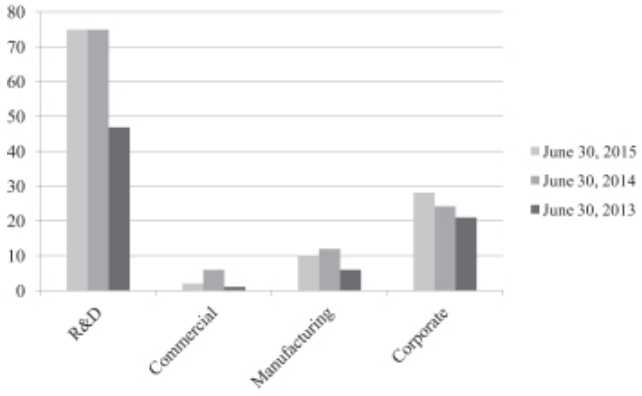
There are also an increasing number of state "sunshine" laws that require manufacturers to make reports to states on pricing and marketing information. Several states have enacted legislation requiring pharmaceutical companies to, among other things, establish marketing compliance programs, file periodic reports with the state, make periodic public disclosures on sales, marketing, pricing, clinical trials and other activities, and/or register their sales representatives, as well as to prohibit certain other sales and marketing practices. In addition, beginning in 2013, a similar federal requirement began requiring manufacturers to track and report to the federal government certain payments and other transfers of value made to physicians and other healthcare professionals and teaching hospitals and ownership or investment interests held by physicians and their immediate family members. The federal government began disclosing the reported information on a publicly available website in 2014. These laws may affect our sales, marketing, and other promotional activities by imposing administrative and compliance burdens on us. If we fail to track and report as required by these laws or otherwise comply with these laws, we could be subject to the penalty provisions of the pertinent state and federal authorities.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our business activities could be subject to challenge under one or more of such laws. If our operations are found to be in violation of any of the federal and state laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including criminal and significant civil monetary penalties, damages, fines, imprisonment, exclusion from participation in government healthcare programs, injunctions, recall or seizure of products, total or partial suspension of production, denial or withdrawal of premarketing product approvals, private qui tam actions brought by individual whistleblowers in the name of the government or refusal to allow us to enter into supply contracts, including government contracts, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate

our business and our results of operations. To the extent that any of our products are sold in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-approval requirements, including safety surveillance, anti-fraud and abuse laws, and implementation of corporate compliance programs and reporting of payments or transfers of value to healthcare professionals.

Employees

As of June 30, 2015, we had 115 full-time employees, 80 of whom are based in the United States, 26 of whom are based in Australia, including our CEO and certain executive team members, 8 of whom are based in Singapore, and 1 of whom is based in Switzerland. We had 117 and 75 full-time employees as of June 30, 2014, and 2013, respectively. We have no collective bargaining agreements with our employees. We have not experienced any work stoppages to date and consider our relations with our employees to be good. The composition of our employee base breaks down as follows:



Facilities

We lease approximately 11,150 square feet of office space in Melbourne, Australia, where our headquarters are located. We currently pay approximately A$695,000 per year for this lease, which expires in April 2020. We also lease approximately 31,000 square feet in New York City, where significant development and commercial activities are conducted. We currently pay US$955,000 per year for this lease, which expires in May 2021. We also lease laboratory space in Singapore. We pay approximately A$250,000 per year for this lease, which expires in January 2016. All of our manufacturing operations are currently located at Lonza's manufacturing facilities. See "Business—Manufacturing and Supply Chain."

Legal Proceedings

From time to time, we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently party to any legal proceedings that, in the opinion of our management, would reasonably be expected to have a material adverse effect on our business, financial condition, operating results or cash flows if determined adversely to us. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

MANAGEMENT

Directors and Senior Management

The table below sets forth the certain information relating to our directors and senior management as of the date of this prospectus.

Name	Age	Position
Silviu Itescu	58	Chief Executive Officer and Managing Director
Paul Hodgkinson	47	Chief Financial Officer
Peter Howard	47	Corporate Executive and General Counsel
Sue MacLeman	51	Head of Commercial
John McMannis	59	Head of Manufacturing
Michael Schuster	38	Investor Relations
Paul Simmons	56	Head of Research
Donna Skerrett	58	Chief Medical Officer
Darin Weber	47	Head of Regulatory & Quality Management
Brian Jamieson	71	Chairman of the Board of Directors
William Burns	67	Director
Donal O'Dwyer	62	Director
Eric Rose	64	Director
Michael Spooner	58	Director
Ben-Zion Weiner	70	Director

Senior Management

Silviu Itescu, MBBS (Hons), FRACP, FACP, FACRA, Dr. Itescu is our Chief Executive Officer. He has served on our board of directors since our founding in 2004, was Executive Director from 2007 to 2011, and became Chief Executive Officer and Managing Director in 2011. Prior to founding Mesoblast in 2004, Dr. Itescu established an international reputation as a physician scientist in the fields of stem cell biology, autoimmune diseases, organ transplantation, and heart failure. He has been a faculty member of Columbia University in New York, and of Melbourne and Monash universities in Australia. In 2011, Dr. Itescu was named BioSpectrum Asia Person of the Year. In 2013, he received the inaugural Key Innovator Award from the Vatican's Pontifical Council for Culture for his leadership in translational science and clinical medicine in relation to adult stem cell therapy.

We believe Dr. Itescu is qualified to serve as a member of our board of directors because he has consulted for various international pharmaceutical companies, has been an adviser to biotechnology and health care investor groups, and has served on the board of directors of several publicly listed life sciences companies.

Paul Hodgkinson, MA (Hons) FCA, has served as our Chief Financial Officer since June 2014. Mr. Hodgkinson has 16 years of international pharmaceutical experience in the areas of finance, strategic planning, business development and licensing, manufacturing and supply chain, and procurement. From 2011 through 2014, Mr. Hodgkinson served as the Country Chief Financial Officer for the Novartis Australia and New Zealand, or ANZ, group of companies and divisions, which was comprised of Alcon, Sandoz, and the Novartis Vaccines and Diagnostics, Consumer Health, Animal Health, and Pharmaceuticals divisions. From 1998 to 2006, Mr. Hodgkinson held a number of leadership roles with AstraZeneca in the United Kingdom, including Global Licensing Finance Director, before serving as Chief Financial Officer for AstraZeneca Australia from 2006 through 2011. Mr. Hodgkinson is a member of the Institute of Chartered Accountants in Australia, is a Fellow of the Institute of Chartered Accountants of England and Wales and has a master's degree in engineering from Cambridge University. He has also undertaken executive leadership programs at the Harvard Business School and INSEAD.

Peter Howard, BSc, LLB (Hons), has served as our General Counsel and Corporate Executive since July 2011. As external counsel and partner at Australian law firm Middletons (now, K&L Gates), Mr. Howard has been integrally involved with Mesoblast since its inception and public listing on the ASX in 2004. More

generally, Mr. Howard has extensive experience with many biopharmaceutical firms and major research institutions, covering public listings, private financings, strategic, licensing, intellectual property and mergers and acquisition activities. He has done so in several roles, including as a partner at a major law firm, entrepreneur, director and senior executive.

Sue MacLeman, BPharm, MMktg, MLaw, FACPP, FAICD, has been Senior Vice President since 2011 and is Commercial Head. Mrs. MacLeman has more than 20 years of experience as a pharmaceutical executive and has held roles in corporate, medical, marketing, business development and sales management roles at Schering-Plough Corporation (now Merck) (1991-1994), at Amgen Inc. (1993-1996), and at Bristol-Myers Squibb Company (1996-2002). Mrs. MacLeman also served as Chief Executive Officer at EQiTX Ltd (2004-2006), Benitec Biopharma Ltd (2007-2010), Progen Pharmaceuticals Ltd (2010-2011) and in the past served as a board member of AusBiotech Ltd, EQiTX Ltd, Benitec Biopharma Ltd and is currently a non-executive director at Reproductive Health Sciences Ltd. Before her work in the pharmaceutical industry, Mrs. MacLeman worked in various hospital roles including as a pharmacist and as an executive (1985-1991). Mrs. MacLeman has been a member of the Pharmaceutical Industry Council since 2007 and a member of the Australian Government Pharmaceutical Working Group since 2007. In 2011, Mrs. MacLeman was appointed to the Victorian Biotechnology Advisory Council.

John McMannis, PhD has served as our Head of Manufacturing since 2011. Dr. McMannis has 27 years of experience in clinical cellular therapy trials in both academic and commercial environments. Before joining Mesoblast, Dr. McMannis served at the University of Texas MD Anderson Cancer Center as a Professor of Medicine from 1999 to 2011, and as the Director of the Cell Therapy Laboratory from 1999 to 2011, and as the Technical Director of the Cord Blood Bank from 2008 to 2011. Before his tenure at the University of Texas MD Anderson Cancer Center, Dr. McMannis was a Senior Director Technical Affairs at the Immunotherapy Division of Baxter and Therapy Scientist at COBE BCT (now Terumo BCT). Dr. McMannis has served on the scientific advisory boards at BioSafe SA, Biolife Solutions, Inc., and General Electric and on the board of directors for the American Association of Blood Banks, or AABB, and the National Marrow Donor Program, or NMDP, which operates the "Be the Match" donor program.

Michael Schuster, MBA has been a founding executive holding multiple executive roles with Mesoblast for the last ten years. He has served as our Executive Vice President of Global Therapeutic Programs, Director of Business Development and Vice President of Operations and Investor Relations. Mr. Schuster holds an undergraduate degree in science from Tufts University, a master's degree in Immunology & Microbiology from New York Medical College, and a MBA from Fordham University in New York.

Donna Skerrett, MD has served as our Chief Medical Officer since 2011, and she previously held roles at Mesoblast in Clinical and Regulatory Affairs since 2004. Dr. Skerrett has 20 years of combined experience in transfusion medicine, cellular therapy, and transplantation. Prior to joining Mesoblast, Dr. Skerrett was Director of Transfusion Medicine and Cellular Therapy at Weill Cornell Medical Center in New York from 2004 to 2011, and she served as Associate Director of Transfusion Medicine and Director of Stem Cell Facilities at Columbia University's New York-Presbyterian Hospital from 1999 to 2004. She has been an advisor to the New York State Department of Health on the Progenitor Cell Committee since 1989 and has been Chair of the Governor's Council on Blood and Transfusion Services since 2007.

Paul Simmons, PhD has served as our Head of Research and Development since 2011. Dr. Simmons has nearly 30 years of experience in stem cell research, especially research in basic hematopoiesis and in precursor cells for the stromal system of the bone marrow, and served as President of the International Society of Stem Cell Research, or ISSCR, from 2006 to 2007. Prior to joining Mesoblast, Dr. Simmons held the C. Harold and Lorine G. Wallace Distinguished University Chair at the University of Texas Health from 2008 to 2011 and served as the inaugural Professor and Director of the Centre for Stem Cell Research at the Brown Foundation Institute of Molecular Medicine from 2006 to 2011. Dr. Simmons is, or has served as, an associate editor, a member of the editorial board, or a reviewer on multiple scientific and medical journals including *Experimental Hematology*, *Cytotherapy* and *Stem Cell Research*, *Cell Stem Cell*, *Stem Reports*, *Science* and *Nature*.

Darin Weber, PhD has served as our Global Head of Regulatory Affairs since June 2011. Since October 2012, he also served as Head of Quality Management. Dr. Weber has 18 years of experience in cellular and tissue-based regenerative medicine products and serves on the United States Pharmacopeia Expert Committee and on committees within the International Society for Cellular Therapy and Alliance for Regenerative Medicine. Before joining Mesoblast, Dr. Weber worked as a senior consultant at Biologics Consulting Group, Inc. from February 2004 to May 2011. Prior to that, Dr. Weber worked at the FDA Center for Biologics Evaluation and Research as a regulatory management officer from 1996 to 1998, as a regulatory review officer from 1998 to 2003, and as the Chief of the Cellular Therapy Branch in the Office of Cellular, Tissue and Gene Therapies from 2002 to 2004. During his employment with the FDA, Dr. Weber held a Commission in the United States Public Health Service Commissioned Corps, with a rank of Lieutenant Commander at the conclusion of his service.

Directors

Brian Jamieson, FCA, has served on our board of directors as Chairman since 2007. Mr. Jamieson was Chief Executive of Minter Ellison Melbourne and a partner of the Minter Ellison Revenue Group from 2002 to 2005. He retired as Chief Executive of Minter Ellison Melbourne on December 31, 2005. Prior to joining Minter Ellison, Mr. Jamieson was Chief Executive Officer at KPMG Australia from 1998 to 2000, Managing Partner of KPMG Melbourne and Southern Regions from 1993 to 1998 and Chairman of KPMG Melbourne from 2001 to 2002. He was also a KPMG Board Member in Australia, and a member of the USA Management Committee. Mr. Jamieson is Chairman of Sigma Pharmaceuticals Limited and a Non-Executive Director of the Tatts Group Limited. He is also a director and Treasurer of the Bionic Ear Institute. He is a fellow of the Institute of Chartered Accountants in Australia.

We believe Mr. Jamieson is qualified to serve as a member of our board of directors because he has over 30 years of experience in providing advice and audit services to a diverse range of public and large private companies.

William Burns, BA, has served on our board of directors since March 2014. Mr. Burns has spent his entire management career at the Beecham Group and F. Hoffmann-La Roche Ltd. He was Chief Executive Officer of Roche Pharmaceuticals from 2001 to 2009, when he joined the board of directors of F. Hoffmann-La Roche Ltd. until he retired in 2014. Mr. Burns has also served on the board of directors of Roche Holdings AG from 2010 to 2014, Chugai Pharmaceutical Co. and Genentech from 2002 to 2014, and Crucell from 2010 to 2011. Mr. Burns is also a member of the oncology Advisory Board of the Universities of Cologne/Bonn. Mr. Burns is currently the Chairman of the board of directors of Biotie Therapies Corp. and is a non-executive director of Shire PLC. In October 2014 Mr. Burns was appointed a trustee of the Institute of Cancer Research, London, UK.

We believe Mr. Burns is qualified to serve as a member of our board of directors because of his extensive experience in the pharmaceuticals industry, specifically as a member of the board of directors of other pharmaceutical companies.

Donal O'Dwyer, BE, MBA, has served on our board of directors since 2004. Mr. O'Dwyer has over 25 years of experience as a senior executive in the global cardiovascular and medical devices industries. From 1996 to 2003, Mr. O'Dwyer worked for Cordis Cardiology, the cardiology division of Johnson & Johnson's Cordis Corporation, initially as its president (Europe) and from 2000 as its worldwide president. Prior to joining Cordis, Mr. O'Dwyer worked for 12 years with Baxter Healthcare, rising from plant manager in Ireland to president of the Cardiovascular Group, Europe, now Edwards Lifesciences. Mr. O'Dwyer is a qualified civil engineer, has an MBA and is on the board of directors of a number of companies including Cochlear Limited, Atcor Medical Holdings Ltd and Fisher & Paykel Healthcare Ltd.

We believe Mr. O'Dwyer is qualified to serve as a member of our board of directors because of his extensive experience in the cardiovascular and medical devices industries.

Eric Rose, MD, has served on our board of directors since 2013. Dr. Rose is currently Chairman and Chief Executive Officer of SIGA Technologies and Executive Vice President, Life Sciences at MacAndrews & Forbes,

Inc., the holding company of Ronald O. Perelman. From 2008 through 2012, Dr. Rose served as the Edmond A. Guggenheim Professor and Chairman of the Department of Health Evidence and Policy at the Mount Sinai School of Medicine. From 1994 through 2007, Dr. Rose served as Chairman of the Department of Surgery and Surgeon-in-Chief of the Columbia Presbyterian Center of New York Presbyterian Hospital. From 1982 through 1992, he led the Columbia Presbyterian heart transplantation program in the United States. Dr. Rose currently sits on the board of directors of ABIOMED.

We believe Dr. Rose is qualified to serve on our board of directors because of his years of experience as a surgeon, researcher and businessman.

Michael Spooner, BCom, ACA, MAICD, has served on our board of directors since 2004. During this period he has filled various roles including as Chairman from the date of our IPO in 2004 until 2007, Chair of the Audit and Risk Committee as well as a member of our Remuneration Committee. Over the past several years Mr. Spooner has served on the board of directors in various capacities at several Australian and international biotechnology companies, including BiVacor Pty Ltd (2009-2013), Advanced Surgical Design & Manufacture Limited (2010-2011), Peplin, Inc. (2004-2009), Hawaii Biotech, Inc. (2010-2012), Hunter Immunology Limited (2007-2008), and Ventracor Limited (2001-2003). Prior to returning to Australia in 2001, Mr. Spooner spent much of his career internationally where he served in various roles including as a partner to PA Consulting Group, a UK based management consultancy and a Principal Partner and Director of Consulting Services with PricewaterhouseCoopers (Coopers & Lybrand) in Hong Kong. In addition Mr. Spooner has owned and operated several international companies providing services and has consulted to a number of U.S. and Asian public companies.

We believe Mr. Spooner is qualified to serve on our board of directors because of his business experience and relationships with investment firms and business communities worldwide.

Ben-Zion Weiner, BSc, MSc, PhD, has served on our board of directors since 2012. Prior to joining Mesoblast, Dr. Weiner spent 37 years at Teva until he retired in 2012. During his tenure at Teva, he served as the Vice President of Research and Development from 1986 to 2002, the Global Vice President of Global Products from 2002 to 2006, and the Chief R&D Officer from 2006 to 2012. Dr. Weiner is currently on the board of directors at Novaremed Ltd., the scientific advisory board at E-QURE Corp. and Breed IT, Corp. and has in the past served on the board of directors at Geffen Biomed Investments Ltd (2010-2013), XTL Biopharmaceuticals Limited (2012-2013) and Breed IT, Corp.

We believe Dr. Weiner is qualified to serve on our board of directors because of his experience in our industry and prior board service.

There are no family relationships among any of our directors and senior management. The business address of each of our directors and senior management is Mesoblast Limited, Level 38, 55 Collins Street, Melbourne 3000, Australia.

Board of Directors

Our board of directors currently consists of seven members, including six non-executive directors and one executive director, our Chief Executive Officer.

Our directors are generally elected to serve three-year terms in a manner similar to a “staggered” board of directors under Delaware law. At every annual general meeting, one-third of the previously elected directors or, 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. The directors who retire in this manner are required to be the directors or director longest in office since last being elected. Additionally, no director, except the Managing Director (currently designated as our chief executive officer, Silviu Itescu), may hold office for a period in excess of three years, or beyond the third annual general meeting following the director’s last election, whichever is the longer, without submitting himself or herself for re-election. As a result of the staggered terms, not all of our directors

will be elected in any given year. The current terms of Messrs. Spooner and Rose will expire at the annual shareholders' meeting in 2015, the current terms of Messrs. Jamieson and Burns will expire at the annual shareholders' meeting in 2016 and the current terms of Messrs. O'Dwyer and Weiner will expire at the annual shareholders' meeting in 2017.

We believe that each of our directors has relevant industry experience. The membership of our board of directors is directed by the following requirements:

- our Constitution specifies that there must be a minimum of 3 directors and a maximum of 10, and our board of directors may determine the number of directors within those limits;
- we may appoint or remove any director by resolution passed in the general meeting of shareholders;
- our directors may appoint any person to be a director, and that person only holds office until the next general meeting at which time the director may stand for election by shareholders at that meeting;
- it is the intention of our board of directors that its membership consists of a majority of independent directors who satisfy the criteria for independence recommended by the ASX's Corporate Governance Principles and Recommendations;
- the chairperson of our board of directors should be an independent director who satisfies the criteria for independence recommended by the ASX's Corporate Governance Principles and Recommendations; and
- our board of directors should, collectively, have the appropriate level of personal qualities, skills, experience, and time commitment to properly fulfill its responsibilities or have ready access to such skills where they are not available.

Our board of directors is responsible for, and has the authority to determine, all matters relating to our corporate governance, including the policies, practices, management and operation. The principal roles and responsibilities of our board of directors are to:

- facilitate board of directors and management accountability to our company and its shareholders;
- ensure timely reporting to shareholders;
- provide strategic guidance to us, including contributing to the development of, and approving, the corporate strategy;
- oversee management and ensure there are effective management processes in place;
- monitor:
  - organizational performance and the achievement of our strategic goals and objectives;
  - financial performance including approval of the annual and half-year financial reports and liaison with our auditors;
  - progress of major capital expenditures and other significant corporate projects including any acquisitions or divestments;
  - compliance with our code of conduct;
  - progress in relation to our diversity objectives and compliance with its diversity policy;
- review and approve business plans, the annual budget and financial plans including available resources and major capital expenditure initiatives;
- approve major corporate initiatives;
- enhance and protect the reputation of the organization;

- oversee the operation of our system for compliance and risk management reporting to shareholders; and
- ensure appropriate resources are available to senior management.

Committees

To assist our board of directors with the effective discharge of its duties, it has established a Nomination and Remuneration Committee, an Audit and Risk Committee and a Science and Technology Committee. Each committee operates under a specific charter approved by our board of directors.

Nomination and Remuneration Committee. The members of our Nomination and Remuneration Committee are Messrs. Jamieson, O'Dwyer (Chairman) and Spooner, all of whom are independent, non-executive directors. The remuneration committee is a committee of our board of directors, and is primarily responsible for making recommendations to our board of directors on:

- board appointments;
- non-executive director fees;
- the executive remuneration framework;
- remuneration of executive directors, including the CEO and other key executives;
- short-term and long-term incentive awards; and
- share ownership plans.

The committee's objective is to ensure remuneration policies are fair and competitive and in line with similar industry benchmarks while aligned with our objectives. The remuneration committee seeks independent advice from remuneration consultants as and when it deems necessary. See "Management—Remuneration."

Audit and Risk Committee. The members of our Audit and Risk Committee are Messrs. Jamieson, O'Dwyer and Spooner (Chairman), all of whom are independent, non-executive directors. This committee oversees, reviews, acts on and reports on various auditing and accounting matters to our board of directors, including the selection of our independent accountants, the scope of our annual audits, fees to be paid to the independent accountants, the performance of our independent accountants and our accounting practices. In addition, the committee oversees, reviews, acts on and reports on various risk management matters to our board of directors.

The effective management of risk is central to our ongoing success. We have adopted a risk management policy to ensure that:

- appropriate systems are in place to identify, to the extent that is reasonably practical, all material risks that we face in conducting our business;
- the financial impact of those risks is understood and appropriate controls are in place to limit exposures to them;
- appropriate responsibilities are delegated to control the risks; and
- any material changes to our risk profile are disclosed in accordance with the our continuous disclosure reporting requirements in Australia.

It is our objective to appropriately balance, protect and enhance the interests of all of our shareholders. Proper behavior by our directors, officers, employees and those organizations that we contract to carry out work is essential in achieving this objective.

We have established a code of conduct, which sets out the standards of behavior that apply to every aspect of our dealings and relationships, both within and outside Mesoblast. The following standards of behavior apply:

- patient well-being;

- comply with all laws that govern us and our operations;
- act honestly and with integrity and fairness in all dealings with others and each other;
- avoid or manage conflicts of interest;
- use our assets properly and efficiently for the benefit of all of our shareholders; and
- seek to be an exemplary corporate citizen.

Science and Technology Committee. The members of the Science and Technology Committee are Messrs. Itescu, Rose (Chairman), Burns and Weiner. The Science and Technology Committee is a committee of our board of directors, and is primarily responsible for making recommendations to our board of directors pertaining to our strategic direction and investment in research and development and technology, by:

- identifying areas and activities that are critical to the success of our regenerative medicine discovery, development and licensing efforts;
- evaluating the effectiveness of our regenerative medicine development and licensing strategies and operations;
- keeping our board of directors apprised of this evaluation process and findings;
- making appropriate recommendations to our board of directors on modifications of strategies and operations; and
- identifying additional areas of focus as appropriate.

Foreign Private Issuer Exemption

We qualify as a "foreign private issuer" as defined in Section 405 of the Securities Act of 1933, as amended. As a foreign private issuer, we are exempt from certain rules under the Exchange Act that impose disclosure requirements as well as procedural requirements for proxy solicitations under Section 14 of the Exchange Act. Under the NASDAQ listing standards, a foreign private issuer is subject to less stringent corporate governance requirements. Subject to certain exceptions, NASDAQ listing standards permit a foreign private issuer to follow its home country practice in lieu of NASDAQ listing standards.

Remuneration

Directors' Fee Structure

We have six non-executive directors, three based in Australia, one in the United States, one in Switzerland and one in Israel. Non-executive director fees are paid in accordance with Australian regulations and vary depending on the time commitment required of each director. They have been set at market rates for our industry and company size in order to attract those directors who have considerable expertise both in our industry and in the Australian capital markets.

Our aim is to establish a board of directors with global expertise in the biopharmaceutical industry and capital markets. Therefore, our non-executive directors' fees are based on the responsibilities and work involved with directing a company of Mesoblast's technological and geographical complexity, our financial position, regulatory and compliance context, and market practice.

In keeping with our aim to attract directors with international experience, we sought and obtained shareholders approval at our annual general meeting on November 25, 2014 for a grant of options to three relatively new non-executive directors.

Director Fee Structure

Non-executive directors receive fixed fees for their services, as approved by shareholders at the 2013 annual general meeting, not to exceed a maximum fee pool of $1,250,000. Board and committee fees are structured as

outlined below which were adopted on November 1, 2013. This structure reflects advice provided by Towers Watson in October 2012 with reference to companies of comparable size and complexity.

Fees (per annum) FY15	Chair A$	Member A$
Board	328,230	128,250
Committee fees		
Audit & Risk Committee	25,000	12,500
Nomination & Remuneration Committee	20,000	10,000
Science & Technology Committee	20,000	10,000

Non-executive directors do not receive performance-related remuneration and are not provided with retirement benefits other than statutory superannuation. Non-executive directors are reimbursed for costs directly related to conducting Mesoblast business. The key terms of Non-executive directors service are documented in a letter of appointment to the Board.

Performance Review

During each year, our board of directors conducts a self-review of its performance and its operations as whole. The review is conducted internally using questionnaires and interviews between the Chairman and each individual director.

CEO Remuneration

Silviu Itescu is our CEO and founder and serves on our board of directors. Our CEO is our single largest shareholder and has been since our inception in 2004.

Our CEO's remuneration is comprised of the following components:

- Fixed remuneration, comprising base salary and statutory superannuation; and
- Performance based remuneration, comprising short-term incentives up to a maximum entitlement of 100% of fixed remuneration, based on business and individual performance.

The Board has customized the CEO's remuneration mix in comparison with other executive KMP in recognition that he continues to be Mesoblast's single largest shareholder. The Board believes the CEO has sufficient exposure to the Company's share performance to align his interests in value creation. The Board reviews the CEO's remuneration package annually, including the remuneration mix.

Since June 30, 2014, a benchmarking study on CEO remuneration was performed by an independent service provider. The findings of this exercise show our CEO's overall remuneration package resides between the 25th percentile and the median of the comparison group. The comparison group included Australian-based companies with a similar market capitalization to ours, of between A$1 billion to A$1.5 billion.

Fixed Remuneration

Our CEO's annual fixed pay pursuant to his contract of employment dated April 1, 2014 is A$960,000 plus statutory superannuation. This reflected a 0.1% increase over the year ended June 30, 2014, due to a slight increase in the statutory superannuation.

Performance-Based Incentives

In order to align our CEO with our shorter-term success and the achievement of milestones which are designed to ultimately lead to long-term shareholder wealth, our CEO has 50% of his total target opportunity at risk, which is paid subject to meeting annual key performance indicators, or KPIs. These KPIs are set by our board of directors, with reference to the upcoming strategic milestones needed to be achieved in order for us to grow and set the foundation for long-term shareholder wealth.

At the end of each year, our board of directors assesses the overall performance of our company, and our CEO's individual performance against the set KPIs. The achievement of these KPIs is always assessed in the context of total corporate performance against budget which ensures cost control is always part of the performance framework and is regularly measured and reported.

Our board of directors approved the following KPIs for the CEO in the following performance categories for the year ended June 30, 2015:

KPI	Percentage	Achievement
Clinical Trial Management: regulatory and enrollment targets	40	Achieved
Manufacturing achievements • Advances in technology transfers • Progress with commercial manufacturing capabilities	25	Substantially achieved
Financial Performance • company performance versus budget • development of strategic and capital market initiatives	25	Substantially achieved
Organizational development	10	Achieved

For the year ended June 30, 2015, the total performance assessment of the achievement of the above KPIs was 90% of the target/maximum short-term incentive.

Non-CEO Executive Remuneration

Our executive management team, also referred to in this prospectus as "officers" or "senior management," consists of nine people as of June 30, 2015. Our executive team is currently located across both the United States and Australia and includes Silviu Itescu, Paul Hodgkinson, Peter Howard, Sue MacLeman, John McMannis, Michael Schuster, Paul Simmons, Donna Skerrett and Darin Weber.

Our executive team remuneration packages are designed to be competitive in each of the jurisdictions in which they are based, with close alignment across the team where skill sets and experience are similar, to ensure cohesion.

Certain compensation disclosures are provided herein with respect to our "key management personnel," which is a defined term under Australian law. Our key management personnel consist of our directors (including our CEO, Silviu Itescu) and our CFO, Paul Hodgkinson, and we are required to make certain compensation disclosures with respect to these individuals.

Remuneration Structure

The aim of our executive remuneration structure is to ensure the remuneration package reflects the skills, responsibilities and experience of our people. It is also designed to align the achievement of our goals that are ultimately set to achieve long-term shareholder value. We are committed to adhering to appropriate corporate governance standards for executive (including the CEO) remuneration, having regard to the ASX Corporate Governance Principles and Recommendations and relevant stakeholder bodies, together with mindfulness of the industry and environment we are operating within.

Our remuneration arrangements for our executive team (excluding the CEO whose details are discussed above) are comprised of both fixed and performance-based remuneration. The fixed remuneration component allows us to recruit and retain highly specialized experts in a small and competitive market. The at-risk components of short-term incentives, or STIs, and long-term incentives, or LTIs, seek to reward our executives for achieving the operational objectives that are essential to reaching our long-term objective of creating regenerative medicine therapies for major unmet clinical needs.

When conducting our annual executive remuneration review, the Nomination and Remuneration Committee considers the following:

- our operational performance and current financial position;

- the achievement of our strategic goals for the year; and
- the individual performance of our executive team members.

The Nomination and Remuneration Committee benchmarks the various components of our executive remuneration to packages paid by other publicly listed companies in our peer group, incorporates compensation data from recruitment processes and an international life sciences survey, and considers recommendations from our CEO (other than for his own salary). From time to time the Nomination and Remuneration Committee engages the services of outside compensation consultants.

As approximately 70% of our employees are in the United States, it is critical that our approach to remuneration in that market is appropriate and competitive, to ensure we can hire and retain the key individuals we need to give us the best opportunity for success.

Fixed Remuneration

Fixed remuneration consists of base salary, and in keeping with local market practices our Australian executives receive employer superannuation contributions, up to the statutory limits, and our United States executives receive medical and insurance benefits.

Performance-Based Remuneration

Our performance-based remuneration components consist of at-risk STIs and LTIs. Annual STI and LTI grants are determined each year by the CEO together with the Nomination and Remuneration Committee, with regard to both individual performance and overall corporate performance. STI and LTI recommendations are then subject to approval by our board of directors.

Short-Term Incentives (STIs). Our approach to STI setting is influenced by the fact that we are in development stage, as follows:

- we set STIs at a smaller proportion of our total target remuneration than LTIs to conserve cash outflow; and
- we measure performance against the following:
  - achievement of individual KPIs;
  - key corporate and budgetary milestones; and
  - achievement of strategic goals.

All of the factors lead to long-term shareholder value creation.

KPIs for the executive team are closely aligned to our strategy and objectives, and our CEO's own KPIs. This ensures that by their achievement they will contribute to the overall corporate goals.

STI allocations for the executive team start with an assessment of overall company performance against key milestones, strategic goals and budget performance. The STIs are then adjusted up or down based on each executive's operational ability to contribute to our goals and their individual performance against their own individual KPIs. For the year ended June 30, 2015, executive STI allocations were between 80% and 100% of target. STIs are paid in cash.

The following is a summary of the key features of our Short-Term Incentive Plan, or STIP:

What is the STIP?	An incentive plan under which eligible employees are (subject to satisfaction of specified performance measures) granted a cash amount, which is based on a percentage range of each participant's fixed remuneration (determined according to role and ability to influence our performance). Performance is assessed against a combination of company and individual measures.

When is the STIP grant paid to eligible employees?	The STIP amount will be paid to each participant who satisfies applicable performance measures in August of each year following assessment of performance against the applicable measures during our fiscal year end.
Who participates in the STIP?	All employees hired on or before March 31 of the relevant year are eligible for consideration. Employees hired during the year are recognized on a pro-rata basis.
Why does our board of directors consider the STIP an appropriate incentive?	The STIP is a globally recognized form of reward for management, aimed at ensuring focus and alignment our goals and strategy. Based on both company and individual measures, and in conjunction with other factors, our board of directors believes that it helps encourage and reward high performance.
What are the performance conditions under the STIP?	Individual performance is measured against the achievement of individual KPIs, key corporate and budgetary milestones and achievement of strategic goals all of which lead to long-term shareholder value creation.
What is the relationship between our performance and allocation of STIs?	At the end of the fiscal year our board of directors assesses our overall company performance based on the achievement of our CEO's KPIs. This assessment will adjust how much of our bonus pool is eligible for allocation. For example, if we achieve an 85% company performance assessment, then 85% of the total bonus pool will be available for allocation to individual employees. The executives evaluate individual performance contributions and make recommendations of the bonus amount each employee should receive based on the bonus pool they have available for allocation and with reference to individual target bonus opportunities.
What is the period over which our performance is assessed?	The assessment period is the fiscal year preceding the payment date of the STIP (July 1 through June 30).

Long-Term Incentives (LTIs). As a biotechnology company which is still in the clinical trial development stage, we aim to conserve our cash resources in order to fund our programs, therefore we place significant weight on the LTI component of our remuneration mix. This focuses our executives on the value creation that occurs as our products move through development process and ultimately to therapeutic treatment.

In designing a LTI mechanism which aims to reward and retain talent across our locations, and considering a large portion of our employees are based in the United States, we seek to balance:

- Australian practice and governance expectations, where LTI are expected to have performance hurdles other than price and employment milestones alone;
- United States practices, where options are a widely distributed remuneration component, typically issued without a price premium, performance hurdles or milestones, and which vest on a more regular basis (e.g. rolling monthly basis);

- a strong preference for a single reward mechanism to maintain executive cohesion and teamwork; and
- alignment with driving shareholder value.

In view of the points outlined above our approach is to issue LTIs to executives that are time based. They are generally approved at a premium to the actual share price. It is our belief that this approach is the appropriate one for us at this stage as we believe that the addition of performance hurdles to our LTI program would make it problematic for us to attract and retain the people we need, particularly in the United States, and would ultimately be negative for our company. This is an area we continue to review and assess on an ongoing basis.

In Australia, most LTIs made prior to July 1, 2015 consisted of our limited recourse loan-funded shares pursuant to the rules of the Loan-funded Share Plan, or LFSP. Changes to the tax treatment of employee share schemes in Australia became effective on July 1, 2015. These changes alter the relevance of using a LFSP for Australian participants. As a result, we returned to using a single plan, our Employee Share Option Plan, or ESOP, for all participants, effective 10 July 2015. Existing grants under the LFSP generally remain the same until the grants vest and the loans have been repaid. Outside Australia prior to July 1, 2015 and globally thereafter, LTIs consist of options over our ordinary shares under the rules of the Employee Share Ownership Plan, or ESOP. Both the ESOP and LFSP were approved by shareholders at the annual general meeting held in November 2013. Both plans operate in a similar manner, with the shares/options typically having a purchase/exercise price premium applied, over a three-year vesting schedule. Grants made prior to July 1, 2015 had a five-year term. Recognizing that option grants in the U.S. where the majority of our LTI participants reside typically have a ten-year term, the grant made on July 10, 2015 was issued with a seven-year term. Our board of directors considers the appropriate term at the time each grant is approved.

Executive LTI allocations are determined with consideration to the nature of the role within our organization, market value of LTI allocations for comparable roles, previous grants made and the remuneration mix described above where a modified Black-Scholes calculation is used to determine the value of the option.

If LTI valuations decline due to a decline in our share price the Board has taken a view that this should not automatically drive an increase in LTI grants to maintain the desired remuneration mix. In recent years LTI grants have remained stable in number of options/loan funded shares reflecting the Board's assessment that this grant size will deliver the desired value to the executives over time.

Shares issued in the LFSP are generally issued as new equity, and we do not buy shares on-market under this plan in an effort to conserve cash.

The following is a summary of the key features of the ESOP and LFSP (collectively, the LTI Plans):

Long Term Incentive Plans:

Why does our board of directors consider the LFSP/ESOP an appropriate long-term incentive?	The LTI Plans are designed to reward participants for our performance and to align long-term interests of shareholders, participating employees and us, by linking a significant proportion of at-risk remuneration to our future performance, currently assessed over a three-year period from the date of grant of the shares.
In what circumstances are LTI entitlements forfeited?	The LTI will be forfeited upon cessation of employment prior to the conclusion of the performance period in circumstances where a participant is a "bad leaver" as defined in the LTI Plan rules, or breaches any term of the loan agreement under the LFSP, or the Loan Agreement, in the case of the LFSP. Otherwise a leaver may retain vested loan funded shares or options subject to repayment of the loan or exercising the option within 60 days of cessation of employment or within a longer period if so determined by our board of directors.

What are the performance conditions under the LTI scheme?	Shares and options are generally issued at a 10% premium above the volume weighted average share price calculated at grant date. In addition participants have to remain in employment with us for the LTIs to vest.
Why did our board of directors choose the above performance conditions/hurdles?	High volatility makes it difficult to set meaningful performance hurdles other than price premiums, and applying such hurdles may have a severe impact on the competitiveness of remuneration.
What is the relationship between our performance and allocation of shares/options?	Equity-based remuneration is an integral part of remuneration in the biotechnology industry as companies in that sector reward share price growth and seek to conserve cash. Our board of directors believes that share price growth is an appropriate measure of success as it is the prime driver of investment in the biotechnology sector, and is simply and clearly rewarded using equity-based remuneration.
What is the maximum number of shares/options that may be granted to a participant to the LTI scheme?	The maximum number of shares or options that may be granted is determined by the level of equity based remuneration applicable to each applicant.
When do the shares/options vest?	Shares/options vest in three equal tranches, one year, two years and three years after the date of grant, provided performance conditions are met.
Is the benefit of participation in the LTI scheme affected by changes in the share price?	Yes, participants in the both ESOP and LFSP will be affected in the same way as all other shareholders by changes in our share price. The value participants receive through participation in the LTI Plans will be reduced if the share price falls during the performance period and will increase if the share price rises over the performance period.
Australian Loan Funded Share Plan (LFSP):	
What is the LFSP?	An incentive plan under which eligible employees are granted our limited recourse, interest free, loan-funded ordinary shares.
Who participates in the LFSP?	All of our eligible non-director and non-officer Australian based employees who are in positions to influence achievement of our long-term outcomes and where warranted by market practice for attraction and retention.
What are the key features of the LFSP?	Loan funded shares are issued with a price per share that is typically 10% higher than the five-day volume weighted average share price calculated at grant date. The loan funded shares are subject to a Loan Agreement between the participant and us. Once all conditions are met and the participant no longer has any outstanding obligations pursuant to the Loan Agreement, the loan funded shares revert to being fully paid ordinary shares.

How are shares provided to participants under the LFSP?	Shares issued in the LFSP are generally issued as new equity and we do not buy shares on-market under this plan in an effort to conserve cash.

ESOP:

The ESOP operates as a traditional option plan, and is used for non-Australian based employees:

What is the ESOP?	An incentive plan under which eligible employees are granted options over our ordinary shares.
Who participates in the ESOP?	All of our employees, who are in positions to influence achievement of our long-term outcomes and where warranted by market practice for attraction and retention.
What are the key features of the ESOP?	Options are issued with an exercise price that is typically 10% higher than the volume weighted average share price calculated at grant date. High volatility makes it difficult to set meaningful performance hurdles and applying such hurdles may have a severe impact on the competitiveness of remuneration.
How are shares provided to participants under the ESOP?	Shares are issued to the participant upon the holder exercising their option and paying the exercise price to us (once all vesting conditions are satisfied).

Employment Agreements

The employment of our CEO and CFO are formalized in contracts of employment, the key terms of which are as follows:

Name	Term	Notice Period	Termination Benefit
Silviu Itescu	Initial term of 3 years commencing April 1, 2014, and continuing subject to a 12 month notice period	12 months	12 months base salary
Paul Hodgkinson	Ongoing employment agreement until notice is given by either party	6 months	6 months base salary

On termination of employment, key management personnel (and executive directors, including Dr. Itescu, and Mr. Hodgkinson) are entitled to receive their statutory entitlements of accrued annual and long service leave, together with any superannuation benefits.

Non-executive directors are not provided with retirement benefits other than statutory superannuation which is only applicable to Australian resident directors.

There is no entitlement to a termination payment in the event of resignation or removal for misconduct.

The employment of the executive team is also formalized in employment contracts. Five members of the executive team have employment contracts with initial terms ranging from 15 months to three years, with notice periods ranging from six to twelve months. The remaining four members have continuous employment contracts with no fixed term and notice periods ranging from “at will” to twelve months. Two contracts have contractual CPI increases—there are no other contractual increases in remuneration.

Remuneration Details

Details of the remuneration of our individual directors and key management personnel for the year ended June 30, 2015 are set out below (amounts are presented in various currencies as detailed in the table):

		Short-Term Benefits					Post-Employment Benefits	Long-Term Benefits	Share-Based Payments	Other	
	Currency	Salary and Fees	Cash Bonus(1)	Annual Leave	Non-Monetary Benefits	Other	Super-annuation	Long-Service Leave	Options	Termination Benefits	Total
Silviu Itescu (CEO)	A$	960,000	864,000	59,078	—	—	18,783	19,052	—	—	1,920,913
Paul Hodgkinson(2) (CFO)	A$	367,233	212,500	7,968	—	63,128	25,088	690	228,589	—	905,196
William Burns	A$	134,278	—	—	—	—	—	—	37,799	—	172,077
Brian Jamieson	A$	328,320	—	—	—	—	18,783	—	—	—	347,103
Donal O'Dwyer	A$	160,750	—	—	—	—	15,271	—	—	—	176,021
Michael Spooner	A$	163,250	—	—	—	—	15,509	—	—	—	178,759
Ben Zion-Weiner	A$	138,250	—	—	—	—	—	—	37,799	—	176,049
Eric Rose	A$	148,250	—	—	—	—	—	—	37,799	—	186,049
Total directors and executive KMP	**A$**	**2,400,331**	**1,076,500**	**67,046**	**—**	**63,128**	**93,434**	**19,742**	**341,986**	**—**	**4,062,168**
Total directors and executive KMP(3)	**US$**	**1,980,274**	**888,113**	**55,313**	**—**	**52,080**	**77,083**	**16,287**	**282,138**	**—**	**3,351,288**

(1) STI bonus payable for performance in the year ended June 30, 2015, not paid as of June 30, 2015.

(2) Appointed as KMP on August 25, 2014. Paul Hodgkinson was paid a sign on bonus of A$72,000 in July 2014 which has been excluded from the table above as it predated his appointment as a KMP.

(3) The US$ results has been translated at the average weighted exchange rate for the year ended June 30, 2015.

Details of the remuneration of our individual directors and key management personnel for the year ended June 30, 2014 are set out below (amounts are presented in various currencies as detailed on the table):

2014		Short-term benefits					Post-employment benefits	Long-term benefits	Share-based payments	Other	
Name	Currency	Salary & fees	Cash Bonus(5)	Annual Leave	Non-monetary benefits	Other	Super-annuation	Long service leave	Options	Termi-nation benefits	Total
Silviu Itescu (CEO)	A$	960,000	840,000(2)	38,493(3)	—	—	17,775	23,173(4)	—	—	1,879,441
William Burns(1)	A$	44,145	—	—	—	—	—	—	—	—	44,145
Brian Jamieson	A$	325,547	—	—	—	—	17,775	—	—	—	343,322
Donal O'Dwyer	A$	159,667	—	—	—	—	14,769	—	—	—	174,436
Michael Spooner	A$	162,167	—	—	—	—	15,000	—	—	—	177,167
Ben-Zion Weiner	A$	134,667	—	—	—	—	—	—	—	—	134,667
Eric Rose	A$	142,167	—	—	—	—	—	—	—	—	142,167
Total directors	**A$**	**1,928,360**	**840,000**	**38,493**	**—**	**—**	**65,319**	**23,173**	**—**	**—**	**2,895,345**
Total directors(6)	**US$**	**1,772,163**	**771,960**	**35,375**	**—**	**—**	**60,028**	**21,296**	**—**	**—**	**2,660,822**

(1) William Burns joined the Board on March 6, 2014;

(2) STI payable for the year ended June 30, 2014. This represents 87.5% of target bonus, and therefore an amount of A$120,000 (12.5%) was forfeited.

(3) Annual leave has been amended from what was reported in 2014.

(4) Long service leave has been amended from what was reported in 2014.

(5) STI bonus payable for performance in the year ended June 30, 2014, not paid as at June 30, 2014.

(6) The US$ results has been translated at the average weighted exchange rate for the year ended June 30, 2014.

Performance-Based Remuneration

Performance-based remuneration consists of STIs and LTIs. The relative proportions of remuneration that are linked to performance and those that are fixed, for executives that are key management personnel, are as follows:

	Fixed remuneration		At risk - STI		At risk - LTI	
	2015	2014	2015	2014	2015	2014
Name	%	%	%	%	%	%
Silviu Itescu	55	54	45	46	0	0
Paul Hodgkinson	55	N/A	22	N/A	23	N/A

The proportion of at-risk performance remuneration that was awarded and forfeited during the periods presented was as follows:

	At-Risk STI	
Name	Awarded %	Forfeited %
Silviu Itescu (for the year ended June 30, 2015)	90	10
Silviu Itescu (for the year ended June 30, 2014)	87.5	12.5
Paul Hodgkinson (for the year ended June 30, 2015)	100	—

Remuneration Consultants

During the year ended June 30, 2015, the Nomination and Remuneration Committee of our board of directors engaged KPMG, to provide a report on the following matters:

- review and benchmarking of the CEO's remuneration;
- review of FY14 Remuneration Report;
- review of fee structure for overseas Non-executive directors;
- advice regarding transition of loan funded share plan for Australian participants; and
- disclosure advice for KMP.

Their report did not include any remuneration recommendations within the meaning of section 9B of the Corporations Act, and consequently they are not considered to be remuneration consultants in relation to Mesoblast as defined by section 9B of the Corporations Act.

Share Based Compensation

Share options granted to key management personnel (our directors, including Dr. Itescu and Mr. Hodgkinson) in the year ended June 30, 2015 were 450,000 share options granted to Mr. Hodgkinson, and 80,000 share options granted to each of Mr. Burns, Mr. Rose and Mr. Zion-Weiner. 300,000 of Mr. Hodgkinson's options were originally granted on August 8, 2014 under our LFSP and were changed from loan funded shares to options under ESOP on March 25, 2015. There were no changes made to the terms pertaining to the exercise price or the expiry date during this modification.

There were no grants of share options made to key management personnel, including to our directors, in the year ended June 30, 2014. There has been no modification to any terms and conditions of share-based payment transactions during the year ended June 30, 2014.

Details of options over our ordinary shares provided as remuneration to each director and member of key management personnel for the years ended June 30, 2015 and 2014 and the period from July 1, 2015 through to the date of this prospectus are set out in the tables below:

Remuneration Values

The following table provides the remuneration values:

	Remuneration consisting of options(1)	Value of options granted(2)	Value of options exercised(3)	Value of options lapsed(4)
Paul Hodgkinson (from July 1, 2015 through the date of this prospectus)	21.5%	A$280,000	—	—
Donal O'Dwyer (from July 1, 2015 through the date of this prospectus)	—	—	A$1,079,474	—
William Burns (for the year ended June 30, 2015)	22.0%	A$103,616	—	—
Eric Rose (for the year ended June 30, 2015)	20.3%	A$103,616	—	—
Ben-Zion Weiner (for the year ended June 30, 2015)	21.5%	A$103,616	—	—
Brian Jamieson (for the year ended June 30, 2015)	—	—	A$328,500	—
Paul Hodgkinson (for the year ended June 30, 2015)	25.3%	A$411,840	—	—
Brian Jamieson (for the year ended June 30, 2014)	—	—	A$582,750	—

(1) The percentage of the value of remuneration consisting of options, based on the value of options expensed during the year presented in accordance with IFRS2 Share-based payments.

(2) The accounting value at grant date of options that were granted during the year presented as part of remuneration, determined using Black-Scholes valuation model and in accordance with IFRS2 Share-based payments.

(3) The intrinsic value at exercise date of options that were exercised during the year presented, having been granted as part of remuneration previously.

(4) The intrinsic value at lapse date of options that lapsed during the year presented because a performance condition was not met, but valued as if the performance condition had been met.

Number of Options

The following table provides the number of options:

	No. of options granted during the period	No. of options vested during the period	No. of options lapsed during the period
Paul Hodgkinson (from July 1, 2015 through the date of this prospectus)	200,000	—	—
William Burns (for the year ended June 30, 2015)	80,000	—	—
Eric Rose (for the year ended June 30, 2015)	80,000	—	—
Ben-Zion Weiner (for the year ended June 30, 2015)	80,000	—	—
Brian Jamieson (for the year ended June 30, 2015)	—	—	—
Paul Hodgkinson (for the year ended June 30, 2015)(1)	450,000	450,000	—

(1) Paul Hodgkinson was granted 450,000 share options. Of this 450,000 options, 300,000 were granted as a result of the planned repurchase and cancellation of 300,000 loan-funded shares in anticipation of this offering are in compliance with the Sarbanes-Oxley Act. Those 450,000 have vested, however they may not be exercised until their escrow period have lapsed.

Shares provided on exercise of remuneration options:

	No. of options exercised during the period	No. of ordinary shares in Mesoblast Limited issued	Exercise Date	Value per share at exercise date (closing price)	Exercise price per option
Brian Jamieson (for the year ended June 30, 2015)	75,000	75,000	October 27, 2014	A$ 3.86	A$1.73
Brian Jamieson (for the year ended June 30, 2015)	75,000	75,000	November 11, 2014	A$ 3.98	A$1.73
Brian Jamieson (for the year ended June 30, 2014)	75,000	75,000	September 2, 2013	A$ 5.65	A$1.73
Brian Jamieson (for the year ended June 30, 2014)	75,000	75,000	December 13, 2013	A$ 5.58	A$1.73
Donal O'Dwyer (from July 1, 2015 through the date of this prospectus)	287,903	287,903	July 6, 2015	A$ 3.81	US$0.046

Options Granted as Remuneration

The following table presents options and loan-funded shares that have been granted over unissued shares during or since the end of the years ended June 30, 2015 and 2014, to our key management personnel and our next 4 highest remunerated officers that are not also designated as key management personnel.

Name of Officer	Grant Date	Exercise Price	Number of shares, under option or loan-funded
Silviu Itescu	—	—	—
Paul Hodgkinson	July 10, 2015	A$4.22	200,000
Paul Hodgkinson(2)	March 25, 2015	A$4.71	450,000
William Burns	November 25, 2014	A$4.02	80,000
Eric Rose	November 25, 2014	A$4.02	80,000
Ben-Zion Weiner	November 25, 2014	A$4.02	80,000
Peter Howard(1)(3)	March 25, 2015	A$4.46	600,000
Peter Howard(1)(3)	March 25, 2015	A$5.00	850,000
Michael Schuster(1)	July 10, 2015	A$4.22	200,000
Michael Schuster(1)	September 5, 2014	A$4.71	200,000
Donna Skerrett(1)	July 10, 2015	A$4.22	200,000
Donna Skerrett(1)	September 5, 2014	A$4.71	200,000
Darin Weber(1)	July 10, 2015	A$4.22	200,000
Darin Weber(1)	September 5, 2014	A$4.71	200,000

(1) Four most highly remunerated officers that are not also designated as key management personnel.

(2) 300,000 of Mr. Hodgkinson's options were originally granted on August 8, 2014 under the LFSP and were changed from loan funded shares to options on March 25, 2015. There were no changes made to the terms pertaining to the exercise price or the expiry date during this modification.

(3) On March 25, 2015, we repurchased and correspondingly cancelled 1,450,000 loan-funded shares that had previously been granted to Mr Howard (including 600,000 that were issued on September 5, 2014). As compensation for the repurchase and cancellation of these loan-funded shares, replacement share options were issued under our ESOP. The changes to Mr Howard's options were consistent with changes made to all options issued to Australian based executives.

PRINCIPAL SHAREHOLDERS

The following table sets forth information regarding the beneficial ownership of our ordinary shares at June 30, 2015 by:

- each of our directors and key management personnel; and
- each person known by us to own more than 5% of our ordinary shares.

We have determined beneficial ownership in accordance with the rules of the SEC. Except as indicated in the footnotes below, we believe, based on the information furnished to us, that the persons named in the following table have sole voting and investment power with respect to all ordinary shares that they beneficially own, subject to applicable community property laws.

The percentage ownership of each listed person before this offering is based upon 336,997,729 ordinary shares outstanding at June 30, 2015.

which excludes:

- the exercise of employee options outstanding at June 30, 2015 to purchase 18,369,078 fully paid ordinary shares issuable upon at a weighted average exercise price of A$5.25 per ordinary share;

and includes:

- an aggregate of 3,500,000 ordinary shares at a weighted average exercise price of A$6.78 held in trust as part of our loan funded share plan, or LFSP.

As of June 30, 2015, we had 17 holders of record in the United States, which represented approximately 17.5% of our ordinary shares outstanding. The percentage ownership of each listed person after the offering is based upon ordinary shares outstanding immediately after the closing of this offering, including the ordinary shares identified in the immediately preceding sentence plus the ordinary shares to be sold by us in this offering.

In computing the number of ordinary shares beneficially owned by a person and the percentage ownership of that person, we deemed outstanding ordinary shares subject to options held by that person that are currently exercisable or exercisable within 60 days of June 30, 2015. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

We have granted the underwriters the right to purchase up to an additional ADSs from us at the initial public offering price less underwriting discounts and commissions.

Unless otherwise indicated, the principal address of each of the shareholders below is c/o Mesoblast Limited, Level 38, 55 Collins Street, Melbourne 3000, Australia.

Name	Ordinary Shares beneficially owned before offering Number	%	Ordinary Shares beneficially owned after offering (assuming no exercise of the over-allotment option) Number	%
5% or Greater Shareholders:				
M&G Investment Group(1)	38,717,697	11.5%		
Cephalon, Inc.(2)	55,785,806	16.6%		
Silviu Itescu(3)	68,244,642	20.3%		
Capital Research Global Investors(4)	26,600,000	7.9%		
Thorney Holdings(5)	18,854,000	5.6%		
Directors and key management personnel:				
Silviu Itescu(3)	68,244,642	20.3%		
William Burns	—	*		
Brian Jamieson(6)	610,000	*		
Paul Hodgkinson	150,000	*		
Eric Rose	—	*		
Donal O'Dwyer(7)	1,104,727	*		
Ben-Zion Weiner	—	*		
Michael Spooner(8)	1,059,000	*		
All directors and key management personnel as a group (8 persons)	**71,168,369**	**21.1%**		

* Less than 1% of the outstanding ordinary shares.

(1) Includes ordinary shares owned indirectly through custodial accounts, over which shares M&G Investment Group retains voting and dispositive power. The address for M&G Investment Group is Laurence Pountney Hill, London EC4R 0HH, United Kingdom.

(2) The address for Cephalon Inc. is 41 Moores Road, Frazer, PA 19355.

(3) Includes (a) 67,756,838 ordinary shares owned by Dr. Itescu and (b) 487,804 ordinary shares owned by Josaka Investments Pty Ltd., the trustee of Dr. Itescu's self-managed superannuation fund.

(4) Includes ordinary shares owned indirectly through custodial accounts, over which shares Capital Research Global Investors retains voting and dispositive power. The address for Capital Research Global Investors is 333 South Hope Street, Los Angeles, California, 90071.

(5) Includes ordinary shares owned indirectly through custodial accounts, over which shares Thorney Holdings retains voting and dispositive power. The address for Thorney Holdings is 55 Collins Street, Level 39, Melbourne, Victoria 3000, Australia.

(6) Includes (a) 335,000 ordinary shares owned by Mr. Jamieson, (b) 275,000 ordinary shares owned by Mr. Jamieson through Brians Maserati Pty Ltd.

(7) Includes (a) 300,000 ordinary shares owned by Mr. O'Dwyer, (b) 5,000 ordinary shares owned by Dundrum Investments Ltd. as trustee for The O'Dwyer Family Trust, and (c) 799,727 ordinary shares subject to options currently exercisable held by Dundrum Superannuation Fund. Mr. O'Dwyer and his spouse are the sole shareholders of Dundrum Investments Ltd.

(8) Includes (a) 868,272 ordinary shares owned by Mr. Spooner, (b) 181,728 ordinary shares owned by Spooner Superannuation Fund, and (c) 9,000 ordinary shares owned by Mr. Spooner's family.

RELATED PARTY TRANSACTIONS

Other than compensation arrangements which are described under "Management—Remuneration" or as disclosed below, from July 1, 2012 through the date of this prospectus we did not enter into any transactions or loans with any: (i) enterprises that directly or indirectly, through one or more intermediaries, control, are controlled by or are under common control with us; (ii) associates; (iii) individuals owning, directly or indirectly, an interest in our voting power that gives them significant influence over us, and close members of any such individual's family; (iv) key management personnel and close members of such individuals' families; or (v) enterprises in which a substantial interest in our voting power is owned, directly or indirectly, by any person described in (iii) or (iv) or over which such person is able to exercise significant influence.

Teva/Cephalon

In December 2010, we entered into a development and commercialization agreement, or DCA, with Cephalon, Inc., now a wholly-owned subsidiary of Teva, and one of our largest equity holders. See "Principal Shareholders." In this section, we refer to Cephalon and Teva together as Teva. In September 2013, we and Teva amended the DCA. See "Business—Our Strategic Alliances—Teva/Cephalon, Inc.—Cardiovascular, Neurological and Bone Marrow Collaboration" for a description of the DCA, as amended.

In December 2010, we also entered into a subscription deed with Teva, or the Deed. Pursuant to the Deed, for so long as Teva holds at least 10% of our outstanding ordinary shares, in connection with any future placements of our ordinary shares or issues of ordinary shares on the conversion of convertible securities, Teva has the right to subscribe, on the same terms and at the same time, for additional ordinary shares that would result in Teva maintaining its same percentage ownership in Mesoblast immediately before and after the issuance. Teva's subscription right does not apply to issuances made (i) under an option plan or pursuant to remuneration arrangements for employees or directors, (ii) under a dividend reinvestment plan or (iii) pursuant to an acquisition agreement. Teva's subscription right is conditioned upon the ASX granting a waiver of Listing Rule 6.18, which restricts options from being exercisable over a percentage of an ASX listed company's capital.

Loan-Funded Share Plan

Our loan-funded share plan, or LFSP, is our incentive plan under which eligible non-director and non-officer employees are granted limited recourse, interest free, loan-funded ordinary shares of Mesoblast. As of June 30, 2015, we had A$23.7 million of loans outstanding under the LFSP. During the period from July 1, 2012 through June 30, 2015, the largest amount outstanding under the LFSP was A$41.4 million. On April 13, 2015, in anticipation of this offering and in compliance with the Sarbanes-Oxley Act, we repurchased an aggregate amount of A$17.7 million of loans under our LFSP and correspondingly cancelled 2,985,000 of our ordinary shares held in trust for certain of our officers. As remuneration for the repurchase of loans and cancellation of these ordinary shares under our LFSP, we granted options to purchase 2,985,000 of our ordinary shares at exercise prices ranging from A$4.46 to A$5.00 under our ESOP. As of the date of this prospectus, we had A$23.7 million of loans outstanding under the LFSP corresponding to 3,500,000 ordinary shares held in trust for non-directors and non-officers. See "Management-Remuneration-Non-CEO Executive Remuneration-Performance-Based Remuneration-Long-Term Incentives (LTIs)-Australian Loan Funded Share Plan (LFSP)" for a more detailed description of the LFSP.

Indemnification Agreements and Directors' and Officers' Liability Insurance

Under our Constitution, to the extent permitted by the Corporations Act we may indemnify or insure any person who is or has been our or any of our subsidiaries' officer, 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. Under Australian law, an "officer" includes any director.

We have entered into Deeds of Indemnity, Insurance and Access, or Indemnity Deeds, with each director.

Under the Indemnity Deeds, we have agreed to indemnify (to the maximum extent permitted under Australian law and subject to certain specified exceptions) each director and certain of our officers against all liabilities incurred in their capacity as our or our subsidiaries' director or officer and any and all legal costs incurred by such director or officer in defending an action for a liability incurred in their capacity as our or our subsidiaries' director or officer. The Indemnity Deeds provide that the indemnities are unlimited as to amount, continuous and irrevocable.

Separately, we have obtained insurance for each of our directors, as required by the Indemnity Deeds, and each of our officers.

DESCRIPTION OF SHARE CAPITAL

General

The following description of our ordinary shares is only a summary. We encourage you to read our Constitution, which is included as an exhibit to the registration statement of which this prospectus forms a part.

We are a public company limited by shares registered under the Corporations Act by the Australian Securities and Investments Commission, or ASIC. Our corporate affairs are principally governed by our Constitution, the Corporations Act and the ASX Listing Rules. Our ordinary shares trade on the ASX, and we intend to list our ADSs on the NASDAQ Global Select Market.

The Australian law applicable to our Constitution is not significantly different than a U.S. company's charter documents except we do not have the concept of, or a limit on, our authorized share capital, the concept of par value is not recognized under Australian law and as further discussed under "—Our Constitution."

Subject to restrictions on the issue of securities in our Constitution, the Corporations Act and the ASX Listing Rules and any other applicable law, we may at any time issue ordinary shares and grant options or warrants on any terms, with the rights and restrictions and for the consideration that our board of directors determines.

The rights and restrictions attaching to ordinary shares are derived through a combination of our Constitution, the common law applicable to Australia, the ASX Listing Rules, the Corporations Act and other applicable law. A general summary of some of the rights and restrictions attaching to our ordinary shares is set forth below. Each shareholder is entitled to receive notice of, and to be present, vote and speak at, general meetings.

Changes to Our Share Capital

As of June 30, 2015, we had (i) 333,497,729 fully paid ordinary shares outstanding, (ii) employee options outstanding to purchase 18,369,078 of our ordinary shares at a weighted average exercise price of A$5.25, and (iii) an aggregate of 3,500,000 ordinary shares held in trust as part of our LFSP at a weighted average exercise price A$6.78.

During the three years ended June 30, 2015, 2014 and 2013, the following changes have been made to our ordinary share capital:

- 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;
- 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;
- 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 assets of Osiris Therapeutics, Inc. Consideration per share was A$5.69; and
- On April 12, 2015, we issued 15,298,837 ordinary shares to Celgene Corporation as consideration for $45 million investment at a price per share of A$3.82.

In addition, we issued the following fully-paid ordinary shares upon exercise of employee options:

- 1,043,798 ordinary shares in the year ended June 30, 2015;
- 987,300 ordinary shares in the year ended June 30, 2014; and
- 2,552,816 ordinary shares in the year ended June 30, 2013.

Our Constitution

Our Constitution is similar in nature to the bylaws of a U.S. corporation. It does not provide for or prescribe any specific objectives or purposes of Mesoblast. Our Constitution is subject to the terms of the ASX Listing Rules and the Corporations Act. It may be modified or repealed and replaced by special resolution passed at a meeting of shareholders, which is a resolution passed by at least 75% of the votes cast by shareholders (including proxies and representatives of shareholders) entitled to vote on the resolution.

Under Australian law, a company has the legal capacity and powers of an individual both within and outside Australia. The material provisions of our Constitution are summarized below. This summary is not intended to be complete nor to constitute a definitive statement of the rights and liabilities of our shareholders. Our Constitution is filed as an exhibit to the registration statement of which this prospectus forms a part.

Directors

Interested Directors

Except as permitted by the Corporations Act and the ASX Listing Rules, a director must not vote in respect of any contract or arrangement in which the director has any direct or indirect material personal interest or any lesser interest according to our Constitution. Such director must not be counted in a quorum, must not vote on the matter and must not be present at the meeting while the matter is being considered.

Pursuant to our Constitution, a director is liable to us for any profits derived with regard to any matter in which the director has a material interest unless the director:

- declares the director's interest in the matter as soon as practicable after the relevant facts come to the director's knowledge; and
- does not contravene our Constitution or the Corporations Act in relation to the matter.

Unless a relevant exception applies, the Corporations Act requires our directors to provide disclosure of certain interests and prohibits directors of companies listed on the ASX from voting on matters in which they have a material personal interest and from being present at the meeting while the matter is being considered. In addition, unless a relevant exception applies, the Corporations Act and the ASX Listing Rules require shareholder approval of any provision of financial benefits (including the issue by us of ordinary shares and other securities) to our directors, including entities controlled by them and certain members of their families.

Borrowing Powers Exercisable by Directors

Pursuant to our Constitution, our business is managed by our board of directors. Our board of directors has the power to raise or borrow money, and incur liens on or grant a security interest in any of our property or business or any uncalled portion of any partly paid shares, and may issue debentures or give any other security for any of our debts, liabilities or obligations or of any other person, in each case, in the manner and on terms it deems fit.

Election, Removal and Retirement of Directors

We may appoint or remove any director by resolution passed in the general meeting of shareholders. Additionally, our directors are elected to serve three-year terms in a manner similar to a "staggered" board of directors under Delaware law. At every annual general meeting, one-third of the previously elected directors or, 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. Additionally, no director except the Managing Director (currently designated as our chief executive officer, Silviu Itescu) may hold office for a period in excess of three years, or beyond the third annual general meeting following the director's last election, whichever is the longer, without submitting himself or herself for re-election.

A director who is appointed during the year by the other directors only holds office until the next general meeting at which time the director may stand for election by shareholders at that meeting.

In addition, provisions of the Corporations Act apply where at least 25% of the votes cast on a resolution to adopt our remuneration report (which resolution must be proposed each year at our annual general meeting) are against the adoption of the report at two successive annual general meetings. Where these provisions apply, a resolution must be put to a vote at the second annual general meeting to the effect that a further meeting, or a spill meeting, take place within 90 days. At the spill meeting, the directors in office when the remuneration report was considered at the second annual general meeting (other than the Managing Director) cease to hold office and resolutions to appoint directors (which may involve re-appointing the former directors) are put to a vote.

Voting restrictions apply in relation to the resolutions to adopt our remuneration report and to propose a spill meeting. These restrictions apply to our key management personnel and their closely related parties. See "Rights and Restrictions on Classes of Shares—Voting Rights" below.

Pursuant to our Constitution, no person is eligible to be elected as a director unless a notice of the director's candidature is given to us at least 35 business days (30 business days for a meeting shareholders have requested directors to call) before the meeting. This restriction does not apply to a retiring director or to the election of a director previously appointed by the directors during the year.

Share Qualifications

There are currently no requirements for directors to own our ordinary shares in order to qualify as directors.

Rights and Restrictions on Classes of Shares

Subject to the Corporations Act and the ASX Listing Rules, the rights attaching to our ordinary shares are detailed in our Constitution. Our Constitution provides that any of our ordinary shares may be issued with preferred, deferred or other special rights, whether in relation to dividends, voting, return of share capital, payment of calls or otherwise as our board of directors may determine from time to time. Subject to the Corporations Act, the ASX Listing Rules and any rights and restrictions attached to a class of shares, we may issue further ordinary shares on such terms and conditions as our board of directors resolve. Currently, our outstanding ordinary share capital consists of only one class of ordinary shares.

Dividend Rights

Our board of directors may from time to time determine to pay dividends to shareholders. All unclaimed dividends may be invested or otherwise made use of by our board of directors for our benefit until claimed or otherwise disposed of in accordance with our Constitution.

Voting Rights

Under our Constitution, any resolution to be considered at a meeting of the shareholders shall be decided on a show of hands unless a poll is demanded by the shareholders at or before the declaration of the result of the show of hands. A poll may be demanded by the chairman of the meeting; by at least five shareholders present and having the right to vote on at the meeting; any shareholder or shareholders representing at least 5% of the votes that may be cast on the resolution on a poll; or any shareholder or shareholders holding our shares 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. On a show of hands, each shareholder entitled to vote at the meeting has one vote regardless of the number of ordinary shares held by such shareholder. If voting takes place on a poll, rather than a show of hands, each shareholder entitled to vote has one vote for each ordinary share held and a fractional vote for each ordinary share that is not fully paid, such fraction being equivalent to the proportion of the amount that has been paid to such date on that ordinary share.

Under Australian law, an ordinary resolution is passed on a show of hands if it is approved by a simple majority (more than 50%) of the votes cast by shareholders present (in person or by proxy) and entitled to vote. If a poll is demanded, an ordinary resolution is passed if it is approved by holders representing a simple majority of the total voting rights of shareholders present (in person or by proxy) who (being entitled to vote) vote on the resolution. Special resolutions require the affirmative vote of not less than 75% of the votes cast by shareholders present (in person or by proxy) at the meeting.

Pursuant to our Constitution, each shareholder entitled to attend and vote at a meeting may attend and vote in person or by proxy or attorney and by representative. Shareholders may not vote electronically. Under Australian law, shareholders of a public listed company are not permitted to approve corporate matters by written consent. Our Constitution does not provide for cumulative voting.

Note that ADS holders may not directly vote at a meeting of the shareholders but may instruct the depositary to vote the number of deposited ordinary shares their ADSs represent. Under voting by a show of hands, multiple "yes" votes by ADS holders will only count as one "yes" vote and will be negated by a single "no" vote, unless a poll is demanded.

There are a number of circumstances where the Corporations Act or the ASX Listing Rules prohibit or restrict certain shareholders or certain classes of shareholders from voting. For example, key management personnel whose remuneration details are included elsewhere in this prospectus are prohibited from voting on the resolution that must be proposed at each annual general meeting to adopt our remuneration report, as well as any resolution to propose a spill meeting. An exception applies to exercising a directed proxy which indicates how the proxy is to vote on the proposed resolution on behalf of someone other than the key management personnel or their closely related parties; or that person is chair of the meeting and votes an undirected proxy where the shareholder expressly authorizes the chair to exercise that power. Key management personnel and their closely related parties are also prohibited from voting undirected proxies on remuneration related resolutions. A similar exception to that described above applies if the proxy is the chair of the meeting.

Right to Share in Our Profits

Subject to the Corporations Act and pursuant to our Constitution, prior to our liquidation, our shareholders are entitled to participate in our profits only by payment of dividends. Our board of directors may from time to time determine to pay dividends to the shareholders; however, no dividend is payable except in accordance with the thresholds set out in the Corporations Act.

Rights to Share in the Surplus in the Event of Liquidation

Our Constitution provides for the right of shareholders to participate in a surplus in the event of our liquidation.

Redemption Provisions

There are no redemption provisions in our Constitution in relation to ordinary shares. Under our Constitution and subject to the Corporations Act, any preference shares may be issued on the terms that they are, or may at our option or at the option of the holder be, liable to be redeemed.

Sinking Fund Provisions

Our Constitution allows our directors to, at their discretion, set aside any sums they think proper out of our profits as reserves, which may be applied for any proper purpose.

Liability for Further Capital Calls

According to our Constitution, our board of directors may make any calls from time to time upon shareholders in respect of all monies unpaid on partly paid shares respectively held by them, subject to the terms upon which any of the partly paid shares have been issued. Each shareholder is liable to pay the amount of each call in the manner, at the time and at the place specified by our board of directors. Calls may be made payable by installment.

Provisions Discriminating Against Holders of a Substantial Number of Shares

There are no provisions under our Constitution discriminating against any existing or prospective holders of a substantial number of our ordinary shares.

Variation or Cancellation of Share Rights

The rights attached to shares in a class of shares may only be varied or cancelled by a special resolution of shareholders, together with either:

- a special resolution passed at a separate meeting of members holding shares in the by those members class; or
- the written consent of members with at least 75% of the votes in the class.

General Meetings of Shareholders

General meetings of shareholders may be called by our board of directors or, under the Corporations Act, by a single director. Except as permitted under the Corporations Act, shareholders may not convene a meeting. Under the Corporations Act, shareholders with at least 5% of the votes that may be cast at a general meeting may call and arrange to hold a general meeting. The Corporations Act requires the directors to call and arrange to hold a general meeting on the request of shareholders with at least 5% of the votes that may be cast at a general meeting or at least 100 shareholders who are entitled to vote at the general meeting. Notice of the proposed meeting of our shareholders is required at least 28 days prior to such meeting under the Corporations Act.

Quorum for General Meetings of Shareholders

No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. Under our Constitution, the presence, in person or by proxy, attorney or representative, of five shareholders constitutes a quorum, or if we have less than five shareholders, then the shareholders present at a meeting constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting must be either dissolved if it was summoned by shareholders or adjourned in any other case. A meeting adjourned for lack of a quorum is adjourned to the same day in the following week at the same time and place, unless otherwise decided by our directors. The reconvened meeting is dissolved if a quorum is not present within 15 minutes after the time appointed for the meeting.

Foreign Ownership Regulation

There are no limitations on the rights to own securities imposed by our Constitution. However, acquisitions and proposed acquisitions of shares in Australian companies may be subject to review and approval by the Australian Federal Treasurer under the Foreign Acquisitions and Takeovers Act 1975, or the FATA, which generally applies to acquisitions or proposed acquisitions:

- by a foreign person (as defined in the FATA) or associated foreign persons that would result in such persons having an interest in 15% or more of the issued shares of, or control of 15% or more of the voting power in, an Australian company; and
- by non-associated foreign persons that would result in such foreign person having an interest in 40% or more of the issued shares of, or control of 40% or more of the voting power in, an Australian company.

The Australian Federal Treasurer may prevent a proposed acquisition in the above categories or impose conditions on such acquisition if the Treasurer is satisfied that the acquisition would be contrary to the national interest. If a foreign person acquires shares or an interest in shares in an Australian company in contravention of the FATA, the Australian Federal Treasurer may order the divestiture of such person’s shares or interest in shares in Mesoblast. The Australian Federal Treasurer may order divestiture pursuant to the FATA if he determines that the acquisition has resulted in that foreign person, either alone or together with other non-associated or associated foreign persons, controlling Mesoblast and that such control is contrary to the national interest.

Ownership Threshold

There are no provisions in our Constitution that require a shareholder to disclose ownership above a certain threshold. The Corporations Act, however, requires a substantial shareholder to notify us and the ASX once a 5%

interest in our ordinary shares is obtained. Further, once a shareholder has (alone or together with associates) a 5% or greater interest in us, such shareholder must notify us and the ASX of any increase or decrease of 1% or more in its interest in our ordinary shares. Upon becoming a U.S. listed public company, our shareholders will also be subject to disclosure requirements under U.S. securities laws.

Issues of Shares and Change in Capital

Subject to our Constitution, the Corporations Act, the ASX Listing Rules and any other applicable law, we may at any time issue shares and grant options or warrants on any terms, with preferred, deferred or other special rights and restrictions and for the consideration and other terms that the directors determine. Our power to issue shares includes the power to issue bonus shares (for which no consideration is payable to Mesoblast), preference shares and partly paid shares.

Subject to the requirements of our Constitution, the Corporations Act, the ASX Listing Rules and any other applicable law, including relevant shareholder approvals, we may consolidate or divide our share capital into a smaller or larger number by resolution, reduce our share capital (provided that the reduction is fair and reasonable to our shareholders as a whole, does not materially prejudice our ability to pay creditors and obtains the necessary shareholder approval) or buy back our ordinary shares including under an equal access buy-back or on a selective basis.

Change of Control

Takeovers of listed Australian public companies, such as Mesoblast, are regulated by the Corporations Act, which prohibits the acquisition of a "relevant interest" in issued voting shares in a listed company if the acquisition will lead to that person's or someone else's voting power in Mesoblast increasing from 20% or below to more than 20% or increasing from a starting point that is above 20% and below 90%, subject to a range of exceptions.

Generally, a person will have a relevant interest in securities if the person:

- is the holder of the securities;
- has power to exercise, or control the exercise of, a right to vote attached to the securities; or
- has the power to dispose of, or control the exercise of a power to dispose of, the securities (including any indirect or direct power or control).

If, at a particular time, a person has a relevant interest in issued securities and the person:

- has entered or enters into an agreement with another person with respect to the securities;
- has given or gives another person an enforceable right, or has been or is given an enforceable right by another person, in relation to the securities; or
- has granted or grants an option to, or has been or is granted an option by, another person with respect to the securities, and the other person would have a relevant interest in the securities if the agreement were performed, the right enforced or the option exercised;

then, the other person is taken to already have a relevant interest in the securities.

There are a number of exceptions to the above prohibition on acquiring a relevant interest in issued voting shares above 20%. In general terms, some of the more significant exceptions include:

- when the acquisition results from the acceptance of an offer under a formal takeover bid;
- when the acquisition is conducted on market by or on behalf of the bidder under a takeover bid and the acquisition occurs during the bid period;
- when shareholders of Mesoblast approve an acquisition that would otherwise breach the prohibition, by resolution passed at general meeting;

- an acquisition by a person if, throughout the six months before the acquisition, that person or any other person has had voting power in Mesoblast of at least 19% and, as a result of the acquisition, none of the relevant persons would have voting power in Mesoblast more than three percentage points higher than they had six months before the acquisition;
- as a result of a rights issue;
- as a result of dividend reinvestment schemes;
- as a result of certain underwriting arrangements;
- through operation of law;
- an acquisition that arises through the acquisition of a relevant interest in another company listed on the ASX, certain other Australian financial markets or a foreign stock exchange approved in writing by ASIC;
- arising from an auction of forfeited shares; or
- arising through a compromise, arrangement, liquidation or buy-back.

A formal takeover bid may either be a bid for all securities in the bid class or a fixed proportion of such securities, with each holder of bid class securities receiving a bid for that proportion of their holding. Under our Constitution, a proportionate takeover bid must first be approved by resolution of our shareholders in general meeting before it may proceed.

Breaches of the takeovers provisions of the Corporations Act are criminal offenses. In addition, ASIC and, on application by ASIC or an interested party, such as a shareholder, the Australian Takeovers Panel have a wide range of powers relating to breaches of takeover provisions, including the ability to make orders canceling contracts, freezing transfers of, and rights (including voting rights) attached to, securities, and forcing a party to dispose of securities including by vesting the securities in ASIC for sale. There are certain defenses to breaches of the takeover provisions provided in the Corporations Act.

Access to and Inspection of Documents

Inspection of our records is governed by the Corporations Act. Any member of the public has the right to inspect or obtain copies of our share registers on the payment of a prescribed fee. Shareholders are not required to pay a fee for inspection of our share registers or minute books of the meetings of shareholders. Other corporate records, including minutes of directors' meetings, financial records and other documents, are not open for inspection by shareholders. Where a shareholder is acting in good faith and an inspection is deemed to be made for a proper purpose, a shareholder may apply to the court to make an order for inspection of our books.

DESCRIPTION OF AMERICAN DEPOSITARY SHARES

American Depositary Receipts

, as depositary will issue the ADSs which you will be entitled to receive in this offering. Each ADS will represent an ownership interest in ordinary shares which we will deposit with the custodian, as agent of the depositary, under the deposit agreement among ourselves, the depositary and yourself as an ADR holder. In the future, each ADS will also represent any securities, cash or other property deposited with the depositary but which they have not distributed directly to you. Unless certificated ADRs are specifically requested by you, all ADSs will be issued on the books of our depositary in book-entry form and periodic statements will be mailed to you which reflect your ownership interest in such ADSs. In our description, references to American depositary receipts, or ADRs, shall include the statements you will receive which reflect your ownership of ADSs.

The depositary's office is located at .

You may hold ADSs either directly or indirectly through your broker or other financial institution. If you hold ADSs directly, by having an ADS registered in your name on the books of the depositary, you are an ADR holder. This description assumes you hold your ADSs directly. If you hold the ADSs through your broker or financial institution nominee, you must rely on the procedures of such broker or financial institution to assert the rights of an ADR holder described in this section. You should consult with your broker or financial institution to find out what those procedures are.

As an ADR holder, we will not treat you as a shareholder of ours and you will not have any shareholder rights. Australian law governs shareholder rights. Because the depositary or its nominee will be the shareholder of record for the ordinary shares represented by all outstanding ADSs, shareholder rights rest with such record holder. Your rights are those of an ADR holder. Such rights derive from the terms of the deposit agreement to be entered into among us, the depositary and all registered holders from time to time of ADSs issued under the deposit agreement. The obligations of the depositary and its agents are also set out in the deposit agreement. Because the depositary or its nominee will actually be the registered owner of the ordinary shares, you must rely on it to exercise the rights of a shareholder on your behalf. The deposit agreement and the ADSs are governed by New York law. Under the deposit agreement, as an ADR holder, you agree that any legal suit, action or proceeding against or involving us or the depositary, arising out of or based upon the deposit agreement or transactions contemplated thereby, may only be instituted in a state or federal court in New York, New York, and you irrevocably waive any objection which you may have to the laying of venue of any such proceeding and irrevocably submit to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

The following is a summary of what we believe to be the material terms of the deposit agreement. Notwithstanding this, because it is a summary, it may not contain all the information that you may otherwise deem important. For more complete information, you should read the entire deposit agreement and the form of ADR which contains the terms of your ADSs. You can read a copy of the deposit agreement which is filed as an exhibit to the registration statement of which this prospectus forms a part. You may also obtain a copy of the deposit agreement at the SEC's Public Reference Room which is located at 100 F Street, NE, Washington, DC 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-732-0330. You may also find the registration statement and the attached deposit agreement on the SEC's website at http://www.sec.gov.

Ordinary Share Dividends and Other Distributions

How will I receive dividends and other distributions on the ordinary shares underlying my ADSs?

We may make various types of distributions with respect to our securities. The depositary has agreed that, to the extent practicable, it will pay to you the cash dividends or other distributions it or the custodian receives on ordinary shares or other deposited securities, after converting any cash received into U.S. dollars (if it determines such conversion may be made on a reasonable basis) and, in all cases, making any necessary deductions provided for in the deposit agreement. The depositary may utilize a division, branch or affiliate of ,

to direct, manage and/or execute any public and/or private sale of securities under the deposit agreement. Such division, branch and/or affiliate may charge the depositary a fee in connection with such sales, which fee is considered an expense of the depositary. You will receive these distributions in proportion to the number of underlying securities that your ADSs represent.

Except as stated below, the depositary will deliver such distributions to ADR holders in proportion to their interests in the following manner:

- *Cash.* The depositary will distribute any U.S. dollars available to it resulting from a cash dividend or other cash distribution or the net proceeds of sales of any other distribution or portion thereof (to the extent applicable), on an averaged or other practicable basis, subject to (i) appropriate adjustments for taxes withheld, (ii) such distribution being impermissible or impracticable with respect to certain registered ADR holders, and (iii) deduction of the depositary's and/or its agents' expenses in (1) converting any foreign currency to U.S. dollars to the extent that it determines that such conversion may be made on a reasonable basis, (2) transferring foreign currency or U.S. dollars to the United States by such means as the depositary may determine to the extent that it determines that such transfer may be made on a reasonable basis, (3) obtaining any approval or license of any governmental authority required for such conversion or transfer, which is obtainable at a reasonable cost and within a reasonable time and (4) making any sale by public or private means in any commercially reasonable manner. *If exchange rates fluctuate during a time when the depositary cannot convert a foreign currency, you may lose some or all of the value of the distribution*.
- *Ordinary shares.* In the case of a distribution in ordinary shares, the depositary will issue additional ADRs to evidence the number of ADSs representing such ordinary shares. Only whole ADSs will be issued. Any ordinary shares which would result in fractional ADSs will be sold and the net proceeds will be distributed in the same manner as cash to the ADR holders entitled thereto.
- *Rights to receive additional ordinary shares.* In the case of a distribution of rights to subscribe for additional ordinary shares or other rights, if we timely provide evidence satisfactory to the depositary that it may lawfully distribute such rights, the depositary will distribute warrants or other instruments in the discretion of the depositary representing such rights. However, if we do not timely furnish such evidence, the depositary may:
  - sell such rights if practicable and distribute the net proceeds in the same manner as cash to the ADR holders entitled thereto; or
  - if it is not practicable to sell such rights by reason of the non-transferability of the rights, limited markets therefor, their short duration or otherwise, do nothing and allow such rights to lapse, in which case ADR holders will receive nothing and the rights may lapse.

  We have no obligation to file a registration statement under the Securities Act in order to make any rights available to ADR holders.
- *Other Distributions*. In the case of a distribution of securities or property other than those described above, the depositary may either (i) distribute such securities or property in any manner it deems equitable and practicable or (ii) to the extent the depositary deems distribution of such securities or property not to be equitable and practicable, sell such securities or property and distribute any net proceeds in the same way it distributes cash.
- *Elective Distributions*. In the case of a dividend payable at the election of our shareholders in cash or in additional ordinary shares, we will notify the depositary at least 30 days prior to the proposed distribution stating whether or not we wish such elective distribution to be made available to ADR holders. The depositary shall make such elective distribution available to ADR holders only if (i) we shall have timely requested that the elective distribution is available to ADR holders, (ii) the depositary shall have determined that such distribution is reasonably practicable and (iii) the depositary shall have received satisfactory documentation and opinions within the terms of the deposit agreement. If the

above conditions are not satisfied, the depositary shall, to the extent permitted by law, distribute to the ADR holders, on the basis of the same determination as is made in the local market in respect of the ordinary shares for which no election is made, either (i) cash or (ii) additional ADSs representing such additional ordinary shares. If the above conditions are satisfied, the depositary shall establish procedures to enable ADR holders to elect the receipt of the proposed dividend in cash or in additional ADSs. There can be no assurance that ADR holders generally, or any ADR holder in particular, will be given the opportunity to receive elective distributions on the same terms and conditions as the holders of ordinary shares.

If the depositary determines in its discretion that any distribution described above is not practicable with respect to any specific registered ADR holder, the depositary may, after consultation with us if practicable, choose any method of distribution that it deems practicable for such ADR holder, including the distribution of foreign currency, securities or property, or it may retain such items, without paying interest on or investing them, on behalf of the ADR holder as deposited securities, in which case the ADSs will also represent the retained items.

Any U.S. dollars will be distributed by checks drawn on a bank in the United States for whole dollars and cents. Fractional cents will be withheld without liability and dealt with by the depositary in accordance with its then current practices.

The depositary is not responsible if it decides that it is unlawful or not reasonably practicable to make a distribution available to any ADR holders.

There can be no assurance that the depositary will be able to convert any currency at a specified exchange rate or sell any property, rights, ordinary shares or other securities at a specified price, nor that any of such transactions can be completed within a specified time period. For further information about the general sale and/or purchase of securities see https://www.adr.com.

Deposit, Withdrawal and Cancellation

How does the depositary issue ADSs?

The depositary will issue ADSs if you or your broker deposit ordinary shares or evidence of rights to receive ordinary shares with the custodian and pay the fees and expenses owing to the depositary in connection with such issuance. In the case of the ADSs to be issued under this prospectus, we will arrange with the underwriters named herein to deposit such ordinary shares.

Ordinary shares deposited in the future with the custodian must be accompanied by certain delivery documentation and shall, at the time of such deposit, be registered in the name of , as depositary for the benefit of holders of ADRs or in such other name as the depositary shall direct.

The custodian will hold all deposited ordinary shares (including those being deposited by or on our behalf in connection with the offering to which this prospectus relates) for the account of the depositary. ADR holders thus have no direct ownership interest in the ordinary shares and only have such rights as are contained in the deposit agreement. The custodian will also hold any additional securities, property and cash received on or in substitution for the deposited ordinary shares. The deposited ordinary shares and any such additional items are referred to as “deposited securities”.

Upon each deposit of ordinary shares, receipt of related delivery documentation and compliance with the other provisions of the deposit agreement, including the payment of the fees and charges of the depositary and any taxes or other fees or charges owing, the depositary will issue an ADR or ADRs in the name or upon the order of the person entitled thereto evidencing the number of ADSs to which such person is entitled. All of the ADSs issued will, unless specifically requested to the contrary, be part of the depositary’s direct registration system, and a registered holder will receive periodic statements from the depositary which will show the number of ADSs registered in such holder’s name. An ADR holder can request that the ADSs not be held through the depositary’s direct registration system and that a certificated ADR be issued.

How do ADR holders cancel an ADS and obtain deposited securities?

When you turn in your ADR certificate at the depositary's office, or when you provide proper instructions and documentation in the case of direct registration ADSs, the depositary will, upon payment of certain applicable fees, charges and taxes, deliver the underlying ordinary shares to you or upon your written order. At your risk, expense and request, the depositary may deliver deposited securities at such other place as you may request.

The depositary may only restrict the withdrawal of deposited securities in connection with:

- temporary delays caused by closing our transfer books or those of the depositary or the deposit of ordinary shares in connection with voting at a shareholders' meeting, or the payment of dividends;
- the payment of fees, taxes and similar charges; or
- compliance with any U.S. or foreign laws or governmental regulations relating to the ADRs or to the withdrawal of deposited securities.

This right of withdrawal may not be limited by any other provision of the deposit agreement.

Record Dates

The depositary may, after consultation with us if practicable, fix record dates for the determination of the registered ADR holders who will be entitled (or obligated, as the case may be):

- to receive any distribution on or in respect of ordinary shares;
- to give instructions for the exercise of voting rights at a meeting of holders of ordinary shares;
- to pay the fee assessed by the depositary for administration of the ADR program and for any expenses as provided for in the ADR; or
- to receive any notice or to act in respect of other matters,

all subject to the provisions of the deposit agreement.

Voting Rights

How do I vote?

If you are an ADR holder and the depositary asks you to provide it with voting instructions, you may instruct the depositary how to exercise the voting rights for the ordinary shares which underlie your ADSs. As soon as practicable after receiving notice of any meeting or solicitation of consents or proxies from us, the depositary will distribute to the registered ADR holders a notice stating such information as is contained in the voting materials received by the depositary and describing how you may instruct the depositary to exercise the voting rights for the ordinary shares which underlie your ADSs, including instructions for giving a discretionary proxy to a person designated by us. For instructions to be valid, the depositary must receive them in the manner, and on or before the date specified. The depositary will try, as far as is practical, subject to the provisions of and governing the underlying ordinary shares or other deposited securities, to vote or to have its agents vote the ordinary shares or other deposited securities as you instruct. The depositary will only vote or attempt to vote as you instruct. Holders are strongly encouraged to forward their voting instructions to the depositary as soon as possible. Voting instructions will not be deemed to be received until such time as the ADR department responsible for proxies and voting has received such instructions notwithstanding that such instructions may have been physically received by the depositary prior to such time. The depositary will not itself exercise any voting discretion. Furthermore, neither the depositary nor its agents are responsible for any failure to carry out any voting instructions, for the manner in which any vote is cast or for the effect of any vote. Notwithstanding anything contained in the deposit agreement or any ADR, the depositary may, to the extent not prohibited by law or regulations, or by the requirements of the stock exchange on which the ADSs are listed, in lieu of distribution of the materials provided to the depositary in connection with any meeting of, or solicitation of consents or

proxies from, holders of deposited securities, distribute to the registered holders of ADRs a notice that provides such holders with, or otherwise publicizes to such holders, instructions on how to retrieve such materials or receive such materials upon request (i.e., by reference to a website containing the materials for retrieval or a contact for requesting copies of the materials).

There is no guarantee that you will receive voting materials in time to instruct the depositary to vote and it is possible that you, or persons who hold their ADSs through brokers, dealers or other third parties, will not have the opportunity to exercise a right to vote.

Reports and Other Communications

Will ADR holders be able to view our reports?

The depositary will make available for inspection by ADR holders at the offices of the depositary and the custodian the deposit agreement, the provisions of or governing deposited securities, and any written communications from us which are both received by the custodian or its nominee as a holder of deposited securities and made generally available to the holders of deposited securities.

Additionally, if we make any written communications generally available to holders of our ordinary shares, and we furnish copies thereof (or English translations or summaries) to the depositary, it will distribute the same to registered ADR holders.

Fees and Expenses

What fees and expenses will I be responsible for paying?

The depositary may charge each person to whom ADSs are issued, including, without limitation, issuances against deposits of ordinary shares, issuances in respect of ordinary share distributions, rights and other distributions, issuances pursuant to a stock dividend or stock split declared by us or issuances pursuant to a merger, exchange of securities or any other transaction or event affecting the ADSs or deposited securities, and each person surrendering ADSs for withdrawal of deposited securities or whose ADRs are cancelled or reduced for any other reason, US$5.00 or less for each 100 ADSs (or any portion thereof) issued, delivered, reduced, cancelled or surrendered, as the case may be. The depositary may sell (by public or private sale) sufficient securities and property received in respect of an ordinary share distribution, rights and/or other distribution prior to such deposit to pay such charge.

The following additional charges shall be incurred by the ADR holders, by any party depositing or withdrawing ordinary shares or by any party surrendering ADSs or to whom ADSs are issued (including, without limitation, issuance pursuant to a stock dividend or stock split declared by us or an exchange of stock regarding the ADSs or the deposited securities or a distribution of ADSs), whichever is applicable:

- a fee of US$1.50 per ADR or ADRs for transfers of certificated or direct registration ADRs;
- a fee of up to US$0.05 per ADS for any cash distribution made pursuant to the deposit agreement;
- a fee of up to US$0.05 per ADS per calendar year (or portion thereof) for services performed by the depositary in administering the ADRs (which fee may be charged on a periodic basis during each calendar year and shall be assessed against holders of ADRs as of the record date or record dates set by the depositary during each calendar year and shall be payable in the manner described in the next succeeding provision);
- a fee for the reimbursement of such fees, charges and expenses as are incurred by the depositary and/or any of its agents (including, without limitation, the custodian and expenses incurred on behalf of holders in connection with compliance with foreign exchange control regulations or any law or regulation relating to foreign investment) in connection with the servicing of the ordinary shares or other deposited securities, the sale of securities (including, without limitation, deposited securities), the delivery of deposited securities or otherwise in connection with the depositary's or its custodian's

compliance with applicable law, rule or regulation (which fees and charges shall be assessed on a proportionate basis against holders as of the record date or dates set by the depositary and shall be payable at the sole discretion of the depositary by billing such holders or by deducting such charge from one or more cash dividends or other cash distributions);

- a fee for the distribution of securities (or the sale of securities in connection with a distribution), such fee being in an amount equal to the US$0.05 per ADS issuance fee for the execution and delivery of ADSs which would have been charged as a result of the deposit of such securities (treating all such securities as if they were ordinary shares) but which securities or the net cash proceeds from the sale thereof are instead distributed by the depositary to those holders entitled thereto;
- stock transfer or other taxes and other governmental charges;
- cable, telex and facsimile transmission and delivery charges incurred at your request in connection with the deposit or delivery of ordinary shares;
- transfer or registration fees for the registration of transfer of deposited securities on any applicable register in connection with the deposit or withdrawal of deposited securities;
- in connection with the conversion of foreign currency into U.S. dollars, shall deduct out of such foreign currency the fees, expenses and other charges charged by it and/or its agent (which may be a division, branch or affiliate) so appointed in connection with such conversion; and
- fees of any division, branch or affiliate of the depositary utilized by the depositary to direct, manage and/or execute any public and/or private sale of securities under the deposit agreement.

and/or its agent may act as principal for such conversion of foreign currency. For further details see https://www.adr.com.

We will pay all other charges and expenses of the depositary and any agent of the depositary (except the custodian) pursuant to agreements from time to time between us and the depositary. The charges described above may be amended from time to time by agreement between us and the depositary.

Our depositary has agreed to reimburse us for certain expenses we incur that are related to establishment and maintenance of the ADR program upon such terms and conditions as we and the depositary may agree from time to time. The depositary may make available to us a set amount or a portion of the depositary fees charged in respect of the ADR program or otherwise upon such terms and conditions as we and the depositary may agree from time to time. The depositary collects its fees for issuance and cancellation of ADSs directly from investors depositing ordinary shares or surrendering ADSs for the purpose of withdrawal or from intermediaries acting for them. The depositary collects fees for making distributions to investors by deducting those fees from the amounts distributed or by selling a portion of distributable property to pay the fees. The depositary may collect its annual fee for depositary services by deduction from cash distributions, or by directly billing investors, or by charging the book-entry system accounts of participants acting for them. The depositary will generally set off the amounts owing from distributions made to holders of ADSs. If, however, no distribution exists and payment owing is not timely received by the depositary, the depositary may refuse to provide any further services to holders that have not paid those fees and expenses owing until such fees and expenses have been paid. At the discretion of the depositary, all fees and charges owing under the deposit agreement are due in advance and/or when declared owing by the depositary.

The fees and charges you may be required to pay may vary over time and may be changed by us and by the depositary. You will receive prior notice of the increase in any such fees and charges.

Payment of Taxes

ADR holders must pay any tax or other governmental charge payable by the custodian or the depositary on any ADS or ADR, deposited security or distribution. If an ADR holder owes any tax or other governmental charge, the depositary may (i) deduct the amount thereof from any cash distributions, or (ii) sell deposited

securities (by public or private sale) and deduct the amount owing from the net proceeds of such sale. In either case the ADR holder remains liable for any shortfall. Additionally, if any taxes or other governmental charges (including any penalties and/or interest) shall become payable by or on behalf of the custodian or the depositary with respect to any ADR, any deposited securities represented by the ADSs evidenced thereby or any distribution thereon, such tax or other governmental charge shall be paid by the holder thereof to the depositary and by holding or having held an ADR the holder and all prior holders thereof, jointly and severally, agree to indemnify, defend and save harmless each of the depositary and its agents in respect thereof. If any tax or governmental charge is unpaid, the depositary may also refuse to effect any registration, registration of transfer, split-up or combination of deposited securities or withdrawal of deposited securities until such payment is made. If any tax or governmental charge is required to be withheld on any cash distribution, the depositary may deduct the amount required to be withheld from any cash distribution or, in the case of a non-cash distribution, sell the distributed property or securities (by public or private sale) to pay such taxes and distribute any remaining net proceeds or the balance of any such property after deduction of such taxes to the ADR holders entitled thereto.

By holding an ADR or an interest therein, you will be agreeing to indemnify us, the depositary, its custodian and any of our or their respective officers, directors, employees, agents and affiliates against, and hold each of them harmless from, any claims by any governmental authority with respect to taxes, additions to tax, penalties or interest arising out of any refund of taxes, reduced rate of withholding at source or other tax benefit obtained.

Reclassifications, Recapitalizations and Mergers

If we take certain actions that affect the deposited securities, including (i) any change in par value, split-up, consolidation, cancellation or other reclassification of deposited securities or (ii) any distributions of ordinary shares or other property not made to holders of ADRs or (iii) any recapitalization, reorganization, merger, consolidation, liquidation, receivership, bankruptcy or sale of all or substantially all of our assets, then the depositary may choose to, and shall if reasonably requested by us:

- amend the form of ADR;
- distribute additional or amended ADRs;
- distribute cash, securities or other property it has received in connection with such actions;
- sell any securities or property received and distribute the proceeds as cash; or
- none of the above.

If the depositary does not choose any of the above options, any of the cash, securities or other property it receives will constitute part of the deposited securities and each ADS will then represent a proportionate interest in such property.

Amendment and Termination

How may the deposit agreement be amended?

We may agree with the depositary to amend the deposit agreement and the ADSs without your consent for any reason. ADR holders must be given at least 30 days notice of any amendment that imposes or increases any fees or charges (other than stock transfer or other taxes and other governmental charges, transfer or registration fees, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or otherwise prejudices any substantial existing right of ADR holders. Such notice need not describe in detail the specific amendments effectuated thereby, but must identify to ADR holders a means to access the text of such amendment. If an ADR holder continues to hold an ADR or ADRs after being so notified, such ADR holder is deemed to agree to such amendment and to be bound by the deposit agreement as so amended. Notwithstanding the foregoing, if any governmental body or regulatory body should adopt new laws, rules or regulations which would require amendment or supplement of the deposit agreement or the form of ADR to ensure compliance therewith, we and the depositary may amend or supplement the deposit agreement and the ADR at any time in accordance with such changed laws, rules or regulations, which amendment or supplement may take effect before a notice is given

or within any other period of time as required for compliance. No amendment, however, will impair your right to surrender your ADSs and receive the underlying securities, except in order to comply with mandatory provisions of applicable law.

How may the deposit agreement be terminated?

The depositary may, and shall at our written direction, terminate the deposit agreement and the ADRs by mailing notice of such termination to the registered holders of ADRs at least 30 days prior to the date fixed in such notice for such termination; provided, however, if the depositary shall have (i) resigned as depositary under the deposit agreement, notice of such termination by the depositary shall not be provided to registered holders unless a successor depositary shall not be operating under the deposit agreement within 45 days of the date of such resignation, and (ii) been removed as depositary under the deposit agreement, notice of such termination by the depositary shall not be provided to registered holders of ADRs unless a successor depositary shall not be operating under the deposit agreement on the 90th day after our notice of removal was first provided to the depositary. After termination, the depositary's only responsibility will be (i) to deliver deposited securities to ADR holders who surrender their ADRs, and (ii) to hold or sell distributions received on deposited securities. As soon as practicable after the expiration of six months from the termination date, the depositary will sell the deposited securities which remain and hold the net proceeds of such sales (as long as it may lawfully do so), without liability for interest, in trust for the ADR holders who have not yet surrendered their ADRs. After making such sale, the depositary shall have no obligations except to account for such proceeds and other cash.

Limitations on Obligations and Liability to ADR holders

Limits on our obligations and the obligations of the depositary; limits on liability to ADR holders and holders of ADSs

Prior to the issue, registration, registration of transfer, split-up, combination, or cancellation of any ADRs, or the delivery of any distribution in respect thereof, and from time to time in the case of the production of proofs as described below, we or the depositary or its custodian may require:

- payment with respect thereto of (i) any stock transfer or other tax or other governmental charge, (ii) any stock transfer or registration fees in effect for the registration of transfers of ordinary shares or other deposited securities upon any applicable register and (iii) any applicable fees and expenses described in the deposit agreement;
- the production of proof satisfactory to it of (i) the identity of any signatory and genuineness of any signature and (ii) such other information, including without limitation, information as to citizenship, residence, exchange control approval, beneficial ownership of any securities, compliance with applicable law, regulations, provisions of or governing deposited securities and terms of the deposit agreement and the ADRs, as it may deem necessary or proper; and
- compliance with such regulations as the depositary may establish consistent with the deposit agreement.

The issuance of ADRs, the acceptance of deposits of ordinary shares, the registration, registration of transfer, split-up or combination of ADRs or the withdrawal of ordinary shares, may be suspended, generally or in particular instances, when the ADR register or any register for deposited securities is closed or when any such action is deemed advisable by the depositary; provided that the ability to withdraw ordinary shares may only be limited under the following circumstances: (i) temporary delays caused by closing transfer books of the depositary or our transfer books or the deposit of ordinary shares in connection with voting at a shareholders' meeting, or the payment of dividends, (ii) the payment of fees, taxes, and similar charges, and (iii) compliance with any laws or governmental regulations relating to ADRs or to the withdrawal of deposited securities.

The deposit agreement expressly limits the obligations and liability of the depositary, ourselves and our respective agents, provided, however, that no such disclaimer of liability under the Securities Act of 1933 is

intended by any of the limitations of liabilities provisions of the deposit agreement. The deposit agreement it provides that neither we nor the depositary nor any such agent will be liable if:

- any present or future law, rule, regulation, fiat, order or decree of the United States, Australia or any other country, or of any governmental or regulatory authority or securities exchange or market or automated quotation system, the provisions of or governing any deposited securities, any present or future provision of our charter, any act of God, war, terrorism, nationalization or other circumstance beyond our, the depositary's or our respective agents' control shall prevent or delay, or shall cause any of them to be subject to any civil or criminal penalty in connection with, any act which the deposit agreement or the ADRs provide shall be done or performed by us, the depositary or our respective agents (including, without limitation, voting);
- it exercises or fails to exercise discretion under the deposit agreement or the ADR including, without limitation, any failure to determine that any distribution or action may be lawful or reasonably practicable;
- it performs its obligations under the deposit agreement and ADRs without gross negligence or willful misconduct;
- it takes any action or refrains from taking any action in reliance upon the advice of or information from legal counsel, accountants, any person presenting ordinary shares for deposit, any registered holder of ADRs, or any other person believed by it to be competent to give such advice or information; or
- it relies upon any written notice, request, direction, instruction or document believed by it to be genuine and to have been signed, presented or given by the proper party or parties.

Neither the depositary nor its agents have any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any deposited securities or the ADRs. We and our agents shall only be obligated to appear in, prosecute or defend any action, suit or other proceeding in respect of any deposited securities or the ADRs, which in our opinion may involve us in expense or liability, if indemnity satisfactory to us against all expense (including fees and disbursements of counsel) and liability is furnished as often as may be required. The depositary and its agents may fully respond to any and all demands or requests for information maintained by or on its behalf in connection with the deposit agreement, any registered holder or holders of ADRs, any ADRs or otherwise related to the deposit agreement or ADRs to the extent such information is requested or required by or pursuant to any lawful authority, including without limitation laws, rules, regulations, administrative or judicial process, banking, securities or other regulators. The depositary shall not be liable for the acts or omissions made by, or the insolvency of, any securities depository, clearing agency or settlement system. Furthermore, the depositary shall not be responsible for, and shall incur no liability in connection with or arising from, the insolvency of any custodian that is not a branch or affiliate of . Notwithstanding anything to the contrary contained in the deposit agreement or any ADRs, the depositary shall not be responsible for, and shall incur no liability in connection with or arising from, any act or omission to act on the part of the custodian except to the extent that the (i) custodian committed fraud or willful misconduct in the provision of custodial services to the depositary or (ii) failed to use reasonable care in the provision of custodial services to the depositary as determined in accordance with the standards prevailing in the jurisdiction in which the custodian is located. The depositary shall not have any liability for the price received in connection with any sale of securities, the timing thereof or any delay in action or omission to act nor shall it be responsible for any error or delay in action, omission to act, default or negligence on the part of the party so retained in connection with any such sale or proposed sale.

The depositary has no obligation to inform ADR holders or other holders of an interest in any ADSs about the requirements of Australian law, rules or regulations or any changes therein or thereto.

Additionally, none of us, the depositary or the custodian shall be liable for the failure by any registered holder of ADRs or beneficial owner therein to obtain the benefits of credits on the basis of non-U.S. tax paid against such holder's or beneficial owner's income tax liability. Neither we nor the depositary shall incur any liability for any tax consequences that may be incurred by holders or beneficial owners on account of their ownership of ADRs or ADSs.

Neither the depositary nor its agents will be responsible for any failure to carry out any instructions to vote any of the deposited securities, for the manner in which any such vote is cast or for the effect of any such vote. The depositary may rely upon instructions from us or its counsel in respect of any approval or license required for any currency conversion, transfer or distribution. The depositary shall not incur any liability for the content of any information submitted to it by us or on our behalf for distribution to ADR holders or for any inaccuracy of any translation thereof, for any investment risk associated with acquiring an interest in the deposited securities, for the validity or worth of the deposited securities, for the credit-worthiness of any third party, for allowing any rights to lapse upon the terms of the deposit agreement or for the failure or timeliness of any notice from us. The depositary shall not be liable for any acts or omissions made by a successor depositary whether in connection with a previous act or omission of the depositary or in connection with any matter arising wholly after the removal or resignation of the depositary, provided that in connection with the issue out of which such potential liability arises the depositary performed its obligations without negligence while it acted as depositary. Neither us, nor the depositary nor any of their respective agents shall be liable to registered holders of ADRs or beneficial owners of interests in ADSs for any indirect, special, punitive or consequential damages or lost profits, in each case of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought.

In the deposit agreement each party thereto (including, for avoidance of doubt, each holder and beneficial owner and/or holder of interests in ADRs and/or ADSs irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any suit, action or proceeding against the depositary and/or us directly or indirectly arising out of or relating to the ordinary shares or other deposited securities, the ADSs or the ADRs, the deposit agreement or any transaction contemplated therein, or the breach thereof (whether based on contract, tort, common law or any other theory).

The depositary and its agents may own and deal in any class of our securities and in ADSs.

Disclosure of Interest in ADSs

To the extent that the provisions of or governing any deposited securities may require disclosure of or impose limits on beneficial or other ownership of deposited securities, other ordinary shares and other securities and may provide for blocking transfer, voting or other rights to enforce such disclosure or limits, you agree to comply with all such disclosure requirements and ownership limitations and to comply with any reasonable instructions we may provide in respect thereof. We reserve the right to instruct you to deliver your ADSs for cancellation and withdrawal of the deposited securities so as to permit us to deal with you directly as a holder of ordinary shares and, by holding an ADS or an interest therein, you will be agreeing to comply with such instructions.

Books of Depositary

The depositary or its agent will maintain a register for the registration, registration of transfer, combination and split-up of ADRs, which register shall include the depositary's direct registration system. Registered holders of ADRs may inspect such records at the depositary's office at all reasonable times for the purpose of communicating with other holders in the interest of the business of our company or a matter relating to the deposit agreement. Such register may be closed from time to time, when deemed expedient by the depositary or, in the case of the issuance portion of the ADR Register, when reasonably requested by us to enable us to comply with applicable law.

The depositary will maintain facilities for the delivery and receipt of ADRs.

Pre-release of ADSs

In its capacity as depositary, the depositary shall not lend ordinary shares or ADSs; provided, however, that the depositary may (i) issue ADSs prior to the receipt of ordinary shares and (ii) deliver ordinary shares prior to the receipt of ADSs for withdrawal of deposited securities, including ADSs which were issued under (i) above but for which ordinary shares may not have been received (each such transaction a "pre-release"). The depositary

may receive ADSs in lieu of ordinary shares under (i) above (which ADSs will promptly be canceled by the depositary upon receipt by the depositary) and receive ordinary shares in lieu of ADSs under (ii) above. Each such pre-release will be subject to a written agreement whereby the person or entity (the "applicant") to whom ADSs or ordinary shares are to be delivered (a) represents that at the time of the pre-release the applicant or its customer owns the ordinary shares or ADSs that are to be delivered by the applicant under such pre-release, (b) agrees to indicate the depositary as owner of such ordinary shares or ADSs in its records and to hold such ordinary shares or ADSs in trust for the depositary until such ordinary shares or ADSs are delivered to the depositary or the custodian, (c) unconditionally guarantees to deliver to the depositary or the custodian, as applicable, such ordinary shares or ADSs, and (d) agrees to any additional restrictions or requirements that the depositary deems appropriate. Each such pre-release will be at all times fully collateralized with cash, U.S. government securities or such other collateral as the depositary deems appropriate, terminable by the depositary on not more than five (5) business days' notice and subject to such further indemnities and credit regulations as the depositary deems appropriate. The depositary will normally limit the number of ADSs and ordinary shares involved in such pre-release at any one time to thirty percent (30%) of the ADSs outstanding (without giving effect to ADSs outstanding under (i) above), provided, however, that the depositary reserves the right to change or disregard such limit from time to time as it deems appropriate. The depositary may also set limits with respect to the number of ADSs and ordinary shares involved in pre-release with any one person on a case-by-case basis as it deems appropriate. The depositary may retain for its own account any compensation received by it in conjunction with the foregoing. Collateral provided in connection with pre-release transactions, but not the earnings thereon, shall be held for the benefit of the ADR holders (other than the applicant).

Appointment

In the deposit agreement, each registered holder of ADRs and each person holding an interest in ADSs, upon acceptance of any ADSs (or any interest therein) issued in accordance with the terms and conditions of the deposit agreement will be deemed for all purposes to:

- be a party to and bound by the terms of the deposit agreement and the applicable ADR or ADRs, and
- appoint the depositary its attorney-in-fact, with full power to delegate, to act on its behalf and to take any and all actions contemplated in the deposit agreement and the applicable ADR or ADRs, to adopt any and all procedures necessary to comply with applicable laws and to take such action as the depositary in its sole discretion may deem necessary or appropriate to carry out the purposes of the deposit agreement and the applicable ADR and ADRs, the taking of such actions to be the conclusive determinant of the necessity and appropriateness thereof.

Governing Law

The deposit agreement and the ADRs shall be governed by and construed in accordance with the laws of the State of New York. In the deposit agreement, we have submitted to the jurisdiction of the courts of the State of New York and appointed an agent for service of process on our behalf. Notwithstanding the foregoing, any action based on the deposit agreement may be instituted by the depositary in any competent court in Australia and/or the United States.

By holding an ADS or an interest therein, registered holders of ADRs and owners of ADSs each irrevocably agree that any legal suit, action or proceeding against or involving us or the depositary, arising out of or based upon the deposit agreement or the transactions contemplated thereby, may only be instituted in a state or federal court in New York, New York, and each irrevocably waives any objection which it may have to the laying of venue of any such proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

SHARES AND ADSS ELIGIBLE FOR FUTURE SALE

Upon completion of this offering, we will have outstanding ADSs representing approximately % of our ordinary shares in issue assuming no exercise of the underwriters' option to purchase ADSs in this offering. In addition, we will have outstanding ordinary shares not represented by ADSs. All outstanding ordinary shares and all of the ADSs sold in this offering will be freely transferable by persons other than our "affiliates" without restriction or further registration under the Securities Act. Sales of substantial amounts of our ADSs in the public market could have a material adverse effect on the prevailing market prices of our ADSs.

Our ordinary shares have been trading on the ASX since December 16, 2004. While we intend to apply to list our ADSs on the NASDAQ Global Select Market, we cannot assure you that an active trading market for our ADSs will develop.

Lock-up Agreements

Our directors, our chief executive officer and our chief financial officer have each entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each of these persons or entities, with limited exceptions, for a period of 180 days after the date of this prospectus, may not, without the prior written consent of J.P. Morgan Securities LLC and Credit Suisse Securities (USA) LLC, (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any ordinary shares or ADSs or any securities convertible into or exercisable or exchangeable for our ordinary shares or ADSs (including, without limitation, ordinary shares or such other securities which may be deemed to be beneficially owned by such directors, senior management, managers and members in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a share option or warrant) or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the ordinary shares or ADSs or such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of ordinary shares or ADSs or such other securities, in cash or otherwise, or (3) make any demand for or exercise any right with respect to the registration of any ordinary shares or ADSs or any security convertible into or exercisable or exchangeable for ordinary shares or ADSs, subject to certain exceptions.

Rule 144

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus a person who has beneficially owned our "restricted securities" within the meaning of Rule 144 for at least six months is entitled to sell the restricted securities without registration under the Securities Act, subject to certain restrictions. Persons who are our affiliates may sell within any three-month period a number of restricted securities that does not exceed the greater of the following:

- 1% of the number of our ordinary shares then outstanding, in the form of ADSs or otherwise, which will equal approximately ordinary shares immediately after this offering, or approximately ordinary shares if the underwriters exercise their option to purchase additional ADSs in full; and
- The average weekly trading volume of our ADSs on the NASDAQ Global Select Market during the four calendar weeks preceding the date on which notice of the sale is filed with the SEC.

Sales under Rule 144 by persons who are deemed our affiliates are subject to manner-of-sale provisions, notice requirements and the availability of current public information about us. Persons who are not our affiliates and have beneficially owned our restricted securities for more than six months but not more than one year may sell the restricted securities without registration under the Securities Act, subject to the availability of current public information about us. Persons who are not our affiliates and have beneficially owned our restricted securities for more than one year may freely sell the restricted securities without registration under the Securities Act.

In addition, in each case, these shares would remain subject to lock-up arrangements and would only become eligible for sale when the lock-up period expires.

Rule 701

Beginning 90 days after the date of the prospectus, persons other than our affiliates who purchased ordinary shares under a written compensatory plan or contract may be entitled to sell such shares in the United States in reliance on Rule 701. Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. Rule 701 further provides that non-affiliates may sell these shares in reliance on Rule 144 subject only to its manner-of-sale requirements.

Share options

Shortly after the completion of this offering, we intend to file a registration statement on Form S-8 under the Securities Act to register all ordinary shares issuable under our equity-based compensation plan. See "Management—Remuneration—Non-CEO Executive Remuneration" for a description of such plan.

This Form S-8 registration statement is expected to become effective immediately upon filing, and ordinary shares (and the ADSs representing such ordinary shares) covered by that registration statement will then be eligible for sale in the public markets, subject to:

- The Rule 144 limitations applicable to affiliates;
- The expiration of the lock-up period; and
- Vesting restrictions imposed by us.

As of June 30, 2015, there were employee options outstanding to purchase 18,369,078 fully paid ordinary shares at a weighted average exercise price of A$5.25 per share and an aggregate of 3,500,000 shares at a weighted average exercise price of A$6.78 per share held in trust as part of our LFSP.

TAXATION

The following summary of the material Australian and U.S. federal income tax consequences of an investment in our ADSs or ordinary shares is based upon laws and relevant interpretations thereof in effect as of the date of this prospectus, all of which are subject to change, possibly with retroactive effect. This summary does not deal with all possible tax consequences relating to an investment in our ADSs or ordinary shares, such as the tax consequences under U.S. state, local and other tax laws other than Australian and U.S. federal income tax laws. To the extent that the discussion relates to matters of Australian tax law, it represents the opinion of Minter Ellison, our Australian counsel. To the extent that the discussion states definitive legal conclusions under U.S. federal income tax law as to the material U.S. federal income tax consequences of an investment in our ADSs or ordinary shares, and subject to the qualifications, assumptions and limitations set forth herein, it represents the opinion of Wilson, Sonsini, Goodrich & Rosati, Professional Corporation, our special U.S. tax counsel.

Material U.S. Federal Income Tax Considerations to U.S. Holders

The following summary describes the material U.S. federal income tax consequences to U.S. holders (as defined below) of the ownership and disposition of our ordinary shares and ADSs as of the date hereof. Except where noted, this summary deals only with ordinary shares or ADSs acquired in this offering and held as capital assets within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended, or the Code. This section does not discuss the tax consequences to any particular holder, nor any tax considerations that may apply to holders subject to special tax rules, such as:

- banks, insurance companies, regulated investment companies and real estate investment trusts;
- financial institutions;
- individual retirement and other tax-deferred accounts;
- certain former U.S. citizens or long-term residents;
- brokers or dealers in securities or currencies;
- traders that elect to use a mark-to-market method of accounting;
- partnerships and other entities treated as partnership or pass through entities for U.S. federal income tax purposes, and partners or investors in such entities;
- tax-exempt organizations (including private foundations);
- persons subject to the alternative minimum tax;
- persons that hold or dispose of ordinary shares or ADSs as a position in a straddle or as part of a hedging, constructive sale, conversion or other integrated transaction;
- persons that have a functional currency other than the U.S. dollar;
- persons that own (directly, indirectly or constructively) 10% or more of our equity; or
- persons that are not U.S. holders (as defined below).

In this section, a "U.S. holder" means a beneficial owner of ordinary shares or ADSs, other than a partnership or other entity treated as a partnership for U.S. federal income tax purposes, that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States (for U.S. federal income tax purposes);
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or any state thereof or the District of Columbia;
- an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source; or

- a trust (i) the administration of which is subject to the primary supervision of a court in the United States and for which one or more U.S. persons have the authority to control all substantial decisions or (ii) that has an election in effect under applicable income tax regulations to be treated as a U.S. person.

The discussion below is based upon the provisions of the Code, and the U.S. Treasury regulations, rulings and judicial decisions thereunder as of the date hereof, and such authorities may be replaced, revoked or modified, possibly with retroactive effect, so as to result in U.S. federal income tax consequences different from those discussed below. In addition, this summary is based, in part, upon the terms of the deposit agreement and assumes that the deposit agreement, and all other related agreements, will be performed in accordance with their terms.

If a partnership or an entity or arrangement treated as a partnership for U.S. federal income tax purposes acquires, owns or disposes of ordinary shares or ADSs, the U.S. federal income tax treatment of a partner generally will depend on the status of the partner and the activities of the partnership. Partners of partnerships that acquire, own or dispose of ordinary shares or ADSs should consult their tax advisors.

You are urged to consult your own tax advisor with respect to the U.S. federal, as well as state, local and non-U.S., tax consequences to you of acquiring, owning and disposing of ordinary shares or ADSs in light of your particular circumstances, including the possible effects of changes in U.S. federal income and other tax laws.

ADSs

Assuming the deposit agreement and all other related agreements will be performed in accordance with their terms, a U.S. holder of ADSs will be treated as the beneficial owner for United States federal income tax purposes of the underlying shares represented by the ADSs. The U.S. Treasury has expressed concerns that parties to whom American depositary shares are released before shares are delivered to the depositary, or intermediaries in the chain of ownership between holders of American depositary shares and the issuer of the security underlying the American depositary shares, may be taking actions that are inconsistent with claiming foreign tax credits by holders of American depositary shares. These actions would also be inconsistent with claiming the reduced rate of tax, described below, applicable to dividends received by certain noncorporate holders. Accordingly, the creditability of any foreign taxes and the availability of the reduced tax rate for dividends received by certain non-corporate U.S. Holders, each described below, could be affected by actions taken by such parties or intermediaries.

Distributions

Subject to the passive foreign investment company, or PFIC, rules discussed below, U.S. holders generally will include as dividend income the U.S. dollar value of the gross amount of any distributions of cash or property (without deduction for any withholding tax), other than certain pro rata distributions of ordinary shares, with respect to ordinary shares or ADSs to the extent the distributions are made from our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. A U.S. holder will include the dividend income on the day actually or constructively received: (i) by the holder, in the case of ordinary shares, or (ii) by the depositary, in the case of ADSs. To the extent, if any, that the amount of any distribution by us exceeds our current and accumulated earnings and profits, as so determined, the excess will be treated first as a tax-free return of the U.S. holder's tax basis in the ordinary shares or ADSs and thereafter as capital gain. Notwithstanding the foregoing, we do not intend to determine our earnings and profits on the basis of U.S. federal income tax principles. Consequently, any distributions generally will be reported as dividend income for U.S. information reporting purposes. See "— Backup Withholding Tax and Information Reporting Requirements" below. Dividends paid by us will not be eligible for the dividends-received deduction generally allowed to U.S. corporate shareholders.

The U.S. dollar amount of dividends received by an individual, trust or estate with respect to the ordinary shares or ADSs will be subject to taxation at a maximum rate of 20% if the dividends are "qualified dividends." Dividends paid on ordinary shares or ADSs will be treated as qualified dividends if (i) (a) we are eligible for the benefits of a comprehensive income tax treaty with the United States that the Secretary of the Treasury of the United States determines is satisfactory for this purpose and includes an exchange of information program or

(b) the dividends are with respect to ordinary shares (or ADSs in respect of such shares) which are readily tradable on a U.S. securities market; (ii) certain holding period requirements are met; and (iii) we are not classified as a PFIC for the taxable year in which the dividend is paid or for the preceding taxable year. The Agreement between the Government of the United States of America and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, or the Treaty, has been approved for the purposes of the qualified dividend rules, and we expect to qualify for benefits under the Treaty. We intend to apply to list the ADSs on the NASDAQ Global Select Market. Provided that the listing is approved, U.S. Treasury Department guidance indicates that the ADSs will be readily tradable on an established U.S. securities market. Thus, we believe that as long as we are not a PFIC, dividends we pay generally should be eligible for the reduced income tax rate on qualified dividends. However, the determination of whether a dividend qualifies for the preferential tax rates must be made at the time the dividend is paid. U.S. holders should consult their own tax advisors.

Includible distributions paid in Australian dollars, including any Australian withholding taxes, will be included in the gross income of a U.S. holder in a U.S. dollar amount calculated by reference to the spot exchange rate in effect on the date of actual or constructive receipt, regardless of whether the Australian dollars are converted into U.S. dollars at that time. If Australian dollars are converted into U.S. dollars on the date of actual or constructive receipt, the tax basis of the U.S. holder in those Australian dollars will be equal to their U.S. dollar value on that date and, as a result, a U.S. holder generally should not be required to recognize any foreign currency exchange gain or loss. If Australian dollars so received are not converted into U.S. dollars on the date of receipt, the U.S. holder will have a basis in the Australian dollars equal to their U.S. dollar value on the date of receipt. Any foreign currency exchange gain or loss on a subsequent conversion or other disposition of the Australian dollars generally will be treated as ordinary income or loss to such U.S. holder and generally will be income or loss from sources within the United States for foreign tax credit limitation purposes.

Dividends received by a U.S. holder with respect to ordinary shares (or ADSs in respect of such shares) will be treated as foreign source income, which may be relevant in calculating the holder's foreign tax credit limitation. The limitation on foreign taxes eligible for credit is calculated separately with respect to specific classes of income. For this purpose, dividends distributed by us with respect to ADSs or ordinary shares will generally constitute "passive category income" but could, in the case of certain U.S. holders, constitute "general category income."

Subject to certain complex limitations, including the PFIC rules discussed above, a U.S. holder generally will be entitled, at its option, to claim either a credit against its U.S. federal income tax liability or a deduction in computing its U.S. federal taxable income in respect of any Australian taxes withheld. If a U.S. holder elects to claim a deduction, rather than a foreign tax credit, for Australian taxes withheld for a particular taxable year, the election will apply to all foreign taxes paid or accrued by or on behalf of the U.S. holder in the particular taxable year.

The availability of the foreign tax credit and the application of the limitations on its availability are fact specific and are subject to complex rules. You are urged to consult your own tax advisor as to the consequences of Australian withholding taxes and the availability of a foreign tax credit or deduction. See "—Australian Tax Considerations Australian Income Tax—Taxation of Dividends" below.

Sale, Exchange or Other Disposition of Ordinary Shares or ADSs

Subject to the PFIC rules discussed below, a U.S. holder generally will, for U.S. federal income tax purposes, recognize capital gain or loss, if any, on a sale, exchange or other disposition of ordinary shares or ADSs equal to the difference between the amount realized on the disposition and the U.S. holder's tax basis (in U.S. dollars) in the ordinary shares or ADSs. This recognized gain or loss will generally be long-term capital gain or loss if the U.S. holder has held the ordinary shares or ADSs for more than one year. Generally, for U.S. holders who are individuals (as well as certain trusts and estates), long-term capital gains are subject to U.S. federal income tax at preferential rates. For foreign tax credit limitation purposes, gain or loss recognized upon a disposition generally will be treated as from sources within the United States. The deductibility of capital losses is subject to limitations for U.S. federal income tax purposes.

You should consult your own tax advisor regarding the tax consequences if a foreign tax is imposed on a disposition of ADSs or ordinary shares, including availability of a foreign tax credit or deduction in respect of any Australian tax imposed on a sale or other disposition of ordinary shares or ADSs. See "—Australian Tax Considerations—Tax on Sales or Other Dispositions of Shares—Capital Gains Tax."

Passive Foreign Investment Company

As a non-U.S. corporation, we will be a PFIC for any taxable year if either: (i) 75% or more of our gross income for the taxable year is passive income (such as certain dividends, interest, rents or royalties and certain gains from the sale of shares and securities or commodities transactions, including amounts derived by reason of the temporary investment of funds raised in offerings of our ordinary shares or ADSs); or (ii) the average percentage value of our gross assets during the taxable year that produce passive income or are held for the production of passive income is at least 50% of the value of our total assets. For purposes of the PFIC asset test, passive assets generally include any cash, cash equivalents and cash invested in short-term, interest bearing debt instruments or bank deposits that is readily convertible into cash. If we own at least 25% (by value) of the stock of another corporation, we will be treated, for purposes of the PFIC income and asset tests, as owning our proportionate share of the other corporation's assets and receiving our proportionate share of the other corporation's income.

We believe we were not a PFIC for the taxable year ending June 30, 2014 and we do not expect to be a PFIC for the taxable year ending June 30, 2015. However, if there is a change in the type or composition of our gross income, or our actual business results do not match our projections, it is possible that we may become a PFIC in future taxable years. Investors should be aware that our gross income for purposes of the PFIC income test depends on the receipt of Australian research and development tax incentive credits and other revenue, and there can be no assurances that such tax incentive credit programs will not be revoked or modified, that we will continue to conduct our operations in the manner necessary to be eligible for such incentives or that we will receive other gross income that is not considered passive for purposes of the PFIC income test. The value of our assets for purposes of the PFIC asset test will generally be determined by reference to our market capitalization, which may fluctuate. The composition of our income and assets will also be affected by how, and how quickly, we spend the cash raised in this offering. Under circumstances where our gross income from activities that produce passive income significantly increases relative to our gross income from activities that produce non-passive income or where we decide not to deploy significant amounts of cash for active purposes, our risk of becoming classified as a PFIC may substantially increases. Since a separate factual determination as to whether we are or have become a PFIC must be made each year (after the close of such year), we cannot assure you that we will not be or become a PFIC in the current year or any future taxable year. There can be no assurance that we will not be a PFIC for any taxable year, as PFIC status is determined each year and depends on the composition of our income and assets and the value of our assets in such year. If we are a PFIC for any taxable year, we intend to provide U.S. holders with the information necessary to make and maintain a "Qualified Electing Fund" election, as described below.

Default PFIC Rules

If we are a PFIC for any taxable year during which you own our ordinary shares or ADSs, unless you make the mark-to-market election or the Qualified Electing Fund election described below, you will generally be (and remain) subject to additional taxes and interest charges, regardless of whether we remain a PFIC in any subsequent taxable year (i) on certain "excess" distributions we may make and (ii) on any gain realized on the disposition or deemed disposition of your ordinary shares or ADSs. Distributions in respect of your ordinary shares (or ADSs in respect of such shares) during the taxable year will generally constitute "excess" distributions if, in the aggregate, they exceed 125% of the average amount of distributions in respect of your ordinary shares (or ADSs) over the three preceding taxable years or, if shorter, the portion of your holding period before such taxable year.

To compute the tax on "excess" distributions or any gain: (i) the "excess" distribution or the gain will be allocated ratably to each day in your holding period for the ADSs or the ordinary shares; (ii) the amount allocated

to the current taxable year and any taxable year before we became a PFIC will be taxed as ordinary income in the current year; (iii) the amount allocated to other taxable years will be taxable at the highest applicable marginal rate in effect for that year; and (iv) an interest charge at the rate for underpayment of taxes will be imposed with respect to any portion of the "excess" distribution or gain described under (iii) above that is allocated to such other taxable years. In addition, if we are a PFIC or, with respect to a particular U.S. holder, we are treated as a PFIC for the taxable year in which the distribution was paid or the prior taxable year, no distribution that you receive from us will qualify for taxation at the preferential rate for non-corporate holders discussed in "— Distributions" above. You should consult with your own tax advisor regarding the application of the default PFIC rules based on your particular circumstances.

If we are a PFIC for any taxable year during which a U.S. holder holds our ADSs or ordinary shares and any of our non-U.S. subsidiaries is also a PFIC (i.e., a lower-tier PFIC), such a U.S. holder would be treated as owning a proportionate amount (by value) of the shares of the lower-tier PFIC and would be subject to the rules described above on certain distributions by the lower-tier PFIC and our disposition of shares of the lower-tier PFIC, even though such U.S. holder would not receive the proceeds of those distributions or dispositions. You should consult with your own tax advisor regarding the application to you of the PFIC rules to any of our subsidiaries if we are a PFIC.

Mark-to-Market Election

If we are a PFIC for any taxable year during which you own our ADSs or ordinary shares, you will be able to avoid the rules applicable to "excess" distributions or gains described above if the ordinary shares or ADSs are "marketable" and you make a timely "mark-to-market" election with respect to your ordinary shares or ADSs. The ordinary shares or ADSs will be "marketable" stock as long as they remain regularly traded on a national securities exchange, such as the NASDAQ Global Select Market, or a foreign securities exchange regulated by a governmental authority of the country in which the market is located and which meets certain requirements, including that the rules of the exchange effectively promote active trading of listed stocks. If such stock is traded on such a qualified exchange or other market, such stock generally will be "regularly traded" for any calendar year during which such stock is traded, other than in de minimis quantities, on at least 15 days during each calendar quarter, but no assurances can be given in this regard. Our ordinary shares are traded on the ASX, which may qualify as an eligible foreign securities exchange for this purpose.

If you are eligible to make a "mark-to-market" election with respect to our ordinary shares or ADSs and you make this election in a timely fashion, you will generally recognize as ordinary income or ordinary loss the difference between the fair market value of your ordinary shares or ADSs on the last day of any taxable year and your adjusted tax basis in the ordinary shares or ADSs. Any ordinary income resulting from this election will generally be taxed at ordinary income rates. Any ordinary losses will be deductible only to the extent of the net amount of previously included income as a result of the mark-to-market election, if any. Your adjusted tax basis in the ordinary shares or ADSs will be adjusted to reflect any such income or loss. Any gain recognized on the sale or other disposition of your ordinary shares or ADSs in a year when we are a PFIC will be treated as ordinary income, and any loss will be treated as an ordinary loss (but only to the extent of the net amount previously included as ordinary income as a result of the mark-to-market election).

Because a mark-to-market election cannot be made for any lower-tier PFICs that we may own, a U.S. holder may continue to be subject to the PFIC rules with respect to its indirect interest in any investments held by us that are treated as an equity interest in a PFIC for U.S. federal income tax purposes, including shares in any of our subsidiaries that are treated as PFICs.

You should consult with your own tax advisor regarding the applicability and potential advantages and disadvantages to you of making a "mark-to-market" election with respect to your ordinary shares or ADSs if we are or become a PFIC, including the tax issues raised by lower-tier PFICs that we may own and the procedures for making such an election.

QEF Election

Alternative rules to those set forth in the third preceding paragraph above apply if an election is made to treat us as a "Qualified Electing Fund," or QEF, under Section 1295 of the Code. A QEF election is available only if the U.S. holder receives an annual information statement from the PFIC setting forth its ordinary earnings and net capital gains, as calculated for U.S. federal income tax purposes.

Upon request from a U.S. holder, we will endeavor to provide to the U.S. holder no later than 90 days after the request an annual information statement, in order to enable the U.S. holder to make and maintain a QEF election for us or for any of our subsidiaries that is or becomes a PFIC. However, there is no assurance that we will have timely knowledge of our or our subsidiaries' status as a PFIC in the future or of the required information to be provided. You should consult your own tax advisor regarding the availability and tax consequences of a QEF election with respect to the ordinary shares or ADSs or with respect to any lower-tier PFIC that we may own under your particular circumstances.

If we are a PFIC for any taxable year during which you own our ordinary shares or ADSs, as a U.S. holder, you will generally be required to file IRS Form 8621 on an annual basis, and other reporting requirements may apply. The PFIC rules are complex and you should consult with your own tax advisor regarding whether we or any of our subsidiaries are a PFIC, the tax consequences of any elections that may be available to you, and how the PFIC rules may affect the U.S. federal income tax consequences of the receipt, ownership, and disposition of our ordinary shares or ADSs.

Tax on Net Investment Income

Certain non-corporate U.S. holders will be subject to a 3.8% tax on the lesser of (i) the U.S. holder's "net investment income" for the relevant taxable year and (ii) the excess of the U.S. holder's modified adjusted gross income for the taxable year over a certain threshold. A U.S. holder's net investment income will generally include dividends received on the ordinary shares or ADSs and net gains from the disposition of ordinary shares or ADSs, unless such dividend income or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). A U.S. holder that is an individual, estate or trust should consult the holder's tax advisor regarding the applicability of the tax on net investment income to the holder's dividend income and gains in respect of the holder's investment in the ordinary shares or ADSs.

Backup Withholding Tax and Information Reporting Requirements

U.S. backup withholding tax and information reporting requirements generally apply to payments to non-corporate holders of ordinary shares or ADSs. Information reporting will apply to payments of dividends on, and to proceeds from the disposition of, ordinary shares or ADSs by a paying agent within the United States to a U.S. holder, other than U.S. holders that are exempt from information reporting and properly certify their exemption. A paying agent within the United States will be required to withhold at the applicable statutory rate, currently 28%, in respect of any payments of dividends on, and the proceeds from the disposition of, ordinary shares or ADSs within the United States to a U.S. holder (other than U.S. holders that are exempt from backup withholding and properly certify their exemption) if the holder fails to furnish its correct taxpayer identification number or otherwise fails to comply with applicable backup withholding requirements. U.S. holders who are required to establish their exempt status generally must provide a properly completed IRS Form W-9.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a U.S. holder's U.S. federal income tax liability. A U.S. holder generally may obtain a refund of any amounts withheld under the backup withholding rules in excess of such holder's U.S. federal income tax liability by filing the appropriate claim for refund with the IRS in a timely manner and furnishing any required information.

Certain U.S. holders may be required to report information with respect to such holder's interest in "specified foreign financial assets" (as defined in Section 6038D of the Code), including stock of a non-U.S. corporation that is not held in an account maintained by a U.S. "financial institution". Persons who are required

to report specified foreign financial assets and fail to do so may be subject to substantial penalties. U.S. holders are urged to consult their own tax advisors regarding foreign financial asset reporting obligations and their possible application to the holding of ordinary shares or ADSs.

The discussion above is not intended to constitute a complete analysis of all tax considerations applicable to an investment in our ordinary shares or ADSs. You should consult with your own tax advisor concerning the tax consequences to you in your particular situation.

Australian Tax Considerations

In this section, we discuss the material Australian income tax, stamp duty and goods and services tax considerations related to the acquisition, ownership and disposal by the absolute beneficial owners of the ordinary shares or ADSs. This discussion represents the opinion of Minter Ellison, our Australian counsel. It is based upon existing Australian tax law as of the date of this prospectus, which is subject to change, possibly retrospectively. This discussion does not address all aspects of Australian tax law which may be important to particular investors in light of their individual investment circumstances, such as shares held by investors subject to special tax rules (for example, financial institutions, insurance companies or tax exempt organizations). In addition, this summary does not discuss any foreign or state tax considerations, other than stamp duty and goods and services tax. Prospective investors are urged to consult their tax advisors regarding the Australian and foreign income and other tax considerations of the acquisition, ownership and disposition of the shares. This summary is based upon the premise that the holder is not an Australian tax resident and is not carrying on business in Australia through a permanent establishment.

Australian Income Tax

Nature of ADSs for Australian Taxation Purposes

Ordinary shares represented by ADSs held by a U.S. holder will be treated for Australian taxation purposes as held under a "bare trust" for such holder. Consequently, the underlying ordinary shares will be regarded as owned by the ADS holder for Australian income tax and capital gains tax purposes. Dividends paid on the underlying ordinary shares will also be treated as dividends paid to the ADS holder, as the person beneficially entitled to those dividends. Therefore, in the following analysis we discuss the tax consequences to non-Australian resident holders of ordinary shares which, for Australian taxation purposes, will be the same as to U.S. holders of ADSs.

Taxation of Dividends

Australia operates a dividend imputation system under which dividends may be declared to be "franked" to the extent of tax paid on company profits. Fully franked dividends are not subject to dividend withholding tax. Dividends payable to non-Australian resident shareholders that are not operating from an Australian permanent establishment, or Foreign Shareholders, will be subject to dividend withholding tax, to the extent the dividends are not foreign (i.e., non-Australian) sourced and declared to be conduit foreign income, or CFI, and are unfranked. Dividend withholding tax will be imposed at 30%, unless a shareholder is a resident of a country with which Australia has a double taxation agreement and qualifies for the benefits of the treaty. Under the provisions of the current Double Taxation Convention between Australia and the United States, the Australian tax withheld on unfranked dividends that are not CFI paid by us to which a resident of the United States is beneficially entitled is limited to 15%.

If a company that is a non-Australian resident shareholder directly owns a 10% or more interest, the Australian tax withheld on unfranked dividends (that are not CFI) paid by us to which a resident of the United States is beneficially entitled is limited to 5%. In limited circumstances the rate of withholding can be reduced to zero.

Tax on Sales or Other Dispositions of Shares—Capital Gains Tax

Foreign Shareholders will not be subject to Australian capital gains tax on the gain made on a sale or other disposal of our ordinary shares, unless they, together with associates, hold 10% or more of our issued capital, at the time of disposal or for 12 months of the last 2 years prior to disposal.

Foreign Shareholders who own a 10% or more interest would be subject to Australian capital gains tax if more than 50% of our assets held directly or indirectly, determined by reference to market value, consists of Australian real property (which includes land and leasehold interests) or Australian mining, quarrying or prospecting rights. The Double Taxation Convention between the United States and Australia is unlikely to limit the amount of this taxable gain. Australian capital gains tax applies to net capital gains of Foreign Shareholders at the Australian tax rates for non-Australian residents, which start at a marginal rate of 32.5%. Net capital gains are calculated after reduction for capital losses, which may only be offset against capital gains.

The 50% capital gains tax discount is not available to non-Australian residents individuals on gains accrued after May 8, 2012. Companies are not entitled to a capital gains tax discount.

The previous Australian Government has announced that it would introduce a withholding regime which applies to the disposal by non-Australian residents of certain taxable Australian property which is subject to capital gains tax. Broadly, where a foreign resident disposes of certain taxable Australian property, the purchaser will be required to withhold and remit to the Australian Taxation Office, or ATO, 10% of the proceeds from the sale. No legislation has been introduced although the current Government has announced that it will proceed with this measure, which is proposed to apply from July 1, 2016.

Tax on Sales or Other Dispositions of Shares—Shareholders Holding Shares on Revenue Account

Some Foreign Shareholders may hold ordinary shares on revenue rather than on capital account for example, share traders. These shareholders may have the gains made on the sale or other disposal of the ordinary shares included in their assessable income under the ordinary income provisions of the income tax law, if the gains are sourced in Australia.

Non-Australian resident shareholders assessable under these ordinary income provisions in respect of gains made on ordinary shares held on revenue account would be assessed for such gains at the Australian tax rates for non-Australian residents, which start at a marginal rate of 32.5%. Some relief from Australian income tax may be available to such non-Australian resident shareholders under the Double Taxation Convention between the United States and Australia.

To the extent an amount would be included in a non-Australian resident shareholder's assessable income under both the capital gains tax provisions and the ordinary income provisions, the capital gain amount would generally be reduced, so that the shareholder would not be subject to double tax on any part of the income gain or capital gain.

The proposed withholding regime which has been announced by the Australian Government to apply from July 1, 2016 is proposed to also apply where the disposal of the Australian real property asset by a foreign resident is likely to generate gains on revenue account, and therefore be taxable as ordinary income rather than a capital gain.

Dual Residency

If a shareholder were a resident of both Australia and the United States under those countries' domestic taxation laws, that shareholder may be subject to tax as an Australian resident. If, however, the shareholder is determined to be a U.S. resident for the purposes of the Double Taxation Convention between the United States and Australia, the Australian tax may be subject to limitation by the Double Taxation Convention. Shareholders should obtain specialist taxation advice in these circumstances.

Australian Death Duty

Australia does not have estate or death duties. As a general rule, no capital gains tax liability is realized upon the inheritance of a deceased person's ordinary shares. The disposal of inherited ordinary shares by beneficiaries may, however, give rise to a capital gains tax liability if the gain falls within the scope of Australia's jurisdiction to tax (as discussed above).

Stamp Duty

No Australian stamp duty is payable on the issue, trading or surrender of the ADSs. Further, no Australian stamp duty is payable on the issue or trading of the underlying Mesoblast ordinary shares provided that all of our issued ordinary shares remain quoted on the ASX and no person commences to hold an associate inclusive interest of 90% or more in Mesoblast.

Goods and Services Tax

The issue or transfer of ordinary shares to a non-Australian resident investor will not incur Australian goods and services tax.

UNDERWRITING

We are offering the ADSs described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC and Credit Suisse Securities (USA) LLC are acting as joint book running managers of the offering and as representatives of the underwriters. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has severally agreed to purchase, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of ADSs listed next to its name in the following table:

Name	Number of ADSs
J.P. Morgan Securities LLC	
Credit Suisse Securities (USA) LLC	
Total	

The underwriters are committed to purchase all the ADSs offered by us if they purchase any ADSs. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters propose to offer the ADSs directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of US$ per ADS. After the initial public offering of the ADSs, the offering price and other selling terms may be changed by the underwriters. Sales of ADSs made outside of the United States may be made by affiliates of the underwriters.

The underwriters have an option to buy up to additional ADSs from us to cover sales of ADSs by the underwriters which exceed the number of ADSs specified in the table above. The underwriters have 30 days from the date of this prospectus to exercise this over allotment option. If any ADSs are purchased with this over-allotment option, the underwriters will purchase ADSs in approximately the same proportion as shown in the table above. If any additional ADSs are purchased, the underwriters will offer the additional ADSs on the same terms as those on which the ADSs are being offered.

The underwriting fee is equal to the public offering price per ADS less the amount paid by the underwriters to us per ADS. The underwriting fee is US$ per ADS. The following table shows the per ADS and total underwriting discounts and commissions to be paid to the underwriters by us assuming both no exercise and full exercise of the underwriters' option to purchase additional ADSs.

Underwriting discounts and commissions	Without over allotment exercise	With full over allotment exercise
Per ADS	US$	US$
Total	US$	US$

We have also agreed to reimburse the underwriters for certain of their expenses, in an amount of up to $, incurred in connection with review by the Financial Industry Regulatory Authority, Inc. of the terms of this offering, as set forth in the underwriting agreement.

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately US$.

A prospectus in electronic format may be made available on the web sites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate a number of ADSs to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make internet distributions on the same basis as other allocations.

We have agreed that we will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise dispose of, directly or indirectly, or file with the SEC a registration statement under the Securities Act relating to, any ordinary shares or ADSs or securities convertible into or exchangeable or exercisable for any shares of our ordinary shares or ADSs, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (ii) enter into any swap or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any ordinary shares or ADSs or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of ordinary shares or ADSs or such other securities, in cash or otherwise), in each case without the prior written consent of J.P. Morgan Securities LLC and Credit Suisse Securities (USA) LLC for a period of 180 days after the date of this prospectus, other than (A) the ADSs to be sold in this offering, (B) any ordinary shares or ADSs issued upon the exercise of options granted under our equity plans or warrants described as outstanding in this prospectus, (C) any options and other awards granted under our equity plans described in this prospectus, (D) our filing of any registration statement on Form S-8 or a successor form thereto relating to our equity plans described in this prospectus, (E) the sale or issuance of ordinary shares or ADSs to Osiris Therapeutics, Inc., or the Osiris Shares, pursuant to the Purchase Agreement, dated October 11, 2013, as amended, by and between Mesoblast International Sarl and Osiris Therapeutics, Inc., or the Osiris Agreement; provided that any Osiris Shares issued pursuant to this clause (E) will be subject to a one-year lock-up pursuant to the Osiris Agreement and such lock-up period shall not be shortened or waived by us or through amendment of the Osiris Agreement, and (F) the sale or issuance of or entry into an agreement to sell or issue ordinary shares, ADSs, or securities convertible into or exercisable or exchangeable for ordinary shares in connection with any (1) mergers, (2) acquisitions of securities, businesses, property or other assets, (3) joint ventures, (4) strategic alliances, collaboration agreements or intellectual property license agreements, (5) partnerships with experts or other talent or (6) marketing or distribution arrangements; provided that the aggregate number of ordinary shares, ADSs, or securities convertible or exchangeable for ordinary shares pursuant to this clause (F) shall not exceed ten percent (10%) of the total number of outstanding ordinary shares immediately following the issuance and sale of the ADSs in this offering, unless the ordinary shares, ADSs, or securities convertible or exchangeable for ordinary shares issued pursuant to this clause (F) are required by applicable law or the ASX to be, and have been, approved by a vote of our shareholders; provided further that the recipient(s) of the ordinary shares, ADSs or securities convertible into or exercisable for ordinary shares pursuant to this clause (F) shall agree in writing to be bound by the terms of the lock-up.

Our directors, our chief executive officer, our chief financial officer and Cephalon, Inc. have each entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each of these persons or entities, with limited exceptions, for a period of 180 days after the date of this prospectus, may not, without the prior written consent of J.P. Morgan Securities LLC and Credit Suisse Securities (USA) LLC , (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any ordinary shares or ADSs or any securities convertible into or exercisable or exchangeable for our ordinary shares or ADSs (including, without limitation, ordinary shares or such other securities which may be deemed to be beneficially owned by such directors, senior management, and shareholder in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a share option or warrant) or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the ordinary shares or ADSs or such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of ordinary shares or ADSs or such other securities, in cash or otherwise, or (3) make any demand for or exercise any right with respect to the registration of any ordinary shares or ADSs or any security convertible into or exercisable or exchangeable for ordinary shares or ADSs; provided that (1) our chief executive officer and Cephalon, Inc. may take part in a full or proportionate takeover bid as defined in the Corporations Act 2001 (Australia) and (2) our directors and our chief financial officer may take part in a takeover bid where the holders of at least 50% of our ordinary shares that are not subject to any lock-up agreements have accepted the takeover bid.

The lock-up agreements entered into with our directors, chief executive officer and our chief financial officer, are initially enforceable by Mesoblast Limited until notice is received from the Treasurer of the Commonwealth of Australia that there are no objections under the Australian government's foreign investment policy. Once such notice is obtained, the lock-up agreements will then become enforceable by the underwriters.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933.

We intend to apply to list our ADSs on the NASDAQ Global Select Market under the symbol "MESO."

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling ADSs in the open market for the purpose of preventing or retarding a decline in the market price of the ADSs while this offering is in progress. These stabilizing transactions may include making short sales of the ADSs, which involves the sale by the underwriters of a greater number of ADSs than they are required to purchase in this offering, and purchasing ADSs on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked" shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their over-allotment option, in whole or in part, or by purchasing ADSs in the open market. In making this determination, the underwriters will consider, among other things, the price of ADSs available for purchase in the open market compared to the price at which the underwriters may purchase ADSs through the over allotment option. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the ADSs in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase ADSs in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act of 1933, as amended they may also engage in other activities that stabilize, maintain or otherwise affect the price of the ADSs, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase ADSs in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those ADSs as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of our ordinary shares and the ADSs or preventing or retarding a decline in the market price of the ADSs, and, as a result, the price of the ADSs may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time.

Prior to this offering, our ADSs have been quoted on the over-the-counter markets under the symbol "MBLTY." Our ordinary shares have been trading on the ASX since December 2004 under the symbol "MSB." The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representatives;
- our prospects and the history and prospects for the industry in which we compete;
- an assessment of our management;
- our prospects for future earnings;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and demand for, publicly traded ADSs of generally comparable companies;
- the trading price of our ordinary shares on the ASX; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our ADSs, or that the ADSs will trade in the public market at or above the initial public offering price.

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) to investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, or the Order, or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling with Article 49(2)(a) to (d) of the Order, all such persons together being referred to as "relevant persons". The securities are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such securities will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive, or each, a Relevant Member State, from and including the date on which the European Union Prospectus Directive, or the EU Prospectus Directive, was implemented in that Relevant Member State, or the Relevant Implementation Date, an offer of securities described in this prospectus may not be made to the public in that Relevant Member State prior to the publication of a prospectus in relation to the securities which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the EU Prospectus Directive, except that, with effect from and including the Relevant Implementation Date, an offer of securities described in this prospectus may be made to the public in that Relevant Member State at any time:

- to any legal entity which is a qualified investor as defined under the EU Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the EU Prospectus Directive); or
- in any other circumstances falling within Article 3(2) of the EU Prospectus Directive, provided that no such offer of securities described in this prospectus shall result in a requirement for the publication by us of a prospectus pursuant to Article 3 of the EU Prospectus Directive.

For the purposes of this provision, the expression an "offer of securities to the public" in relation to any securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe for the securities, as the same may be varied in that Member State by any measure implementing the EU Prospectus Directive in that Member State. The expression "EU Prospectus Directive" means Directive 2003/71/EC (and any amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State, and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

This document is not intended to constitute an offer or solicitation to purchase or invest in the shares described herein. The shares may not be publicly offered, sold or advertised, directly or indirectly, in, into or from Switzerland and will not be listed on the SIX Swiss Exchange or on any other exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares

constitutes a prospectus as such term is understood pursuant to article 652a or article 1156 of the Swiss Code of Obligations or a listing prospectus within the meaning of the listing rules of the SIX Swiss Exchange or any other regulated trading facility in Switzerland, and neither this document nor any other offering or marketing material relating to the shares may be publicly distributed or otherwise made publicly available in Switzerland.

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

EXPENSES RELATING TO THIS OFFERING

The following table sets forth the estimated costs and expenses, other than the underwriting discounts and commissions, payable by us in connection with the offering (all amounts are estimated except the SEC registration fee and the FINRA filing fee):

SEC registration fee	US$	*
FINRA filing fee		*
NASDAQ Global Select Market listing fee		*
Printing expenses		*
Legal fees and expenses		*
Accounting fees and expenses		*
Miscellaneous		*
Total		

* To be provided by amendment.

LEGAL MATTERS

Certain legal matters as to United States federal and New York law in connection with this offering will be passed upon for us by Wilson Sonsini Goodrich & Rosati, P.C., Palo Alto, California. Certain legal matters as to Australian law in connection with this offering will be passed upon for us by Minter Ellison. Wilson Sonsini Goodrich & Rosati, P.C., may rely upon Minter Ellison with respect to matters governed by Australian law. Certain legal matters as to United States federal and New York law in connection with the offering will be passed upon for the underwriters by Skadden, Arps, Slate, Meagher & Flom LLP.

EXPERTS

Our consolidated financial statements as of June 30, 2015 and 2014 and for each of the three years in the period ended June 30, 2015 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting. The offices of PricewaterhouseCoopers are located at Freshwater Place, 2 Southbank Boulevard, Southbank, VIC 3006, Australia.

ENFORCEMENT OF CIVIL LIABILITIES

We are a public limited company incorporated under the laws of Australia. Certain of our directors are non-residents of the United States and all or substantially all of their assets are located outside the United States. As a result, it may not be possible for you to:

- effect service of process within the United States upon our non-U.S. resident directors or on us;
- enforce in U.S. courts judgments obtained against our non-U.S. resident directors or us in the U.S. courts in any action, including actions under the civil liability provisions of U.S. securities laws;
- enforce in U.S. courts judgments obtained against our non-U.S. resident directors or us in courts of jurisdictions outside the United States in any action, including actions under the civil liability provisions of U.S. securities laws; or
- bring an original action in an Australian court to enforce liabilities against our non-U.S. resident directors or us based solely upon U.S. securities laws.

You may also have difficulties enforcing in courts outside the United States judgments that are obtained in U.S. courts against any of our non-U.S. resident directors or us, including actions under the civil liability provisions of the U.S. securities laws.

With that noted, there are no treaties between Australia and the United States that would affect the recognition or enforcement of foreign judgments in Australia. We also note that investors may be able to bring an original action in an Australian court against us to enforce liabilities based in part upon U.S. federal securities laws.

We have appointed Mesoblast, Inc., as our agent to receive service of process with respect to any action brought against us in the U.S. District Court for the Southern District of New York under the federal securities laws of the United States or any action brought against us in the Supreme Court of the State of New York in the County of New York under the securities laws of the State of New York.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form F-1 under the Securities Act with respect to the underlying ordinary shares represented by the ADSs to be sold in this offering. This prospectus, which forms a part of the registration statement, does not contain all of the information set forth in the registration statement

and the exhibits and schedules thereto. You should refer to the registration statement for further information. Statements contained in this prospectus as to the content of any contract or other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or document. We intend to file a registration statement on Form F-6 to register the issuance of the ADSs offered hereby.

Upon declaration by the SEC of the effectiveness of the registration statement, we will become subject to the periodic reporting and other informational requirements of the Exchange Act applicable to a foreign private issuer. Under the Exchange Act, we will be required to file reports, including annual reports on Form 20-F, and other information with the SEC. All information filed with the SEC can be inspected and copied at the public reference facilities maintained by the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference rooms. You may also obtain additional information over the Internet at the SEC's website at *www.sec.gov*.

As a foreign private issuer, we are exempt under the Exchange Act from, among other things, the rules prescribing the furnishing and content of proxy statements, and our executive officers, directors and principal shareholders are exempt from the reporting and short-swing profit recovery provisions contained in Section 16 of the Exchange Act. In addition, we will not be required under the Exchange Act to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. companies whose securities are registered under the Exchange Act. Our consolidated financial statements will be prepared in IFRS and certified by an independent public accounting firm. If we make any written communications generally available to holders of our ordinary shares, and we furnish copies thereof (or English translations of summaries) to the depositary, it will distribute the same to registered ADR holders.

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Mesoblast Limited

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

To the Board of Directors and shareholders of Mesoblast Limited:

In our opinion, the accompanying consolidated balance sheets and the related consolidated income statements, consolidated statements of comprehensive income, consolidated statements of changes in equity and consolidated statements of cash flows present fairly, in all material respects, the financial position of Mesoblast Limited and its subsidiaries at June 30, 2015 and June 30, 2014, and the results of their operations and their cash flows for each of the three years in the period ended June 30, 2015 in conformity with International Financial Reporting Standards as issued by the International Accounting Standards Board. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers

Melbourne, Australia
September 21, 2015

Mesoblast Limited

Consolidated Income Statements

(in thousands, except per share amounts)	Note	Year Ended June 30, 2015	2014	2013
Revenue from continuing operations	3(a)	19,761	23,390	29,301
Other income	3(b)	15,399	10,119	5,495
		35,160	**33,509**	**34,796**
Expenses from continuing operations	3(c)			
Research and development		(62,649)	(50,929)	(48,513)
Manufacturing commercialization		(23,783)	(25,434)	(23,082)
Management and administration		(29,636)	(24,403)	(22,899)
Finance costs		(8,506)	(4,078)	—
Other expenses		(6,830)	(4,195)	(952)
		(131,404)	**(109,039)**	**(95,446)**
Loss before income tax		**(96,244)**	**(75,530)**	**(60,650)**
Income tax expense	4	—	(4)	(1,470)
Loss attributable to the owners of Mesoblast Limited		**(96,244)**	**(75,534)**	**(62,120)**
		Cents	Cents	Cents
Losses per share from continuing operations attributable to the ordinary equity holders of the Group:				
Basic — losses per share	20	(29.99)	(23.65)	(21.02)
Diluted — losses per share	20	(29.99)	(23.65)	(21.02)

The above consolidated income statement should be read in conjunction with the accompanying Notes.

Mesoblast Limited

Consolidated Statement of Comprehensive Income

(in thousands)	Note	Year Ended June 30, 2015	2014	2013
Loss for the year		**(96,244)**	**(75,534)**	**(62,120)**
Other comprehensive income/(loss)				
Items that may be reclassified to profit and loss				
Exchange differences on translation of foreign operations	7(b)	(25,783)	3,371	(27,642)
Income tax relating to these items		—	—	—
Other comprehensive income /(loss) for the period, net of tax		**(25,783)**	**3,371**	**(27,642)**
Total comprehensive loss attributable to the owners of Mesoblast Limited		**(122,027)**	**(72,163)**	**(89,762)**

The above consolidated statement of comprehensive income should be read in conjunction with the accompanying Notes.

Mesoblast Limited

Consolidated Statement of Changes in Equity

(in thousands)	Note	Issued Capital	Share Option Reserve	Foreign Currency Translation Reserve	Retained Earnings	Total
Balance as of July 1, 2012		**467,760**	**38,256**	**12,070**	**(30,062)**	**488,024**
Loss for the year		—	—	—	(62,120)	(62,120)
Other comprehensive income		—	—	(27,642)	—	(27,642)
Total comprehensive profit/(loss) for the period		**—**	**—**	**(27,642)**	**(62,120)**	**(89,762)**
Transactions with owners in their capacity as owners:						
Contributions of equity net of transaction costs		173,923	—	—	—	173,923
	7(a)	**173,923**	**—**	**—**	**—**	**173,923**
Tax effect of options deductible for tax		—	—	—	—	—
Transfer exercised options		695	(695)	—	—	—
Fair value of share-based payments	18	—	12,407	—	—	12,407
Balance as of June 30, 2013		**642,378**	**49,968**	**(15,572)**	**(92,182)**	**584,592**
Loss for the year		—	—	—	(75,534)	(75,534)
Other comprehensive loss		—	—	3,371	—	3,371
Total comprehensive loss for the year		**—**	**—**	**3,371**	**(75,534)**	**(72,163)**
Transactions with owners in their capacity as owners:						
Contributions of equity net of transaction costs		17,502	—	—	—	17,502
	7(a)	**17,502**	**—**	**—**	**—**	**17,502**
Transfer exercised options		2,842	(2,842)	—	—	—
Fair value of share-based payments	18	—	8,628	—	—	8,628
Balance as of June 30, 2014		**662,722**	**55,754**	**(12,201)**	**(167,716)**	**538,559**
Loss for the year		—	—	—	(96,244)	(96,244)
Other comprehensive income		—	—	(25,783)	—	(25,783)
Total comprehensive income/(loss) for the year		**—**	**—**	**(25,783)**	**(96,244)**	**(122,027)**
Transactions with owners in their capacity as owners:						
Contributions of equity net of transaction costs		45,873	—	—	—	45,873
	7(a)	**45,873**	**—**	**—**	**—**	**45,873**
Transfer exercised options		596	(596)	—	—	—
Fair value of share-based payments	18	—	6,976	—	—	6,976
Reclassification of modified options to liability		—	(1,394)	—	—	(1,394)
Balance as of June 30, 2015		**709,191**	**60,740**	**(37,984)**	**(263,960)**	**467,987**

The above consolidated statement of changes in equity should be read in conjunction with the accompanying Notes.

Mesoblast Limited

Consolidated Balance Sheet

(in thousands)	Note	As of June 30, 2015	2014
Assets			
Current assets			
Cash and cash equivalents	5(a)	110,701	185,003
Trade and other receivables	5(b)	3,972	5,744
Prepayments	5(b)	7,787	1,184
Total current assets		**122,460**	**191,931**
Non-current assets			
Property, plant and equipment	6(a)	4,398	4,411
Available-for-sale financial assets	5(c)	2,300	—
Other non-current assets	5(d)	2,367	2,806
Intangible assets	6(b)	650,241	648,005
Total non-current assets		**659,306**	**655,222**
Total assets		**781,766**	**847,153**
Liabilities			
Current liabilities			
Trade and other payables	5(e)	28,242	19,521
Deferred revenue	6(c)	15,004	15,004
Derivative financial instruments	10(a)	—	317
Provisions	6(d)	5,161	5,357
Total current liabilities		**48,407**	**40,199**
Non-current liabilities			
Deferred revenue	6(c)	22,505	37,508
Deferred tax liability	6(e)	149,387	149,387
Provisions	6(d)	93,480	81,500
Total non-current liabilities		**265,372**	**268,395**
Total liabilities		**313,779**	**308,594**
Net assets		**467,987**	**538,559**
Equity			
Issued capital	7(a)	709,191	662,722
Reserves	7(b)	22,756	43,553
Accumulated losses		(263,960)	(167,716)
Total equity		**467,987**	**538,559**

The above consolidated balance sheet should be read in conjunction with the accompanying Notes.

Mesoblast Limited

Consolidated Statement of Cash Flows

(in thousands)	Note	Year Ended June 30, 2015	2014	2013
Cash flows from operating activities				
Milestone payment received		2,000	—	—
Research and development tax incentive received		4,456	8,709	—
Payments to suppliers and employees (inclusive of goods and services tax)		(106,817)	(97,438)	(69,786)
Payments for fair value adjustments to contingent consideration subsequent to the business combination measurement period		(4,112)	—	—
Interest received		3,043	11,609	10,608
Rent received		57	—	—
Other income received		405	—	—
Income taxes (paid)/refunded		(68)	2,214	3,432
Net cash (outflows) in operating activities	8(b)	**(101,036)**	**(74,906)**	**(55,746)**
Cash flows from investing activities				
Payments for financial derivatives		(851)	(1,383)	(1,955)
Payments for business combination	12(c)	(2,086)	(33,370)	(1,581)
Payments for licenses		(195)	(426)	—
Proceeds/(payments) for rental deposits		272	(1,609)	—
Investment in fixed assets		(2,204)	(1,712)	(1,265)
Receipts from repayments of loans from employees		—	298	—
Net cash (outflows) in investing activities		**(5,064)**	**(38,202)**	**(4,801)**
Cash flows from financing activities				
Proceeds from issue of shares		46,291	2,237	180,179
Payments for share issue costs		(439)	(41)	(5,764)
Net cash inflows by financing activities		**45,852**	**2,196**	**174,415**
Net (decrease)/increase in cash and cash equivalents		(60,248)	(110,912)	113,868
Cash and cash equivalents at beginning of year		185,003	292,449	209,518
FX (losses)/gains on the translation of foreign bank accounts		(14,054)	3,466	(30,937)
Cash and cash equivalents at end of year	8(a)	**110,701**	**185,003**	**292,449**

The above consolidated statement of cash flows should be read in conjunction with the accompanying Notes.

Mesoblast Limited

Notes to Consolidated Financial Statements

Mesoblast Limited (the "Company") and its subsidiaries (the "Group") are primarily engaged in the development of regenerative medicine products. The Company's primary proprietary regenerative medicine technology platform is based on specialised cells known as mesenchymal lineage adult stem cells. The Company was formed in 2004 as an Australian company and has been listed on the Australian Securities Exchange (the "ASX") since 2004.

These financial statements are presented in thousands of U.S. dollars ("$" or "USD"), unless otherwise noted, including certain amounts that are presented in thousands of Australian dollars ("AUD").

1. Significant changes in the current reporting period

The financial position and performance of the Group was not particularly affected by any significant changes in the year ended June 30, 2015.

The financial position and performance of the Group was particularly affected by the following transaction during the year ended June 30, 2014:

- The acquisition of the entire culture-expanded mesenchymal stem cell ("MSC") business of Osiris Therapeutics, Inc. on October 11, 2013 ("Osiris") (see Note 12) which resulted in a recognition of in-process research and development acquired and goodwill (see Note 6(b)).

2. Segment information

Operating segments are identified on the basis of whether the allocation of resources and/or the assessment of performance of a particular component of the Company's activities are regularly reviewed by the Company's chief operating decision maker as a separate operating segment. By these criteria, the activities of the Company are considered to be one segment being the development of adult stem cell technology platform for commercialization, and the segmental analysis is the same as the analysis for the Company as a whole. The chief operating decision maker (Chief Executive Officer) reviews the consolidated income statement, balance sheet, and statement of cash flows regularly to make decisions about the Company's resources and to assess overall performance.

3. Revenue and expenses from continuing operations

(in thousands)		Year Ended June 30,		
	Note	2015	2014	2013
(a) Revenue from continuing operations				
Commercialization revenue[1]	6(c)	15,004	15,004	18,685
Milestone revenue[2]		2,000	—	—
Interest revenue		2,757	8,386	10,616
		19,761	**23,390**	**29,301**
(b) Other income				
Foreign exchange gains (net of losses)		10,478	—	—
Research and development tax incentive[3]		4,418	7,775	5,495
Other revenue		407	—	—
Rental income		96	—	—
Release of excess provision for services	6(d)	—	2,344	—
		15,399	**10,119**	**5,495**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

3. Revenue and expenses from continuing operations (continued)

(in thousands)	Note	Year Ended June 30, 2015	2014	2013
(c) Expenses from continuing operations				
Clinical trial research and development		**33,877**	**19,245**	**20,013**
Manufacturing production and development		**16,965**	**21,127**	**20,258**
Employee benefits				
Salaries and employee benefits		30,945	26,590	20,225
Defined contribution superannuation expenses		441	376	316
Share-based payment transactions[4]		6,976	8,628	12,409
Total employee benefits		**38,362**	**35,594**	**32,950**
Depreciation and amortization of non-current assets				
Plant and equipment depreciation	6(a)	1,474	892	683
Intellectual property amortization	6(b)	127	132	104
Total depreciation and amortization of non-current assets		**1,601**	**1,024**	**787**
Other management and administration expenses				
Overheads and administration		10,683	9,798	8,788
Consultancy		5,857	6,279	5,260
Legal, patent and other professional fees		6,294	5,093	5,500
Intellectual property expenses (excluding the amount amortized above)		2,429	2,606	938
Total other management and administration expenses		**25,263**	**23,776**	**20,486**
Other expenses				
Foreign exchange losses (net of gains)		—	3,946	952
Remeasurement of contingent consideration		6,830	249	—
Total other expenses		**6,830**	**4,195**	**952**
Finance costs				
Provisions: unwinding of discount	6(d)(ii)	8,506	4,078	—
Total finance costs		**8,506**	**4,078**	**—**
Total expenses from continuing operations		**131,404**	**109,039**	**95,446**

(1) Commercialization revenue

In November 2010, the Group signed a development and commercialization agreement with Cephalon Inc., a major global biopharmaceutical company.

The total upfront cash received under the development and commercialization agreement was $130,000. For the years ended June 30, 2015, 2014 and 2013, the Group has recognized revenue of $15,004, $15,004 and $18,685, respectively, for this payment on the basis that the revenue will be earned through-out the life of the development of those products pertaining to that payment. The Group continuously monitors and reviews the development timelines of the products with no changes being made in the current year.

(2) Milestone revenue

For the year ended June 30, 2015, the Group recognized milestone revenue of $2,000. This revenue was recognized on achievement of a substantive milestone being the filing for marketing approval (Japan) for MSC product TEMCELL. No further performance obligations are required of the Group in relation to this revenue.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

3. Revenue and expenses from continuing operations (continued)

(3) Research and development tax incentive

The Group's research and development activities are eligible under an Australian Government tax incentive for eligible expenditures from July 1, 2011. Management has assessed these activities and expenditures to determine which are likely to be eligible under the incentive scheme. At each period end management estimates the refundable tax offset available to the Group based on available information at the time. This estimate is also reviewed by external tax advisors. For the years ended June 30, 2015, 2014 and 2013, the Group has recognized income of $4,418, $7,775 and $5,495, respectively. See Note 21(e)(iii).

Of the $4,418 research and development tax incentive recorded in other income for the year ended June 30, 2015, $474 relates to a favourable change in the original estimate of the research and development tax incentive income the Group estimated it would receive from the Australian Government for the year ended June 30, 2014.

Of the $7,775 research and development tax incentive recorded in other income for the year ended June 30, 2014, $3,415 relates to research and development tax incentive income the Group received from the Australian Government for the year ended June 30, 2013 following a favourable change in the original estimate. The change in estimate was due to the fact that research and development tax incentives were dependent upon the level of qualifying research and development expenditure and as such we estimated amounts we deemed probable of collection in the year ended June 30, 2013, until we had better information related to the implementation of the relevant regulations with the assistance of our tax advisors.

(4) Share-based payment transactions

For the years ended June 30, 2015, 2014 and 2013, share-based payment transactions have been reflected in the consolidated Income Statement functional expense categories as follows: research and development $3,023, $4,650 and $7,964, respectively, manufacturing commercialization $718, $792 and $504, respectively, and management and administration $3,235, $3,186 and $3,941, respectively.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

4. Income tax expense

(in thousands)	Year Ended June 30,		
	2015	2014	2013
(a) Reconciliation of income tax to prima facie tax payable			
Loss from continuing operations before income tax	(96,244)	(75,530)	(60,650)
Tax benefit at the Australian tax rate of 30% (2014: 30%)	(28,873)	(22,659)	(18,195)
Tax effect of amounts which are not deductible/(exempt) in calculating taxable income:			
Share-based payments expense	2,048	2,590	3,642
Research and development tax concessions	1,343	3,518	(211)
Contingent consideration	4,439	—	—
Other sundry items	1,299	4,415	(824)
Current year tax benefit	**(19,744)**	**(12,136)**	**(15,588)**
Adjustments for current tax of prior periods	3,633	2,319	4,087
Differences in overseas tax rates	11,528	(1,389)	(2,252)
Tax benefit not recognized	4,583	11,205	13,633
Alternative minimum tax charge (USA)	—	—	1,593
USA City and State tax benefit/(charge)	(323)	(2,646)	1,589
USA City and State tax benefit — not recognized	323	2,651	(1,592)
Income tax expense attributable to loss before income tax	**—**	**4**	**1,470**
(b) Income tax expense			
Current tax	—	4	1,470
Deferred tax	—	—	—
	—	**4**	**1,470**
(c) Amounts that would be recognized directly in equity if brought to account			
Aggregate current and deferred tax arising in the reporting period and not recognized in net loss or other comprehensive income but which would have been directly applied to equity had it been brought to account:			
Current tax recorded in equity (if bought to account)	(137)	(148)	1,433
Deferred tax recorded in equity (if bought to account)	516	430	452
	379	**282**	**1,885**

(in thousands)	As of June 30,		
	2015	2014	2013
(d) Amounts recognized directly in equity			
Aggregate current and deferred tax arising in the reporting period and not recognized in net loss or other comprehensive income but debited/credited to equity:			
Current tax recorded in equity	—	—	—
Deferred tax recorded in equity	—	—	—
(e) Deferred tax assets not brought to account			
Unused tax losses			
Potential tax benefit at local tax rates	69,929	57,019	42,125
Other temporary differences			
Potential tax benefit at local tax rates	16,507	25,145	28,229
Total potential tax benefit at local tax rates	**86,436**	**82,164**	**70,354**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

4. Income tax expense (continued)

Temporary differences have been brought to account only to the extent that it is foreseeable that they are recoverable against future tax liabilities.

a. Significant estimates

The Group is subject to income taxes in Australia, Singapore, Switzerland, the United Kingdom and the United States of America. Significant judgment is required in determining the worldwide provision for income taxes. There are certain transactions and calculations undertaken during the ordinary course of business for which the ultimate tax determination is uncertain. The Group consulted professional tax advisers to estimate its tax liabilities based on the Group's understanding of the tax law. Where the final outcome of these matters is different from the amounts that were initially recorded, such differences will impact the current and deferred income tax assets and liabilities in the period in which such determination is made.

The Group has recognized deferred tax assets to the extent that it is probable that the asset will be utilized either through the application of carry back rules or the utilization of taxable temporary differences (deferred tax liabilities) relating to the same taxation authority and the same subsidiary against which the unused tax losses can be utilized. As of June 30, 2015 and 2014, the Group has recorded deferred tax assets of $Nil due to the Company's plans to consolidate certain intellectual property assets and therefore taxable temporary differences will not be available to offset deferred tax assets in the same jurisdictions.

5. Financial assets and liabilities

This note provides information about the Group's financial instruments, including:

- an overview of all financial instruments held by the Group;
- specific information about each type of financial instrument;
- accounting policies; and
- information used to determine the fair value of the instruments, including judgments and estimation uncertainty involved.

The Group holds the following financial instruments:

Financial assets (in thousands)	Notes	Assets at FVOCI[1]	Assets at FVTPL[2]	Assets at amortized cost	Total
As of June 30, 2015					
Cash and cash equivalents	5(a)	—	—	110,701	110,701
Trade and other receivables	5(b)	—	—	3,972	3,972
Available-for-sale financial assets	5(c)	2,300	—	—	2,300
Other non-current assets	5(d)	—	—	2,367	2,367
		2,300	**—**	**117,040**	**119,340**
As of June 30, 2014					
Cash and cash equivalents	5(a)	—	—	185,003	185,003
Trade and other receivables	5(b)	—	—	5,744	5,744
Other non-current assets	5(d)	—	—	2,806	2,806
		—	**—**	**193,553**	**193,553**

(1) Fair value through other comprehensive income

(2) Fair value through profit or loss

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

Financial liabilities (in thousands)	Notes	Liabilities at FVOCI[1]	Liabilities at FVTPL[2]	Liabilities at amortized cost	Total
As of June 30, 2015					
Trade and other payables	5(e)	—	—	28,242	28,242
Contingent consideration	5(f)	—	91,890	—	91,890
Derivative financial instruments	10(a)	—	—	—	—
		—	**91,890**	**28,242**	**120,132**
As of June 30, 2014					
Trade and other payables	5(e)	—	—	19,521	19,521
Contingent consideration	5(f)	—	81,247	—	81,247
Derivative financial instruments	10(a)	—	317	—	317
		—	**81,564**	**19,521**	**101,085**

(1) Fair value through other comprehensive income

(2) Fair value through profit or loss

The Group's exposure to various risks associated with the financial instruments is discussed in Note 10. The maximum exposure to credit risk at the end of the reporting period is the carrying amount of each class of financial assets mentioned above.

a. Cash and cash equivalents

(in thousands)	As of June 30, 2015	2014
Cash at bank	21,126	3,605
Deposits at call[1]	89,575	181,398
	110,701	**185,003**

(1) As of June 30, 2015 and 2014, interest-bearing deposits at call include an amount of $5,742 (2014: $5,832) held as security against future foreign exchange deals and is restricted for use.

(i) Classification as cash equivalents

Term deposits are presented as cash equivalents if they have a maturity of three months or less from the date of acquisition and are repayable with 24 hours' notice with no loss in interest. See Note 21(k) for the Group's other accounting policies on cash and cash equivalents.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

b. Trade and other receivables and prepayments

(in thousands)	As of June 30, 2015	2014
Income tax and tax incentives recoverable	3,696	4,949
Sundry debtors	136	11
Interest receivables	84	279
Other recoverable taxes (goods and services tax and value-added tax)	56	124
Other receivables	—	381
Trade and other receivables	**3,972**	**5,744**
Clinical trial research and development expenditure	3,475	502
Prepaid insurance and subscriptions	635	416
Other prepayments	3,677	266
Prepayments	**7,787**	**1,184**

(i) Classification as trade and other receivables

Interest receivables are amounts due at maturity of term deposits. All trade and other receivable balances are within their due dates and none are considered to be impaired at both June 30, 2015 and June 30, 2014. The Group's impairment and other accounting policies for trade and other receivables are outlined in Notes 10(c) and 22(l) respectively.

(ii) Other receivables

These amounts generally arise from transactions outside the usual operating activities of the Group.

(iii) Fair values of trade and other receivables

Due to the short-term nature of the current receivables, their carrying amount is assumed to be the same as their fair value.

(iv) Impairment and risk exposure

Information about the impairment of trade and other receivables, their credit quality and the Group's exposure to credit risk, foreign currency risk and interest rate risk can be found in Note 10(b) and (c).

c. Available-for-sale financial assets

Available-for-sale financial assets include the following classes of financial assets:

(in thousands)	As of June 30, 2015	2014
Unlisted securities:		
Equity securities	2,300	—
	2,300	**—**

(i) Classification of financial assets as available-for-sale

Investments are designated as available-for-sale financial assets if they do not have fixed maturities and fixed or determinable payments, and management intends to hold them for the medium to long-term. Financial assets that are not classified into any of the other categories (at FVPL, loans and receivables or held-to-maturity investments) are also included in the available-for-sale category.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

The financial assets are presented as non-current assets unless they mature, or management intends to dispose of them within 12 months of the end of the reporting period.

(ii) Impairment indicators for available-for-sale financial assets

A security is considered to be impaired if there has been a significant or prolonged decline in the fair value below its cost. See Note 21(m)(*v*) for further details about the Group's impairment policies for financial assets.

(iii) Amounts recognized in other comprehensive income

For the years ended June 30, 2015 and 2014, there were no gains/(losses) recognized in other comprehensive income.

(iv) Fair-value, impairment and risk exposure

Information about the methods and assumptions used in determining fair value is provided in Note 5(f) below. None of the available-for-sale financial assets are either past due or impaired.

All available-for-sale financial assets are denominated in USD.

d. Other non-current assets

	As of June 30,	
(in thousands)	**2015**	**2014**
Bank guarantee	737	904
Letter of credit	1,630	1,902
	2,367	**2,806**

(i) Classification of financial assets as other non-current assets

Bank guarantee

These funds are held in an account named Mesoblast Limited at National Australia Bank according to the terms of a Bank Guarantee which is security for the sublease agreement for our occupancy of Level 38, 55 Collins Street, Melbourne, Victoria, Australia. The Bank Guarantee is security for the full and faithful performance and observance by the subtenant of the terms, covenants and conditions of the sublease. The Bank Guarantee continues in force until it is released by the lessor.

Letter of credit

These funds are held in an account named Mesoblast, Inc. at the Bank of America according to the terms of two irrevocable standby letters of credit which are security for the sublease agreement for our occupancy of 505 Fifth Avenue, New York, New York, United States of America. The letters of credit are security for the full and faithful performance and observance by the subtenant of the terms, covenants and conditions of the sublease. The letters of credit are deemed to automatically extend without amendment for a period of one year at each anniversary but will not automatically extend beyond the final expiration of July 31, 2021 ($1,186) and May 30, 2021 ($443).

(ii) Impairment and risk exposure

No other non-current assets are either past due or impaired.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

e. Trade and other payables

(in thousands)	As of June 30, 2015	2014
Trade payables and other payables	28,242	19,521
	28,242	**19,521**

The carrying amounts of trade and other payables are assumed to be the same as their fair values, due to their short-term nature.

f. Recognized fair value measurements

(i) Fair value hierarchy

The following table presents the Group's financial assets and financial liabilities measured and recognized at fair value as of June 30, 2015 and June 30, 2014 on a recurring basis, categorized by level according to the significance of the inputs used in making the measurements:

As of June 30, 2015

(in thousands)	Notes	Level 1	Level 2	Level 3	Total
Financial assets					
Available-for-sale financial assets					
Equity securities — biotech sector		—	—	2,300	2,300
Total financial assets	5(c)	**—**	**—**	**2,300**	**2,300**
Financial liabilities					
Financial liabilities at fair value through profit or loss					
Derivative financial instruments	10(a)	—	—	—	—
Contingent consideration	6(d)	—	—	91,890	91,890
Total financial liabilities		**—**	**—**	**91,890**	**91,890**

As of June 30, 2014

(in thousands)	Notes	Level 1	Level 2	Level 3	Total
Financial liabilities					
Financial liabilities at fair value through profit or loss					
Derivative financial instruments	10(a)	—	317	—	317
Contingent consideration	6(d)	—	—	81,247	81,247
Total financial liabilities		**—**	**317**	**81,247**	**81,564**

There were no transfers between any of the levels for recurring fair value measurements during the year.

The Group's policy is to recognize transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period.

Level 1: The fair value of financial instruments traded in active markets (such as publicly traded derivatives, and trading and available-for-sale securities) is based on quoted market prices at the end of the reporting period. The quoted market price used for financial assets held by the Group is the current bid price. These instruments are included in level 1.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

Level 2: The fair value of financial instruments that are not traded in an active market (for example, foreign exchange contracts) is determined using valuation techniques which maximize the use of observable market data and rely as little as possible on entity-specific estimates. If all significant inputs required to fair value an instrument are observable, the instrument is included in level 2.

Level 3: If one or more of the significant inputs is not based on observable market data, the instrument is included in level 3. This is the case for provisions (contingent consideration) and equity securities (unlisted).

(ii) Valuation techniques used.

The Group used the following techniques to determine the fair value measurements:

- Level 2: The fair value of forward foreign exchange contracts is determined using forward exchange rates at the balance sheet date.
- Level 3: The fair value is determined using discounted cash flow analysis.

(iii) Fair value measurements using significant unobservable inputs (level 3)

The following table presents the changes in level 3 instruments for the year ended June 30, 2015 and June 30, 2014:

	Notes	Contingent consideration provision
Opening balance — July 1, 2013		—
Initial recognition	12(b)	77,169
Charged/(credited) to consolidated income statement		
Unwinding of discount[1]		4,078
Closing balance — June 30, 2014		**81,247**
Opening balance — July 1, 2014		81,247
Amount used during the year		(6,779)
Allocated to goodwill		
Remeasurement[2][3]		2,086
Charged/(credited) to consolidated income statement		
Unwinding of discount[1]		8,506
Remeasurement[3]		6,830
Closing balance — June 30, 2015		**91,890**

(1) The unwinding of the risk adjusted discount as the time period shortens between the valuation date and the potential settlement date of the contingent consideration.

(2) $2,086 out of period adjustment to goodwill was recognized on finalisation of the MSC business combination of Osiris.

(3) The total amount of remeasurement of contingent consideration pertaining to the acquired MSC assets of Osiris was $8,916.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

(iv) Valuation inputs and relationship to fair value

The following table summarises the quantitative information about the significant unobservable inputs used in level 3 fair value measurements:

Description	Fair value as of June 30, 2015	Fair value as of June 30, 2014	Valuation technique	Unobservable Inputs*	Range of inputs (weighted average) for the year ended June 30, 2015	Range of inputs (weighted average) for the year ended June 30, 2014	Relationship of unobservable inputs to fair value
Contingent consideration provision	91,890	81,247	Discounted cash flows	Risk adjusted discount rate	11%-13% (12.5%)	11%-13% (12.5%)	2015: A change in the discount rate by 0.5% would increase/decrease the fair value by 3% 2014: A change in the discount rate by 0.5% would increase/decrease the fair value by 3%
				Expected unit revenues	n/a	n/a	2015: A 10% increase in the price assumptions adopted would increase the fair value by 8% 2014: A 10% increase in the price assumptions adopted would increase the fair value by 5%

* There were no significant inter-relationships between unobservable inputs that materially affect fair values.

(v) Valuation processes

In connection with the Osiris acquisition, on October 11, 2013 (the "acquisition date"), an independent valuation of the contingent consideration was carried out by an independent valuer.

For the year ended June 30, 2015, the Group has adopted a process to value contingent consideration internally. This valuation has been completed by the Group's internal valuation team and reviewed by the Chief Financial Officer (the "CFO"). The valuation team is responsible for the valuation model. The valuation team also manages a process to continually refine the key assumptions within the model. This is done with input from the relevant business units. The key assumptions in the model have been clearly defined and the responsibility for refining those assumptions has been assigned to the most relevant business units. The remeasurement charged to the consolidated income statement was a result of changes to key assumptions such as market population, market penetration, product pricing and development timelines.

For the year ended June 30, 2014, an independent valuation was undertaken. The CFO and the internal valuation team reviewed the independent valuation and determined there was no material change to the inputs supporting the fair value that was recorded at the acquisition date. A key reason for this determination is that the independent valuation was completed during the financial year ended June 30, 2014 and no significant events have occurred since it was completed that would lead to the valuation changing.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

5. Financial assets and liabilities (continued)

The fair value of contingent consideration

(in thousands)	As of June 30, 2015	As of June 30, 2014
Fair value of cash or stock payable, dependent on achievement of future late-stage clinical or regulatory targets	23,883	23,580
Fair value of royalty payments from commercialization of the intellectual property acquired	68,007	57,667
	91,890	**81,247**

The main level 3 inputs used by the Group are evaluated as follows:

Risk adjusted discount rate:	The discount rate used in the valuation has been determined based on required rates of returns of listed companies in the biotechnology industry (having regards to their stage of development, their size and number of projects) and the indicative rates of return required by suppliers of venture capital for investments with similar technical and commercial risks.
Expected unit revenues:	Expected market sale price based on independent expert's review of the most comparable products currently available in the market place.

6. Non-financial assets and liabilities

This Note provides information about the Group's non-financial assets and liabilities, including:

- specific information about each type of non-financial asset and non-financial liability
  - property, plant and equipment (Note 6(a));
  - intangible assets (Note 6(b));
  - deferred revenue (Note 6(c));
  - provisions (Note 6(d));
  - deferred tax liability (Note 6(e));
- accounting policies; and
- information about determining the fair value of the instruments, including judgments and estimation uncertainty involved.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

6. Non-financial assets and liabilities (continued)

a. Property, plant and equipment

(in thousands)	Plant and equipment	Office furniture and equipment	Computer hardware and software	Total
Year Ended June 30, 2014				
Opening net book amount	889	816	852	2,557
Additions	1,964	203	597	2,764
Exchange differences	15	(2)	(31)	(18)
Depreciation charge	(295)	(117)	(480)	(892)
Closing net book value	2,573	900	938	4,411
As of June 30, 2014				
Cost or fair value	3,085	1,209	2,318	6,612
Accumulated depreciation	(512)	(309)	(1,380)	(2,201)
Net book value	2,573	900	938	4,411
Year Ended June 30, 2015				
Opening net book amount	2,573	900	938	4,411
Additions	871	50	351	1,272
Exchange differences	—	23	166	189
Depreciation charge	(798)	(148)	(528)	(1,474)
Closing net book value	2,646	825	927	4,398
As of June 30, 2015				
Cost or fair value	3,956	1,259	2,669	7,884
Accumulated depreciation	(1,310)	(434)	(1,742)	(3,486)
Net book value	2,646	825	927	4,398

(i) Depreciation methods and useful lives

Depreciation is calculated using the straight-line method to allocate their cost or revalued amounts, net of their residual values, over the estimated useful lives. The estimated useful lives are:

- Plant and equipment 10-15 years
- Office furniture and equipment 5-10 years
- Computer hardware and software 3-4 years

See Note 21(o) for the other accounting policies relevant to property, plant and equipment.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

6. Non-financial assets and liabilities (continued)

b. Intangible assets

(in thousands)	Goodwill	Acquired licenses to patents	In-process research and development acquired	Total
Year ended June 30, 2014				
Opening net book value	118,431	1,205	388,497	508,133
Additions[1]	13,936	868	125,200	140,004
Exchange differences	—	—	—	—
Amortization charge	—	(132)	—	(132)
Impairment charge	—	—	—	—
Closing net book value	132,367	1,941	513,697	648,005
As of June 30, 2014				
Cost	132,367	2,512	513,697	648,576
Accumulated amortization	—	(571)	—	(571)
Accumulated impairment	—	—	—	—
Net book amount	132,367	1,941	513,697	648,005
Year ended June 30, 2015				
Opening net book value	132,367	1,941	513,697	648,005
Additions[2]	2,086	201	—	2,287
Exchange differences	—	76	—	76
Amortization charge	—	(127)	—	(127)
Impairment charge	—	—	—	—
Closing net book value	134,453	2,091	513,697	650,241
As of June 30, 2015				
Cost	134,453	2,713	513,697	650,863
Accumulated amortization	—	(622)	—	(622)
Accumulated impairment	—	—	—	—
Net book amount	134,453	2,091	513,697	650,241

(1) The total additions of In-process research and development recorded in Note 12 is $126,697 which represents the total for the years ended June 30, 2014 and 2013.

(2) An immaterial out of period adjustment to goodwill was recognized on finalization of the MSC business combination of Osiris.

(i) Carrying value of in-process research and development acquired by product

	As of June 30,	
(in thousands)	2015	2014
Cardiovascular products	254,351	254,351
Intravenous products for metabolic diseases and inflammatory/immunologic conditions	70,730	70,730
Ophthalmic product	31,090	31,090
Bone marrow transplantation	30,829	30,829
Mesenchymal stem cells (MSC)	126,697	126,697
	513,697	**513,697**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

6. Non-financial assets and liabilities (continued)

For all products the above balances, underlying currency of the item recorded is USD.

(ii) Amortization methods and useful lives

The Group amortizes intangible assets with a limited useful life using the straight-line method over the following periods:

- Acquired licenses to patents 7-16 years

See Note 21(p) for the other accounting policies relevant to intangible assets and Note 21(j) for the Group's policy regarding impairments.

(iii) Significant estimate: Impairment of goodwill and assets with an indefinite useful life

The Group tests annually whether goodwill and its assets with indefinite useful lives have suffered any impairment in accordance with its accounting policy stated in Note 21(j). The recoverable amounts of these assets and cash-generating units have been determined based on fair value less costs to dispose calculations, which require the use of certain assumptions.

(iv) Impairment tests for goodwill and intangible assets with an indefinite useful life

In-process research and development acquired is considered to be an indefinite life intangible asset on the basis that it is incomplete and cannot be used in its current form (see Note 21(p)(iii)). The carrying value of in-process research and development ($513,697) is a separate asset which has been subject to impairment testing at the cash generating unit level, which has been determined to be at the product level.

For the purpose of impairment testing, goodwill is monitored by management at the operating segment level. The Group is managed as one operating segment, being the development of adult stem cell technology platform for commercialization. The carrying value of goodwill has been allocated to the appropriate operating segment for the purpose of impairment testing.

The recoverable amount of both goodwill and in-process research and development was assessed as of May 31, 2015 based on the fair value less costs to dispose.

(v) Key assumptions used for fair value less costs to dispose calculations

In determining the fair value less costs to dispose we have given consideration to the following indicators:

- the valuation of the Company that was applicable to the recent (April 12, 2015) equity placement undertaken with Celgene Corporation (NASDAQ: CELG) through issuing of the Company's securities on the Australian Securities Exchange;
- the market capitalisation of the Company on the ASX (ASX:MSB) on the impairment testing date of May 31, 2015;
- the valuation of the Company that was applicable to the March 25, 2013 capital raising undertaken through issuing of the Company's securities to investors on the Australian Securities Exchange;
- the amount of time that has elapsed since the goodwill acquisition of MSC assets from Osiris in October 2013 and of certain other products from Angioblast in December 2010;
- discounted expected future cash flows of programs; and

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

6. Non-financial assets and liabilities (continued)

- the scientific results and progress of the trials since acquisition.

Costs of disposal were assumed to be immaterial.

Discounted cash-flows used a real pre-tax discount rate range of 15.4% to 17.4%, and include estimated real cash inflows and outflows for each program through to patent expiry, at which point a terminal value is assigned to the program. The assessment showed the recoverable amount of goodwill and in-process research and development exceeds the carrying amounts, and therefore there is no impairment.

In relation to cash outflows consideration has been given to cost of goods sold, selling costs and clinical trial schedules including estimates of numbers of patients and per patient costs. Associated expenses such as regulatory fees and patent maintenance have been included as well as any further preclinical development if applicable.

The assessment of goodwill showed the recoverable amount of the Group's operating segment, including goodwill and in-process research and development, exceeds the carrying amounts, and therefore there is no impairment.

There are no standard growth rates applied, other than our estimates of market penetration which increase initially, plateau and then decline.

The assessment of the recoverable amount of each product has been made in accordance with the discounted cash-flow assumptions outlined above. The assessment showed that the recoverable amount of each product exceeds the carrying amount and therefore there is no impairment.

(vi) Impact of possible changes in key assumptions

Due to the significant excess value of the recoverable amount over the carrying value, a reasonably possible change in the key assumptions would not cause the carrying amount of the segment to exceed its recoverable amount.

Whilst we note there is no impairment the key sensitivities in the valuation remain the continued successful development of our technology platform.

c. Deferred revenue

	Year Ended June 30,	
	2015	2014
Opening balance	52,513	67,515
Amount recognized as revenue in the year	(15,004)	(15,004)
Foreign exchange difference	—	1
Balance as of the end of the year	**37,509**	**52,512**
- To be recognized in the next twelve months (current deferred revenue)	15,004	15,004
- To be recognized beyond twelve months (non-current deferred revenue)	22,505	37,508
Balance as of the end of the year	**37,509**	**52,512**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

6. Non-financial assets and liabilities (continued)

d. Provisions

(in thousands)	Year ended June 30,					
	2015			2014		
	Current	Non-current	Total	Current	Non-current	Total
Contingent consideration	—	91,890	91,890	—	81,247	81,247
Employee benefits	5,161	1,590	6,751	4,607	253	4,860
Other	—	—	—	750	—	750
	5,161	**93,480**	**98,641**	**5,357**	**81,500**	**86,857**

(i) Information about individual provisions and significant estimates

Contingent consideration

The contingent consideration provision relates to the Group's liability for certain milestones and royalty achievements pertaining to the acquired MSC assets from Osiris Therapeutics Inc. Further disclosures can be found in Note 12 and Note 6(f)(*iii)*.

Employee benefits

The provision for employee benefits relates to the Group's liability for annual leave, short term incentives and long service leave.

Employee benefits include accrued annual leave. As of June 30, 2015 and 2014, the entire amount of the accrual was $545 and $559, respectively, and is presented as current, since the Group does not have an unconditional right to defer settlement for any of these obligations. However, based on past experience, the Group expects all employees to take the full amount of the accrued leave or require payment within the next 12 months.

Other

During the ordinary course of business the Group occasionally has disputes with service providers. This provision allows for those disputes in the event the disputed amounts may become due and payable. Further disclosure is considered to be prejudicial to the Group.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

6. Non-financial assets and liabilities (continued)

(ii) Movements

Movements in each class of provision during the financial year, other than employee benefits, are set out below:

(in thousands)	Note	Contingent consideration	Other	Total
Carrying amount at start of the year – July 1, 2013		—	8,594	8,594
Initial recognition on business combination	12(b)	77,169	—	77,169
Amount used during the year		—	(5,500)	(5,500)
Charged/(credited) to consolidated income statement				
Unwinding of discount[1]		4,078	—	4,078
Unused amount reversed		—	(2,344)	(2,344)
Carrying amount as of June 30, 2014		**81,247**	**750**	**81,997**
Carrying amount at start of period – July 1, 2014		81,247	750	81,997
Amount used during the year		(6,779)	(750)	(7,529)
Allocated to goodwill				
Remeasurement[2][3]	5(f)(iii)	2,086	—	2,086
Charged/(credited) to consolidated income statement				
Unwinding of discount[1]		8,506	—	8,506
Remeasurement[1]		6,830	—	6,830
Carrying amount as of June 30, 2015		**91,890**	**—**	**91,890**

(1) The unwinding of the risk adjusted discount as the time period shortens between the valuation date and the potential settlement date of the contingent consideration.

(2) $2,086 out of period adjustment to goodwill was recognized on finalization of the MSC business combination of Osiris.

(3) The total amount of remeasurement of contingent consideration pertaining to the acquired MSC assets of Osiris was $8,916.

e. Deferred tax balances

(in thousands)	As of June 30, 2015	2014
(i) Deferred tax liabilities		
The balance comprises temporary differences attributable to:		
Deferred tax liabilities related to intangible assets	149,387	149,387
Deferred tax liabilities expected to be settled within 12 months	—	—
Deferred tax liabilities expected to be settled after 12 months	149,387	149,387

Movements

(in thousands)	Intellectual Property	Total
As of June 30, 2013	135,450	135,450
Foreign exchange difference	—	—
Acquisition of in-process research and development	13,937	13,937
As of June 30, 2014	**149,387**	**149,387**
Foreign exchange difference	—	—
As of June 30, 2015	**149,387**	**149,387**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

7. Equity

a. Contributed equity

(dollars in thousands)	As of June 30,					
	2015 Shares No.	2014 Shares No.	2013 Shares No.	2015	2014	2013
Contributed equity						
(i) Share capital						
Ordinary shares	336,997,729	321,640,094	316,468,901	709,191	662,722	642,378
Less: Treasury Shares	(3,500,000)	(4,485,000)	(3,320,000)	—	—	—
Total Contributed Equity	**333,497,729**	**317,155,094**	**313,148,901**	**709,191**	**662,722**	**642,378**

(ii) Movements in ordinary share capital

	Shares No.	Issue price	Dollars in thousands
Opening Balance as of July 1, 2012	285,835,106		467,760
Exercise of share options	150,000	$ 0.31	46
Exercise of share options	255,913	$ 0.34	87
Exercise of share options	255,913	$ 0.47	121
Exercise of share options	80,000	A$ 0.96	80
Exercise of share options	646,000	A$ 1.00	612
Exercise of share options	300,000	A$ 1.58	490
Exercise of share options	72,000	A$ 2.00	148
Exercise of share options	40,000	A$ 2.64	108
Exercise of share options	475,600	A$ 3.48	1,727
Exercise of share options	277,390	A$ 3.78	1,096
Share issue to institutions and sophisticated investors	26,970,979	A$ 6.30	175,185
Placement of shares under LSFP(1)	50,000	A$ 6.29	—
Placement of shares under LSFP(1)	235,000	A$ 6.36	—
Placement of shares under LSFP(1)	50,000	A$ 6.69	—
Placement of shares under LSFP(1)	775,000	A$ 6.70	—
	30,633,795		179,700
Transaction costs arising on share issues			(5,777)
Contribution of equity (net of transaction costs)			173,923
Share options reserve transferred to equity on exercise of options			695
Movement for the year			174,618
Balance as of June 30, 2013	**316,468,901**		**642,378**
Exercise of share options	230,000	A$ 1.58	332
Exercise of share options	150,000	A$ 1.73	232
Exercise of share options	310,000	A$ 2.64	733
Exercise of share options	297,300	A$ 3.48	940
Consideration for In-process research and development acquired (Note 12)	2,948,729	A$ 5.69	14,926
Consideration for Acquired licenses to patents	70,164	A$ 5.96	380
Placement of shares under LSFP(1)	900,000	A$ 5.92	—
Placement of shares under LSFP(1)	100,000	A$ 6.28	—
Placement of shares under LSFP(1)	165,000	A$ 6.70	—
	5,171,193		17,543
Transaction costs arising on share issues			(41)
Contribution of equity (net of transaction costs)			17,502
Share options reserve transferred to equity on exercise of options			2,842
Movement for the year			20,344
Balance as of June 30, 2014	**321,640,094**		**662,722**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

7. Equity (continued)

	Shares No.	Issue price	Dollars in thousands
Opening balance as of July 1, 2014	321,640,094		662,722
Exercise of share options	41,935	$ 0.31	13
Exercise of share options	255,913	$ 0.34	87
Exercise of share options	480,000	A$ 1.58	663
Exercise of share options	150,000	A$ 1.73	226
Exercise of share options	115,950	A$ 3.48	323
Placement of shares under LSFP(1)	600,000	A$ 4.46	—
Placement of shares under LSFP(1)	25,000	A$ 4.54	—
Placement of shares under LSFP(1)	150,000	A$ 4.66	—
Placement of shares under LSFP(1)	1,225,000	A$ 4.71	—
Placement of shares under a share placement agreement (2)	15,298,837	A$ 3.82	45,000
Share buy-back of LFSP(3)	(600,000)	A$ 4.46	—
Share buy-back of LFSP(3)	(700,000)	A$ 4.71	—
Share buy-back of LFSP(3)	(500,000)	A$ 5.92	—
Share buy-back of LFSP(3)	(135,000)	A$ 6.36	—
Share buy-back of LFSP(3)	(400,000)	A$ 6.70	—
Share buy-back of LFSP(3)	(650,000)	A$ 7.99	—
	15,357,635		46,312
Transaction costs arising on share issues			(439)
Contribution of equity (net of transaction costs)			45,873
Share options reserve transferred to equity on exercise of options			596
Movement for the year			46,469
Balance as of June 30, 2015	**336,997,729**		**709,191**

(1) Initially these shares are issued and held in trust. Therefore there is no dollar movement recorded in ordinary share capital at this time. If the shares are purchased in accordance with the conditions of the Loan Funded Share Plan ("LFSP") a dollar movement will be recorded at that date.

(2) These shares were issued to Celgene Corporation (NASDAQ: CELG) under a placement agreement pursuant to which Celgene purchased Mesoblast Limited securities and received a six-month right of refusal to certain disease fields.

(3) Repurchase of shares held in trust under LFSP by the Company. Therefore there is no dollar movement recorded in ordinary share capital.

(iii) Ordinary shares

Ordinary shares participate in dividends and the proceeds on winding up of the Group in equal proportion to the number of shares held. At shareholders meetings each ordinary share is entitled to one vote when a poll is called, otherwise each shareholder has one vote on a show of hands. Ordinary shares have no par value and the Company does not have a limited amount of authorized capital.

(iv) Employee share options

Information relating the Group's employee share option plan, including details of shares issued under the scheme, is set out in Note 18.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

7. Equity (continued)

b. Reserves

(in thousands)	As of June 30,		
	2015	2014	2013
(i) Reserves			
Share-based payments reserve	60,740	55,754	49,968
Foreign currency translation reserve	(37,984)	(12,201)	(15,572)
	22,756	**43,553**	**34,396**
(ii) Reconciliation of reserves			
Share-based payments reserve			
Opening balance	55,754	49,968	38,256
Transfer to ordinary shares on exercise of options	(596)	(2,842)	(695)
Fair value of share-based payments	6,976	8,628	12,407
Reclassification of modified options to liability	(1,394)	—	—
Closing balance	**60,740**	**55,754**	**49,968**
Foreign currency translation reserve			
Opening balance	(12,201)	(15,572)	12,070
Currency (loss)/gain on translation of foreign operation's net assets	(25,783)	3,371	(27,642)
Closing balance	**(37,984)**	**(12,201)**	**(15,572)**

(iii) Nature and purpose of reserves

Share-based payment reserve

The share-based payments reserve is used to recognize:

- the grant date fair value of options issued but not exercised; and
- the grant date fair value of deferred shares granted but not yet vested.

Foreign currency translation reserve

Exchange differences arising on translation of a foreign controlled entity are recognized in other comprehensive income and accumulated in a separate reserve within equity. The cumulative amount is reclassified to profit or loss when the net investment is disposed of.

8. Cash flow information

(in thousands)	Year Ended June 30,		
	2015	2014	2013
(a) Reconciliation of cash and cash equivalents			
Cash at bank	21,126	3,605	11,820
Deposit at call	89,575	181,398	280,629
	110,701	**185,003**	**292,449**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

8. Cash flow information (continued)

(in thousands)	Year Ended June 30,		
	2015	2014	2013
(b) Reconciliation of net cash flows used in operations with loss after income tax			
Loss for the year	(96,244)	(75,534)	(62,120)
Add/(deduct) net loss for non-cash items as follows:			
Commercialization revenue	(15,004)	(15,004)	(18,685)
Depreciation and amortization	1,601	1,024	787
Foreign exchange (gains)/losses	(9,729)	4,075	1,581
Finance costs	8,506	4,078	—
Remeasurement of contingent consideration	2,164	—	—
Release of excess provision for services	—	(2,344)	—
Equity settled share-based payment	6,976	8,628	12,409
Change in operating assets and liabilities:			
Decrease in trade and other receivables	697	3,086	2,795
(Increase) in prepayments	(7,439)	(189)	(590)
Decrease/(increase) in tax assets	38	3,153	(1,925)
(Decrease)/increase in trade creditors and accruals	7,721	(1,331)	8,669
(Decrease)/increase in provisions	(323)	(4,548)	1,333
Net cash outflows used in operations	**(101,036)**	**(74,906)**	**(55,746)**

9. Significant estimates, judgments and errors

The preparation of financial statements requires the use of accounting estimates which, by definition, will seldom equal the actual results. Management also needs to exercise judgment in applying the Group's accounting policies.

This note provides an overview of the areas that involved a higher degree of judgment or complexity, and of items which are more likely to be materially adjusted due to estimates and assumptions turning out to be wrong. Detailed information about each of these estimates and judgments is included in Notes 1 to 8 together with information about the basis of calculation for each affected line item in the financial statements. In addition, this note also explains where there have been actual adjustments this year as a result of an error and of changes to previous estimates.

a. Significant estimates and judgments

The areas involving significant estimates or judgments are:

- recognition of revenue (Note 3);
- fair value of contingent liabilities and contingent purchase consideration in a business combination (Note 5(f) and 12);
- fair value of goodwill and other intangible assets including in-process research and development (Note 6(b));
- useful life of intangible asset (Note 6(b));
- estimates of tax payable and current tax expense (Note 4(b));
- accrued research and development and manufacturing commercialization expenses (Note 5(e));

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

9. Significant estimates, judgments and errors (continued)

- fair value of share-based payments (Note 18); and
- fair value of available-for-sale financial assets (Note 5(f)).

Estimates and judgments are continually evaluated. They are based on historical experience and other factors, including expectations of future events that may have a financial impact on the entity and that are believed to be reasonable under the circumstances.

10. Financial risk management

This note explains the Group's exposure to financial risks and how these risks could affect the Group's future financial performance. Current year profit and loss information has been included where relevant to add further context.

Risk	Exposure arising from	Measurement	Management
Market risk — currency risk	Future commercial transactions Recognized financial assets and liabilities not denominated in the functional currency of each entity within the Group	Cash flow forecasting Sensitivity analysis	The future cash flows of each currency are forecast and the quantum of cash reserves held for each currency are managed in line with future forecasted requirements. Cross currency swaps are undertaken as required.
Market risk — interest rate risk	Term deposits at fixed rates	Sensitivity analysis	Vary length of term deposits
Credit risk	Cash and cash equivalents, trade receivables and derivative financial instruments	Aging analysis Credit ratings	Only transact with 'A' rated banks
Liquidity risk	Cash and cash equivalents	Rolling cash flow forecasts	Future cash flows requirements are forecasted and capital raising strategies are planned to ensure sufficient cash balances are maintained to meet the Group's future commitments

a. Derivatives

Derivatives are only used for economic hedging purposes and not as trading or speculative instruments. The Group has the following derivative financial instruments:

(in thousands)	As of June 30	
	2015	2014
Current liabilities		
Forward foreign exchange contracts – held for trading	—	317
	—	**317**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

10. Financial risk management (continued)

(i) *Classification of derivatives*

Derivatives are classified as held for trading and accounted for at fair value through profit or loss. They are presented as current assets or liabilities if they are expected to be settled within 12 months after the end of the reporting period.

(ii) *Change in accounting policy*

The Group has applied the new standard on IFRS 13 *Fair Value Measurement* from July 1, 2013.The adoption of the standard has not affected the measurement of the fair value of certain derivative liabilities.

(iii) *Fair value measurement*

For information about the methods and assumptions used in determining the fair value of derivatives please refer to Note 5(f).

b. Market risk

(i) Currency risk

The Group has certain clinical, regulatory and manufacturing activities which are being conducted internationally. The main currency exposure to the Group is the clinical trial activities which are primarily occurring in the United States of America and manufacturing activities occurring in Singapore. As a result of these activities, the Group has foreign currency amounts owing primarily in USD and Singapore dollars ("SGD"), as well as some smaller amounts in various other currencies as tabled below. These foreign currency balances give rise to a currency risk, which is the risk of the exchange rate moving, in either direction, and the impact it may have on the Group's financial performance.

The Group manages the currency risk by evaluating the trend of the relevant foreign currency rates ("FX rates") to the AUD and making decisions as to the levels to hold in each currency by assessing its future activities which will likely be incurred in those currencies. The Group engages professional advice when considering forward foreign exchange contracts.

As of June 30, 2015, the Group held 64% of its cash in USD, and 36% in AUD. As of June 30, 2015, the Group did not hold any financial derivative contracts.

As of June 30, 2014, the Group held 45% of its cash in USD, and 55% in AUD. 12% of the AUD balance is subject to forward contracts to purchase USD at a predetermined rate in the future. After allowing for financial derivative contracts, the Group held 51% USD and 49% AUD. The Group utilized financial derivative contracts to take advantage of enhanced interest rates yields available on AUD deposits when compared to USD deposits. The Group sells USD and buys AUD from the bank at a pre-agreed FX rate and agrees to then sell those AUD and buy USD from the bank on maturity also at a pre-agreed rate. As these FX rates are known at the outset there is no currency risk. It should be noted that trading in speculative derivatives is strictly prohibited in accordance with the Group's treasury and financial risk management policy.

The balances held at the end of the year that give rise to currency risk exposure are presented in USD in the following table, together with a sensitivity analysis which assesses the impact that a change of +/-20% in the exchange rate as of June 30, 2015 and 2014 would have had on the Group's reported net profits/(losses) and/or equity balance.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

10. Financial risk management (continued)

The Group's exposure to foreign currency risk at the end of the reporting period was as follows:

As of June 30, 2015 (in thousands)	Foreign currency balance held	+20% Profit/(loss) USD	-20% Profit/(loss) USD
Bank accounts	USD 70,599	(12,353)	18,529
Bank accounts	CHF 158	(30)	44
Bank accounts	SGD 12	(2)	2
Trade and other receivables — CHF	CHF 117	(22)	33
Trade payables & accruals — USD	(USD 22,899)	4,006	(6,010)
Trade payables & accruals — AUD	(AUD 149)	14	(21)
Trade payables & accruals — SGD	(SGD 208)	27	(40)
Trade payables & accruals — GBP	(GBP 60)	16	(25)
Trade payables & accruals — EUR	(EUR 184)	36	(54)
Trade payables & accruals — CHF	(CHF 111)	22	(32)
Provisions — USD	(USD 2,814)	493	(739)
Provisions — SGD	(SGD 55)	7	(10)
		(7,786)	**11,677**

As of June 30, 2014 (in thousands)	Foreign currency balance held	+20% Profit/(loss) USD	-20% Profit/(loss) USD
Bank accounts	USD 82,853	(13,677)	20,516
Bank accounts	CHF 632	(117)	175
Forward exchange contracts			
Buy foreign currency (Note 10(a))	USD76,000	(12,546)	18,819
Trade and other receivables — USD	USD 990	(163)	245
Trade and other receivables — CHF	CHF 3	(1)	1
Trade payables & accruals — USD	(USD 16,788)	2,771	(4,156)
Trade payables & accruals — AUD	(AUD 222)	33	(49)
Trade payables & accruals — SGD	(SGD 722)	95	(143)
Trade payables & accruals — GBP	(GBP 27)	7	(11)
Trade payables & accruals — EUR	(EUR 86)	20	(29)
Trade payables & accruals — CHF	(CHF 12)	2	(4)
Trade payables & accruals — DKK	(DKK 2)	—	—
Provisions — USD	(USD 3,144)	519	(778)
Provisions — SGD	(SGD 34)	5	(7)
		(23,052)	**34,579**

(ii) Interest rate risk

The Group is not exposed to typical interest rate risk, being the impact of fixed versus floating interest rates on debt. The Group's exposure is to interest rate movements which impacts interest income earned on its deposits. The interest income derived from these balances can fluctuate due to interest rate changes. This interest rate risk is managed by spreading the maturity date of our deposits across various periods. The Group ensures that sufficient funds are available, in at call accounts, to meet the cash flow requirements of the Group.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

10. Financial risk management (continued)

The deposits held which derive interest revenue are described in the table below, together with the maximum and minimum interest rates being earned as of June 30, 2015. The effect on profit is shown if interest rates change by 10%, in either direction, is as follows:

(in thousands, except percent data)	June 30, 2015			June 30, 2014		
USD	**Low**	**High**	**USD**	**Low**	**High**	**USD**
Funds invested	0.30%	0.30%	55,636	0.04%	0.27%	81,000
Rate increase by 10%	0.33%	0.33%	17	0.04%	0.30%	3
Rate decrease by 10%	0.27%	0.27%	(17)	0.04%	0.24%	(3)
AUD	**Low**	**High**	**AUD**	**Low**	**High**	**AUD**
Funds invested	2.85%	2.92%	44,191	3.41%	3.60%	107,540
Rate increase by 10%	3.14%	3.21%	129	3.75%	3.96%	374
Rate decrease by 10%	2.57%	2.63%	(129)	3.07%	3.24%	(374)

(iii) Price risk

Price risk is the risk that future cash flows derived from financial instruments will be altered as a result of a market price movement, other than foreign currency rates and interest rates. The Group does not consider it has any exposure to price risk other than those already described above.

c. Credit risk

Credit risk is the risk that one party to a financial instrument will fail to discharge its obligation and cause financial loss to the other party. As the Group is non–revenue generating it generally does not have trade receivables. The Group's receivables are tabled below.

(in thousands)	As of June 30, 2015	2014
Cash and cash equivalents		
Cash and cash equivalents (Note 5(a)) — minimum A rated	110,701	185,003
Trade and other receivables		
Receivable from the Australian Government (Goods and Services Tax)	54	120
Receivable from the Australian Government (Income Tax)	3,625	4,879
Receivable from the United States Government (Income Tax)	71	70
Receivable from the Swiss Government (Value-Added Tax)	2	4
Receivable from minimum A rated bank deposits (interest)	84	279
Receivable from other parties (non-rated)	136	392

d. Liquidity risk

Liquidity risk is the risk that the Group will not be able to pay its debts as and when they fall due.

For the years ended June 30, 2015, 2014 and 2013 the Group has incurred a total comprehensive loss after income tax of $122,027, $72,163 and $89,762, respectively, and net cash outflows from operations of $101,036, $74,906 and $55,746 respectively. As at June 30, 2015, the Group held total cash and cash equivalents of $110,701. The Group is a development stage biotechnology company and as such expects to be utilizing cash reserves until its research activities are commercialized. The Group has historically funded its research activities through raising capital from shareholders and entering into licensing and partnership agreements, it is expected that similar funding will be obtained to provide working capital as and when required.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

10. Financial risk management (continued)

The directors are satisfied that there is sufficient working capital to support the committed research activities over the coming 12 months and the Group has the ability to realize its assets and pay its liabilities and commitments in the normal course of business. Accordingly, the directors have prepared the financial report on a going concern basis.

All financial liabilities, excluding contingent consideration, held by the Group as of June 30, 2015 and June 30, 2014 are non-interest bearing and mature within 6 months. The total contractual cash flows associated with these liabilities equate to the carrying amount disclosed within the financial statements.

11. Capital management

The Group's objective when managing capital is to safeguard its ability to continue as a going concern, so that it can provide returns for shareholders and benefits for other stakeholders. See Note 5(a) for the cash reserves of the Group as at the end of the financial reporting period.

12. Business combination

a. Summary of acquisition

On October 11, 2013, the Group acquired the culture-expanded mesenchymal stem cell ("MSC") business of Osiris Therapeutics Inc.

The acquisition is complementary in its nature with many commercial and strategic benefits. The potential benefits derived from acquiring the late-phase MSC products include:

- near term market launch of a mesenchymal lineage product in major jurisdictions;
- broadened late-phase clinical programs in strategic areas of focus;
- leveraged roll out of infrastructure, skills and expertise needed to commercialize mesenchymal precursor cell products;
- ownership of extensive long-term clinical data from over 1,500 patients treated with culture-expanded mesenchymal stem cells, including safety, efficacy and repeat dosing data; and
- acquisition of new intellectual property which is highly complementary to the Group's existing patent estate.

Details of the purchase consideration, the net assets acquired and goodwill are as follows:

Purchase consideration at fair value

(in thousands)	Fair value at October 11, 2013
Cash paid on closing	20,000
Cash payment made on the six month anniversary of the agreement (Fair Value)	14,751
Securities allotment (2,948,729 shares were allotted)(1)	15,000
Contingent consideration (Note 6(d)(ii))(2)	77,169
Total purchase consideration	**126,920**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

12. Business combination (continued)

Net assets acquired at fair value

(in thousands)	Fair value at October 11, 2013
Property, plant and equipment	223
Intangible assets: in-process research and development	126,697
Deferred tax liability on intangible assets	(13,937)
Net identifiable assets acquired	**112,983**
add: Goodwill	13,937
Net assets acquired	**126,920**

(1) The Company's securities (ASX: MSB) were issued as consideration upon the transfer of assets on December 18, 2013, which had a value of $15,000 (AUD 16,717) on that date.

(2) At acquisition date contingent consideration of $77,169 was recorded as tabled above. Please refer to Note 6(d)(ii) for the reconciliation of the subsequent movements of this contingent consideration provision.

All assets acquired and purchase consideration amounts are denominated in USD. The goodwill is attributable to the deferred tax liability that is required to be recognized on the difference between the intangible asset's book value compared to its tax value.

No amount of goodwill is expected to be deducted for tax purposes.

The tax base of the asset assumes that the asset is held for use and is therefore $Nil resulting in a deferred tax liability calculated at the tax rate of the jurisdiction where the underlying intangible assets are held.

Refer also to Note 6(b) for an immaterial out of period adjustment to goodwill on finalization of the business combination.

b. Contingent consideration

In the event that certain pre-determined milestones and royalties are achieved additional consideration is payable. The fair value of the contingent consideration is set out in the table below. The fair value estimates have been calculated on the basis of fair value less cost to sell by using the income approach, with reference to both the excess earnings and relief from royalty methods as set out below:

The fair value of contingent consideration (in thousands)	Fair value at October 11, 2013
Fair value of cash or stock payable, dependent on achievement of future late-stage clinical or regulatory targets(1)	23,159
Fair value of royalty payments from commercialization of the intellectual property acquired(2)	54,010
	77,169

(1) The contingent consideration payable for each milestone is a fixed dollar amount and can be paid either in cash or through the allotment of Mesoblast Ltd securities at the date of payment, at the discretion of the Mesoblast Group. The potential undiscounted amount of the contingent consideration for milestones is a minimum of $Nil and a maximum of $50,000.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

12. Business combination (continued)

(2) The amount of the contingent consideration payable as royalties paid on sales achieved is variable. The contingent consideration paid could range from zero dollars if no sale of product occurs, up to a maximum that is unlimited. This maximum is calculated at a commercial arm's length percentage of net sales. Royalty payments will cease after a 10 year commercial sales period. Royalties are payable in cash after the conclusion of the period in which the sales were made.

c. Purchase consideration — cash outflow

(in thousands)	Year Ended June 30, 2015	2014
Cash consideration (fair value) owed pursuant to the asset purchase agreement	33,370	34,951
Securities allotment consideration owed (fair value) pursuant to the asset purchase agreement	2,086	—
less: amount paid during the prior full year ended	(33,370)	(1,581)
Cash outflow reported for the current reporting period(1)	**2,086**	**33,370**

(1) Included within cash flows from investing activities within the statements of cash flows.

d. Revenue and profit contribution

The acquired business contributed revenues of $Nil and net loss of $5,465 to the Group for the period October 11, 2013 to June 30, 2014.

If the acquisition had occurred on July 1, 2013, consolidated revenue and loss for the year ended June 30, 2014 would have been $23,863 and $75,607 respectively. These amounts have been calculated using the Osiris audited financial statements segment information. This has been calculated based on expenditure incurred with external providers to develop programs acquired from Osiris. There were no allocations of internal labour or other internal cost bases.

e. Acquisition-related costs

Directly attributable acquisition-related costs of approximately $876 are included in management and administration expenses in the consolidated income statement, and in the operating cash flows section in the consolidated statement of cash flows, for the full-year ended June 30, 2014.

13. Interests in other entities

a. Material subsidiaries

The Group's principal subsidiaries as of June 30, 2015 are set out below. Unless otherwise stated, they have share capital consisting solely of ordinary shares that are held directly by the Group, and the proportion of ownership interests held equals the voting rights held by the Group. The country of incorporation or registration is also their principal place of business.

Name of entity	Country of incorporation	Class of shares	Equity holding June 30, 2015	Equity holding June 30, 2014
			%	%
Mesoblast, Inc.	USA	Ordinary	100	100
Mesoblast International Sàrl (includes Mesoblast International Sàrl Singapore Branch)	Switzerland	Ordinary	100	100
Mesoblast Australia Pty Ltd	Australia	Ordinary	100	100
Mesoblast UK Limited	United Kingdom	Ordinary	100	100

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

14. Contingent assets and contingent liabilities

a. Contingent assets

The Group did not have any contingent assets outstanding as of June 30, 2015 and 2014.

b. Contingent liabilities

(i) Central Adelaide Local Health Network Incorporated ("CALHNI") (formerly Medvet)

Mesoblast will be required to make a milestone payment to CALHNI of $250 on completion of Phase 3 clinical trials and $350 on FDA marketing approval for products in the orthopaedic field. The Group will pay CALHNI a commercial arm's length royalty based on net sales by the Group of licensed products in the orthopaedic field each quarter.

Additionally, in regards to certain intellectual property assets originally assigned to Mesoblast Inc., the Group may be required to pay consideration to CALHNI depending on the achievement of future milestones. They represent payments on successful completion of subsequent clinical milestones in fields other than orthopaedic. If all milestones were to be reached these payments total $1,850. In addition it stipulates the requirement for royalty payments as a percentage of sales of product in fields other than orthopaedic at a commercial arm's length rate as well as minimum annual royalties after commercial sale of product scaling up from $100 to $500 over 5 years.

Across all fields, if all milestones were reached, milestone payments would total $2,450.

(ii) Other contingent liabilities

The Group has entered into a number of agreements with third parties pertaining to intellectual property**.** Contingent liabilities may arise in the future if certain events or developments occur in relation to these agreements. At this time the Group has assessed these contingent liabilities to be remote and specific disclosure is not required.

15. Commitments

a. Capital commitments

The Group did not have any commitments for future capital expenditure outstanding as of June 30, 2015 and 2014.

b. Lease commitments: Group as lessee

i. Non-cancellable operating leases

The Group leases various offices under non-cancellable operating leases expiring within 1 to 6 years. The leases have varying terms, escalation clauses and renewal rights. On renewal, the terms of the leases are renegotiated. Excess office space is sub-let to a third party also under a non-cancellable operating lease.

(in thousands)	Total	Within one year	Later than one year but no later than three years	Later than three years but no later than five years	Later than five years
Operating leases	14,116	2,592	7,448	4,076	—
Total commitments	14,116	2,592	7,448	4,076	—

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

15. Commitments (continued)

Lease commitments include amounts in AUD and Singapore dollars which have been translated to USD as of June 30, 2015 foreign exchange rates published by the Reserve Bank of Australia.

ii. Sub-lease payments

Future minimum lease payments expected to be received in relation to non-cancellable sub-leases of operating leases are set out below:

(in thousands)	Total	Within one year	Later than one year but no later than three years	Later than three years but no later than five years	Later than five years
Operating leases	711	161	483	67	—
Total commitments	711	161	483	67	—

c. Purchase commitments

The Group has established a strategic alliance for clinical and long-term commercial production of Mesoblast's off-the-shelf (allogeneic) adult stem cell products with Lonza Group (SWS: LONN).

As part of this agreement, Mesoblast has an option to trigger a process requiring Lonza Group to construct a purpose-built manufacturing facility exclusively for Mesoblast's marketed products. In return, Mesoblast will purchase agreed quantities of marketed products from the facility.

The Group has a purchase commitment of $4,416 to Lonza Group.

16. Events occurring after the reporting period

There are no events that have occurred after June 30, 2015 and prior to the signing of this financial report that would likely have a material impact on the financial results presented.

17. Related party transactions

a. Parent entity

The parent entity within the Group is Mesoblast Limited.

b. Subsidiaries

Details of interests in subsidiaries are disclosed in Note 13 to the financial statements.

c. Key management personnel compensation

The aggregate compensation made to Directors and other members of key management personnel of the Group is set out below:

	Year Ended June 30,		
(in dollars)	2015	2014	2013
Short-term employee benefits	2,975,780	2,579,498	2,511,857
Long-term employee benefits	16,287	21,296	23,290
Post-employment benefits	77,083	60,028	59,744
Share-based payments	282,138	—	5,047
	3,351,288	**2,660,822**	**2,599,938**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

17. Related party transactions (continued)

d. Transactions with other related parties

Accounts receivable from, accounts payable to and loans from subsidiaries as at the end of the financial year have been eliminated on consolidation of the Group.

e. Terms and conditions

All other transactions were made on normal commercial terms and conditions and at market rates, except that there are no fixed terms for the repayment of loans between the parties.

Outstanding balances are unsecured and are repayable in cash.

18. Share-based payments

The Company has adopted an Employee Share Option Plan ("ESOP") and a Loan Funded Share Plan ("LFSP") (together, "the Plans") to foster an ownership culture within the Company and to motivate senior management and consultants to achieve performance targets. Selected directors, employees and consultants may be eligible to participate in the Plans at the absolute discretion of the board of directors, and in the case of directors, upon approval by shareholders.

Grant policy

In accordance with the Company's current policy, options and loan funded shares are typically issued in three equal tranches. For issues granted prior to July 1, 2015 the length of time from grant date to expiry date was typically 5 years, the grant made on July 10, 2015 was issued with a seven year term. The first tranche typically vests 12 months after grant date, the second tranche 24 months after grant date, and the third tranche 36 months after grant date.

The exercise price for options is determined by reference to the Company policy which is generally the volume weighted market price of a share sold on the ASX on the 5 trading days immediately before the grant date. In the case of options issued to staff (performance based) the board of directors add a 10% premium, options issued to directors, which are not performance based, are issued with no premium. A one off issue of options to non-Australian based directors was made during the year. The board of directors' policy is not to issue options at a discount to the market price. The same approach is used to determine the purchase price to acquire a loan-funded share for the purposes of the LFSP.

The aggregate number of options which may be issued pursuant to the ESOP must not exceed 10,000,000 with respect to US incentive stock options, and with respect to Australian residents, the limit imposed under the Australian Securities and Investments Commission Class Order [CO 14/1000].

In addition the LFSP has the following characteristics:

On grant date, the Company issues new equity (rather than purchasing shares on market), and the loan funded shares are placed in a trust which holds the shares on behalf of the employee. The trustee issues a limited recourse, interest free, loan to the employee which is equal to the number of shares multiplied by the price. A limited-recourse loan means that the repayment amount will be the lesser of the outstanding loan value (the loan value less any amounts that may have already been repaid) and the market value of the shares that are subject to the loan. The price is the amount the employee must pay for each loan funded share if exercised.

The trustee continues to hold the shares on behalf of the employee until the employee chooses to settle the loan pertaining to the shares and all vesting conditions have been satisfied, at which point ownership of the shares is fully transferred to the employee.

Any dividends paid by the Company, while the shares are held by the trustee, are applied as a repayment of the loan at the after-tax value of the dividend.

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Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

a. Reconciliation of outstanding share based payments

Year ended June 30, 2015

Series	Grant Date	Expiry Date	Exercise Price	Opening Balance	Granted No. (during the year)	Exercised No. (during the year)	Lapsed/ Cancelled No. (during the year)	Closing Balance	Vested and exercisable No (end of year)
10	30/11/2009	30/11/2014	AUD 1.73	150,000	—	(150,000)	—	—	—
11	30/11/2009	30/11/2014	AUD 1.58	480,000	—	(480,000)	—	—	—
13	22/09/2010	21/09/2015	AUD 2.64	135,000	—	—	—	135,000	135,000
14	29/11/2010	29/11/2015	AUD 3.48	1,569,300	—	(115,950)	—	1453,350	1,453,350
15/LF1	22/12/2011	30/06/2016	AUD 7.99	4,243,334	—	—	(830,000)	3,413,334	3,413,334
16/LF2	24/02/2012	23/02/2017	AUD 8.48	340,000	—	—	—	340,000	340,000
17/LF3	09/07/2012	08/07/2018	AUD 6.69	250,000	—	—	—	250,000	166,665
18/LF4	21/09/2012-29/10/2012	30/06/2017	AUD 6.70	2,653,333	—	—	(376,666)	2,276,667	1,863,337
19/LF5	25/01/2013-29/01/2013	24/01/2018-28/01/2008	AUD 6.29	100,000	—	—	—	100,000	66,668
20/LF6	24/05/2013	23/05/2018	AUD 6.36	1,000,000	—	—	(135,000)	865,000	576,676
21/LF7	03/09/2013	30/06/2018	AUD 5.92	3,290,000	—	—	(548,333)	2,741,667	1,206,671
22/LF8	04/09/2013	27/08/2018	AUD 6.28	325,000	—	—	(50,000)	275,000	91,668
23a	26/11/2013	10/10/2018	AUD 6.20	50,000	—	—	—	50,000	16,666
23b	30/11/2013	29/11/2018	AUD 6.79	200,000	—	—	(200,000)	—	—
LF9.4	11/12/2013	30/06/2017	AUD 6.70	165,000	—	—	(165,000)	—	—
LF9.7	03/09/2013	30/06/2018	AUD 5.92	200,000	—	—	(200,000)	—	—
24	17/12/2013	16/12/2018	AUD 6.25	180,000	—	—	(31,667)	148,333	51,666
24a (i)	10/02/2014	09/02/2019	AUD 6.41	100,000	—	—	(100,000)	—	—
24a (ii)	17/02/2014	16/02/2019	AUD 6.33	25,000	—	—	(25,000)	—	—
25	15/07/2014	06/04/2019	AUD 5.80	—	15,000	—	—	15,000	5,000
25a (i&ii)	01/01/2014	31/12/2018	AUD 6.38	650,000	—	—	—	650,000	650,000
25b	12/12/2014	31/10/2019	AUD 4.51	—	50,000	—	—	50,000	—
25c	21/09/2014	02/09/2014	AUD 5.43	—	60,000	—	(60,000)	—	—
26/LF11	24/07/2014	23/07/2019	AUD 4.71	—	575,000	—	(360,000)	215,000	—
27/LF12	05/09/2014	30/06/2019	AUD 4.71	—	3,960,000	—	(580,000)	3,380,000	—
27(i)	28/07/2014	27/07/2019	AUD 4.54	—	100,000	—	(100,000)	—	—
27(ii)	04/08/2014	03/08/2019	AUD 4.60	—	50,000	—	—	50,000	—
27(iii)	11/08/2014	10/08/2019	AUD 4.43	—	100,000	—	(100,000)	—	—
27(iv)	25/08/2014	24/08/2019	AUD 4.67	—	75,000	—	—	75,000	—
LF12a	05/09/2014	30/06/2019	AUD 4.46	—	600,000	—	(600,000)	—	—
28/LF13	09/10/2014	08/10/2019	AUD 4.54	—	235,000	—	—	235,000	—
29	25/11/2014	24/11/2019	AUD 4.02	—	240,000	—	—	240,000	—
30a(1)	25/03/2015	30/06/2018	AUD 5.00	—	650,000	—	—	650,000	650,000
30b(1)	25/03/2015	25/01/2018	AUD 5.00	—	235,000	—	—	235,000	156,666
30c(1)	25/03/2015	25/01/2019	AUD 5.00	—	135,000	—	—	135,000	135,000
30d(1)	25/03/2015	30/06/2019	AUD 5.00	—	300,000	—	—	300,000	100,000
30e(1)	25/03/2015	23/07/2019	AUD 5.00	—	165,000	—	—	165,000	165,000
30f(1)	25/03/2015	23/07/2019	AUD 5.00	—	200,000	—	—	200,000	133,334
30g(1)	25/03/2015	20/01/2019	AUD 4.71	—	300,000	—	—	300,000	—
30h(1)	25/03/2015	25/01/2018	AUD 4.71	—	400,000	—	—	400,000	—
30i(1)	25/03/2015	25/01/2019	AUD 4.46	—	600,000	—	—	600,000	200,000
30j	25/03/2015	30/06/2019	AUD 4.71	—	150,000	—	—	150,000	—
LF14	6/01/2015	16/12/2019	AUD 4.66	—	150,000	—	—	150,000	—
31	16/03/2015	16/02/2020	AUD 4.73	—	60,000	—	—	60,000	—
31a	27/04/2015	16/02/2020	AUD 4.73	—	20,000	—	—	20,000	—
31b	12/05/2015	16/02/2020	AUD 4.30	—	400,000	—	—	400,000	—
INC	7/12/2010	7/07/2015	$ 0.046	287,903	—	—	—	287,903	287,903
INC	7/12/2010	26/10/2018	$ 0.305	195,999	—	(41,935)	—	154,064	154,064
INC	7/12/2010	26/10/2019	$ 0.340	703,761	—	(255,913)	—	447,848	447,848
INC	7/12/2010	25/04/2017	$ 0.444	127,956	—	—	—	127,956	127,956
INC	7/12/2010	2/05/2017	$ 0.444	127,956	—	—	—	127,956	127,956
June 30, 2015				**17,549,542**	**9,825,000**	**(1,043,798)**	**(4,461,666)**	**21,869,078**	**12,722,428**
Weighted average share purchase price				AUD 5.82	AUD 4.69	AUD 1.49	AUD 5.91	AUD 5.49	AUD 5.78

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

(1) 30a to 30i were granted as a remuneration for the repurchase and cancellation of 2,985,000 LFSP during the year ended June 30, 2015 (see Note 18(b)).

Year ended June 30, 2014

Series	Grant Date	Expiry Date	Exercise Price	Opening Balance	Granted No. (during the year)	Exercised No. (during the year)	Lapsed/ Cancelled No. (during the year)	Closing Balance	Vested and exercisable No (end of year)
8	7/07/2008	30/06/2013	AUD 1.00	180,000	—	—	(180,000)	—	—
10	30/11/2009	30/11/2014	AUD 1.73	300,000	—	(150,000)	—	150,000	150,000
11	30/11/2009	30/11/2014	AUD 1.58	710,000	—	(230,000)	—	480,000	480,000
13	22/09/2010	21/09/2015	AUD 2.64	445,000	—	(310,000)	—	135,000	135,000
14	29/11/2010	29/11/2015	AUD 3.48	1,866,600	—	(297,300)	—	1,569,300	1,569,300
15/LF1	22/12/2011	30/06/2016	AUD 7.99	4,560,000(1)	—	—	(316,666)	4,243,334	3,543,339
16/LF2	24/02/2012	23/02/2017	AUD 8.48	340,000	—	—	—	340,000	226,668
17/LF3	9/07/2012	8/07/2018	AUD 6.69	250,000	—	—	—	250,000	83,331
18/LF4	21/09/2012-29/10/2012	30/06/2017	AUD 6.70	2,915,000(1)	—	—	(261,667)	2,653,333	1,275,002
19/LF5	25/01/2013-29/01/2013	24/01/2018-28/01/2008	AUD 6.29	100,000	—	—	—	100,000	33,334
20/LF6	24/05/2013	23/05/2018	AUD 6.36	1,000,000	—	—	—	1,000,000	378,338
21/LF7	3/09/2013	30/06/2018	AUD 5.92	—	3,490,000	—	(200,000)	3,290,000	325,001
22/LF8	4/09/2013	27/08/2018	AUD 6.28	—	325,000	—	—	325,000	—
23a	26/11/2013	10/10/2018	AUD 6.20	—	50,000	—	—	50,000	—
23b	30/11/2013	29/11/2018	AUD 6.79	—	200,000	—	—	200,000	—
24	17/12/2013	16/12/2018	AUD 6.25	—	190,000	—	(10,000)	180,000	—
24a (i)	10/02/2014	9/02/2019	AUD 6.41	—	100,000	—	—	100,000	—
24a (ii)	17/02/2014	16/02/2019	AUD 6.33	—	25,000	—	—	25,000	—
25a (i&ii)	1/01/2014	31/12/2018	AUD 6.38	—	650,000	—	—	650,000	—
LF9.4	11/12/2013	30/06/2017	AUD 6.70	—	165,000	—	—	165,000	110,000
LF9.7	3/09/2013	30/06/2018	AUD 5.92	—	200,000	—	—	200,000	66,667
INC	7/12/2010	7/07/2015	$ 0.046	287,903	—	—	—	287,903	287,903
INC	7/12/2010	26/10/2018	$ 0.305	195,999	—	—	—	195,999	195,999
INC	7/12/2010	26/10/2019	$ 0.340	703,761	—	—	—	703,761	703,761
INC	7/12/2010	25/04/2017	$ 0.444	127,956	—	—	—	127,956	127,956
INC	7/12/2010	2/05/2017	$ 0.444	127,956	—	—	—	127,956	127,956
June 30, 2014				**14,110,175**	**5,395,000**	**(987,300)**	**(968,333)**	**17,549,242**	**9,819,555**
Weighted average share purchase price				AUD 5.46	AUD 6.08	AUD 2.51	AUD 5.90	AUD 5.82	AUD 5.32

(1) The opening balance for 15/LF1 and 18/LF4 has been restated to increase the balance by 100,000 and 45,000 loan funded shares respectively. These shares were forfeited by participants in accordance with the terms of the loan funded share plan and are now the property of the Employee Share Trust.

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Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

Year ended June 30, 2013

Series	Grant Date	Expiry Date	Exercise Price	Opening Balance	Granted No. (during the year)	Exercised No. (during the year)	Lapsed/ Cancelled No. (during the year)	Closing Balance	Vested and exercisable No (end of year)
8	07/07/08	30/06/13	AUD 1.00	826,000	—	(646,000)	—	180,000	180,000
9	19/01/09	18/01/14	AUD 0.96	80,000	—	(80,000)	—	—	—
10	30/11/09	30/11/14	AUD 1.73	300,000	—	—	—	300,000	300,000
11	30/11/09	30/11/14	AUD 1.58	1,010,000	—	(300,000)	—	710,000	710,000
12	26/02/10	26/02/15	AUD 2.00	72,000	—	(72,000)	—	—	—
13	22/09/10	21/09/15	AUD 2.64	485,000	—	(40,000)	—	445,000	270,000
14	29/11/10	29/11/15	AUD 3.48	2,365,600	—	(475,600)	(23,400)	1,866,600	983,000
15/LF1	22/12/11	30/06/16	AUD 7.99	4,770,000	—	—	(310,000)	4,460,000	2,566,673
16/LF2	24/02/12	23/02/17	AUD 8.48	440,000	—	—	(100,000)	340,000	113,334
17/LF3	09/07/12	08/07/18	AUD 6.69	—	250,000	—	—	250,000	—
18/LF4	21/09/2012-29/10/2012	30/06/17	AUD 6.70	—	2,995,000	—	(125,000)	2,870,000	456,667
19/LF5	25/01/13	24/01/18	AUD 6.29	—	100,000	—	—	100,000	—
20/LF6	24/05/13	23/05/18	AUD 6.36	—	1,000,000	—	—	1,000,000	—
INC	07/12/10	07/07/15	$ 0.046	287,903	—	—	—	287,903	287,903
INC	07/12/10	26/10/18	$ 0.305	345,999	—	(150,000)	—	195,999	195,999
INC	07/12/10	07/12/14	$ 0.340	255,913	—	(255,913)	—	—	—
INC	07/12/10	26/10/19	$ 0.340	703,761	—	—	—	703,761	703,761
INC	07/12/10	25/04/17	$ 0.444	127,956	—	—	—	127,956	127,956
INC	07/12/10	02/05/17	$ 0.444	127,956	—	—	—	127,956	127,956
INC	07/12/10	07/12/14	$ 0.474	255,913	—	(255,913)	—	—	—
Conv	07/12/10	07/12/12	AUD3.78	277,390	—	(277,390)	—	—	—
June 30, 2013				**12,731,391**	**4,345,000**	**(2,552,816)**	**(558,400)**	**13,965,175**	**7,023,249**
Weighted average exercise price				AUD 4.42	AUD 6.61	AUD 1.72	AUD 6.33	AUD 5.46	AUD 4.40

The weighted average share price at the date of exercise of options exercised during the year ended June 30, 2015, 2014 and 2013 was AUD 4.06, AUD 5.83 and AUD 5.94, respectively.

The weighted average remaining contractual life of share options and loan funded shares outstanding as of June 30, 2015, 2014 and 2013 was 2.43 years, 2.96 years and 3.38 years, respectively.

b. Existing share-based payment arrangements

General terms and conditions attached to share based payments

Share options pursuant to the employee share option plan and shares pursuant to loan funded share plan are granted in three equal tranches. For issues granted prior to July 1, 2015 the length of time from grant date to expiry date was typically 5 years, the grant made on July 10, 2015 was issued with a seven year term. Vesting occurs progressively over the life of the option/share with the first tranche vesting one year from grant date, the second tranche two years from grant date, and the third tranche three years from grant date. On cessation of employment the Company's board of directors determines if a leaver is a bad leaver or not. If a participant is deemed a bad leaver, all rights, entitlements and interests in any unexercised options or shares (pursuant to the loan funded share plan) held by the participant will be forfeited and will lapse immediately. If a leaver is not a bad leaver they may retain vested options and shares (pursuant to the loan funded share plan), however, they must be exercised within 60 days of

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Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

cessation of employment (or within a longer period if so determined by the Company's board of directors), after which time they will lapse. Unvested options will normally be forfeited and lapse. This policy applies to all issues shown in the above table with the exception of the following:

Series 10 Options granted to the Chairman were approved by shareholders at the Annual General Meeting held on November 30, 2010. The options were granted in four equal tranches vesting on the achievement of certain milestones, being the date on which:

- Mesoblast signs a commercial partnering contract, e.g. a commercial license to one of its products (vested December 7, 2010);
- Mesoblast receives IND clearance from the FDA for its first clinical trial for Intervertebral Disc Repair (vested March 17, 2011);
- Mesoblast completes patient enrolment for its first clinical trial under IND for Intervertebral Disc Repair (vested October 12, 2012);
- Mesoblast obtains a license from the Therapeutics Goods Administration (TGA) for the manufacture (vested July 20, 2010).

All the remaining options under series 10 were exercised during the year.

25a (i&ii) Options were granted in two equal tranches and vested on the date that the option holder had direct involvement (to the reasonable satisfaction of the Company's board of directors) in the Company achieving certain confidential commercial objectives.

INC. As part of the acquisition of Mesoblast, Inc., Mesoblast, Inc. options were converted to options of the Company at a conversion ratio of 63.978. The Mesoblast, Inc. option exercise price per option was adjusted using the same conversion ratio. All options vested on acquisition date (December 7, 2010), and will expire according to their original expiry dates (with the exception of options held by directors which were limited to an expiry date not exceeding four years from acquisition).

31b Options were granted in two equal tranches and will vest on the date that the option holder has direct involvement (to the reasonable satisfaction of the Company's board of directors) in the Company achieving certain confidential commercial objectives.

Modifications to share-based payment arrangements

During the year ended June 30, 2015, the Company repurchased an aggregate amount of $13,908 (AUD 17,665) of loans under LFSP and correspondingly cancelled 2,985,000 of the Company's ordinary shares held in trust for certain employees of the Company. As remuneration for the repurchase of loans and cancellation of these ordinary shares under LFSP, the Company granted options to purchase 2,985,000 of the Company's ordinary shares at exercise prices ranging from AUD 4.46 to AUD 5.00 under ESOP 30a to 30i.

As of March 25, 2015 (the "modification date"), the total incremental fair value granted as a result of these modifications was $606.

c. Fair values of share based payments

The weighted average fair value of share options and loan funded shares granted during the years ended June 30, 2015, 2014 and 2013 was AUD 1.22, AUD 1.71 and AUD 2.69, respectively.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

The fair value of all shared-based payments made has been calculated using the Black-Scholes model. This model requires the following inputs:

Share price at grant date

The share price underpinning the exercise price has been used as the share price at grant date for valuation purposes. This price is generally the volume weighted average share price for the 5 trading days leading up to grant date.

Exercise price

The exercise price is a known value that is contained in the agreements.

Share price volatility

The model requires the Company's share price volatility to be measured. In estimating the expected volatility of the underlying shares our objective is to approximate the expectations that would be reflected in a current market or negotiated exchange price for the option or loan funded share.

Share price date from January 1, 2012 through to the end of each applicable financial year has been used to calculate share price volatility.

Life of the option/share

The life is generally the time period from grant date through to expiry. Certain assumptions have been made regarding "early exercise" i.e. options exercised ahead of the expiry date, with respect to option series 14 and later. These assumptions have been based on historical trends for option exercises within the Company and take into consideration exercise trends that are also evident as a result of local taxation laws.

Dividend yield

The Company has yet to pay a dividend so it has been assumed the dividend yield on the shares underlying the options will be 0%.

Risk free interest rate

This has been sourced from the Reserve Bank of Australia historical interest rate tables for government bonds.

Model inputs

The model inputs for the valuations of options approved and issued during the year ended June 30, 2015 are as follows:

Series	Financial year of grant	Exercise/Loan Price per share AUD	Share price at grant date AUD	Expected share price volatility	Life	Dividend yield	Risk-free interest rate
25	2015	5.80	4.48	38.09%	3.5 yrs	0%	2.99%
25b	2015	4.51	4.33	38.40%	3.7 yrs	0%	2.45%
25c	2015	5.43	4.89	38.38%	3.7 yrs	0%	3.19%
26/LF11	2015	4.71	4.04	37.89%	3.7 yrs	0%	2.80%-2.94%
27/LF12	2015	4.71	5.49	38.44%	3.5 yrs	0%	3.12%

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

Series	Financial year of grant	Exercise/Loan Price per share AUD	Share price at grant date AUD	Expected share price volatility	Life	Dividend yield	Risk-free interest rate
27(i)	2015	4.54	4.13	38.44%	3.7 yrs	0%	3.12%
27(ii)	2015	4.60	4.19	38.44%	3.7 yrs	0%	3.12%
27(iii)	2015	4.43	4.03	38.44%	3.7 yrs	0%	3.12%
27(iv)	2015	4.67	4.24	38.44%	3.7 yrs	0%	3.12%
LF12a	2015	4.46	5.49	38.36%	3.5 yrs	0%	2.81%
28/LF13	2015	4.54	4.11	38.33%	3.7 yrs	0%	2.86%
29	2015	4.02	4.02	38.09%	3.7 yrs	0%	2.71%
30a	2015	5.00	3.96	38.70%	2.4 yrs	0%	1.87%
30b	2015	5.00	3.96	38.70%	2.1 yrs	0%	1.87%
30c	2015	5.00	3.96	38.70%	2.8 yrs	0%	1.87%
30d	2015	5.00	3.96	38.70%	2.8 yrs	0%	1.87%
30e	2015	5.00	3.96	38.70%	2.1 yrs	0%	1.87%
30f	2015	5.00	3.96	38.70%	2.8 yrs	0%	1.87%
30g	2015	4.71	3.96	38.70%	3.2 yrs	0%	1.87%
30h	2015	4.71	3.96	38.70%	3.2 yrs	0%	1.87%
30i	2015	4.46	3.96	38.70%	3.2 yrs	0%	1.87%
30j	2015	4.71	3.96	38.70%	3.2 yrs	0%	1.87%
LF14	2015	4.66	4.33	38.58%	3.7 yrs	0%	2.27%
31	2015	4.73	3.86	38.92%	3.6 yrs	0%	1.99%
31a	2015	4.73	3.56	40.98%	3.6 yrs	0%	2.02%
31b	2015	4.30	3.72	40.82%	3.5 yrs	0%	2.42%

The closing share market price of an ordinary share of Mesoblast Limited on the Australian Securities Exchange as of June 30, 2015 was AUD 3.76.

The model inputs for the valuations of options approved and issued during the year ended June 30, 2014 are as follows:

Series	Financial year of grant	Exercise/Loan Price per share AUD	Share price at grant date AUD	Expected share price volatility	Life	Dividend yield	Risk-free interest rate
15/LF1	2014	7.99	7.00-7.48	51.48%	0.6-4.5yrs	0%	3.18%
18/LF4	2014	6.70	5.83-7.14	48.49%	4.75 yrs	0%	2.78%
21/LF7	2014	5.92	5.56	38.80%	3.6 yrs	0%	3.31%
22	2014	6.28	5.49	38.79%	3.7 yrs	0%	3.37%
LF8	2014	5.92	6.28	38.79%	3.7 yrs	0%	3.37%
LF9.4	2014	6.70	5.88	38.79%	2.6 yrs	0%	3.47%
LF9.7	2014	5.92	5.88	38.79%	3.4 yrs	0%	3.47%
23a	2014	6.20	6.04	38.74%	3.6 yrs	0%	3.45%
23b	2014	6.20	6.79	38.73%	3.7 yrs	0%	3.44%
24	2014	6.25	5.58	38.80%	3.7 yrs	0%	3.38%
24a.(i)	2014	6.41	5.75	38.37%	3.7 yrs	0%	3.44%
24a.(ii)	2014	6.33	5.76	38.20%	3.7 yrs	0%	3.45%
25a.(i)	2014	6.38	5.84	38.04%	3.6 yrs	0%	3.43%
25a.(ii)	2014	6.38	5.84	38.04%	4.9 yrs	0%	3.43%

The closing share market price of an ordinary share of Mesoblast Limited on the Australian Securities Exchange as of June 30, 2014 was AUD 4.47.

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Notes to Consolidated Financial Statements (continued)

18. Share-based payments (continued)

The model inputs for the valuations of options approved and issued during the year ended June 30, 2013 are as follows:

Series	Financial year of grant	Exercise/Loan Price per share AUD	Share price at grant date AUD	Expected share price volatility	Life	Dividend yield	Risk-free interest rate
17/LF3	2013	6.69	6.00	49.61%	5 yrs	0%	2.73%
18/LF4	2013	6.70	5.83-7.14	48.49%	4.75 yrs	0%	2.78%
19/LF5	2013	6.29	5.56-5.61	40.10%	5 yrs	0%	3.09%
20/LF6	2013	6.36	6.01	40.96%	5 yrs	0%	2.84%

The closing share market price of an ordinary share of Mesoblast Limited on the Australian Securities Exchange as of June 30, 2013 was AUD 5.30.

19. Remuneration of auditors

During the year the following fees were paid or payable for services provided by the auditor of the parent entity, its related practices and non-related audit firms:

	Year Ended June 30,		
	2015	2014	2013
a. PricewaterhouseCoopers Australia			
(i) Audit and other assurance services			
Audit and review of financial reports	271,926	264,575	172,966
Audit and review of financial reports and registration statements for United States Initial Public Offering purposes	1,003,706	—	—
Total remuneration of PricewaterhouseCoopers Australia	1,275,632	264,575	172,966
b. Network firms of PricewaterhouseCoopers Australia			
(i) Audit and other assurance services			
Audit and review of financial reports	90,991	115,435	55,288
Total remuneration of Network firms of PricewaterhouseCoopers Australia	90,991	115,435	55,288
Total auditors' remuneration	**1,366,623**	**380,010**	**228,254**

20. Losses per share

	Year Ended June 30,		
	2015 Cents	2014 Cents	2013 Cents
a. Basic losses per share			
From continuing operations attributable to the ordinary equity holders of the Company	(29.99)	(23.65)	(21.02)
Total basic losses per share attributable to the ordinary equity holders of the Company	**(29.99)**	**(23.65)**	**(21.02)**
b. Diluted losses per share			
From continuing operations attributable to the ordinary equity holders of the Company	(29.99)	(23.65)	(21.02)
Total basic losses per share attributable to the ordinary equity holders of the Company	**(29.99)**	**(23.65)**	**(21.02)**

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

20. Losses per share (continued)

	Year Ended June 30,		
	2015 Cents	2014 Cents	2013 Cents
c. Reconciliation of losses used in calculating earnings per share			
(in thousands)			
Basic losses per share			
Losses attributable to the ordinary equity holders of the Company used in calculating basic losses per share:			
From continuing operations	(96,244)	(75,535)	(62,120)
Diluted losses per share			
Losses from continuing operations attributable to the ordinary equity holders of the Company:			
Used in calculating basic losses per share	(96,244)	(75,535)	(62,120)
Losses attributable to the ordinary equity holders of the Company used in calculating diluted losses per share	(96,244)	(75,535)	(62,120)

	Year Ended June 30,		
	2015 Number	2014 Number	2013 Number
Weighted average number of ordinary shares used as the denominator in calculating basic losses per share	320,867,433	319,450,496	295,529,473
Weighted average number of ordinary shares and potential ordinary shares used in calculating diluted losses per share	320,867,433	319,450,496	295,529,473

Options granted to employees (see Note 18) are considered to be potential ordinary shares. These securities have been excluded from the determination of basic losses per shares. They have also been excluded from the calculation of diluted losses per share because they are anti-dilutive for the years ended June 30, 2015, 2014 and 2013. Shares that may be paid as contingent consideration (see Note 12(b)) have also been excluded from basic losses per share. They have also been excluded from the calculation of diluted losses per share because they are anti-dilutive for the years ended June 30, 2015, 2014 and 2013.

21. Summary of significant accounting policies

This note provides the principal accounting policies adopted in the preparation of these consolidated financial statements as set out below. These policies have been consistently applied to all the years presented, unless otherwise stated. The financial statements are for the consolidated entity consisting of Mesoblast Limited and its subsidiaries.

a. Basis of preparation

The general purpose financial statements of Mesoblast Limited and its subsidiaries have been prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board (“IFRS”). Mesoblast Limited is a for-profit entity for the purpose of preparing the financial statements.

i. Historical cost convention

These financial statements have been prepared under the historical cost convention, as modified by the revaluation of available-for-sale financial assets, financial assets and liabilities (including derivative instruments) at fair value through profit or loss, certain classes of property, plant and equipment and investment property.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

ii. Change in reporting currency

Mesoblast Limited has changed its reporting currency from Australian dollars to U.S. dollars and has recast its consolidated financial statements for all periods presented. The reporting currency was changed to align with the expectations of the users of the financial statements.

iii. New and amended standards adopted by the Group

The Group has applied the following standards and amendments for first time for their annual reporting period commencing July 1, 2014.

The adoption of the below standards, amendments and interpretation did not result in any changes in accounting policies or adjustments to the amounts recognized in the financial statements. They also do not significantly affect the disclosures in the Notes to the financial statements.

Title	Key requirements	Effective Date
Amendment to IAS 32 *Financial Instruments: Presentation*	The amendments clarify the offsetting rules in the application guidance in IAS 32 *Financial Instruments: Presentation* and explain when offsetting can be applied. In particular, they clarify that the right of set-off must be available today (i.e. not contingent on a future event) and must be legally enforceable in the normal course of business as well as in the event of default, insolvency or bankruptcy.	Annual reporting periods commencing on or after January 1, 2014
Amendment to IAS 36 *Recoverable Amount Disclosures for Non-Financial Assets*	Amendments to the disclosures required by IAS *36 Impairment of Assets* which: • remove the requirement to disclose the recoverable amount of all cash generating units (CGU) that contain goodwill or identifiable assets with indefinite lives if there has been no impairment. • require disclosure of the recoverable amount of an asset or CGU when an impairment loss has been recognized or reversed. • require detailed disclosure of how the fair value less costs of disposal has been measured when an impairment loss has been recognized or reversed.	Annual reporting periods commencing on or after January 1, 2014
Annual improvements 2010-2012 and 2011-2013 cycles	These annual improvements amend standards from the 2010 — 2012 and 2011 — 2013 reporting cycles: • IFRS 2 *Share based payments* — clarifies the definition of ‘vesting condition’ and now distinguishes between ‘performance condition’ and ‘service condition’ • IFRS 3 *Business combinations* — clarifies that an obligation to pay contingent consideration is classified as financial liability or equity under the principles in IAS 32 and that all non-equity contingent consideration (financial and non-financial) is measured at fair value at each reporting date.	Annual reporting periods commencing on or after July 1, 2014

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

Title	Key requirements	Effective Date
	• IFRS 8 *Operating segments* — requires disclosure of the judgments made by management in aggregating operating segments and clarifies that a reconciliation of segment assets must only be disclosed if segment assets are reported. • IFRS 13 *Fair value* — confirms that short-term receivables and payables can continue to be measured at invoice amounts if the impact of discounting is immaterial. • IFRS 13 *Fair value* — clarifies that the portfolio exception in IFRS 13 (measuring the fair value of a group of financial assets and financial liabilities on a net basis) applies to all contracts within the scope of IAS 39 *Financial instruments: recognition and measurement* or IFRS 9 *Financial instruments*.	

iv. New accounting standards and interpretations not yet adopted

Certain new accounting standards and interpretations have been published that are not mandatory for the June 30, 2015 reporting period. The Group has not elected to apply any pronouncements before their operative date in the annual reporting period beginning July 1, 2014.

Initial application of the following Standard is not expected to affect any of the amounts recognized or disclosures made in the current financial report, but may have a material impact on future transactions made in relation to the Group. The Group is assessing the impact of the new standard on its revenue recognition policy. The Group intends to apply the new standard from July 1, 2018.

Title	Key requirements	Effective Date
IFRS 15 *Revenue from Contracts with Customers*	IFRS 15 provides a single, principles based five-step model to be applied to all contracts with customers. The five steps in the model are as follows: • Identify the contract with the customer • Identify the performance obligations in the contract • Determine the transaction price • Allocate the transaction price to the performance obligations in the contracts • Recognize revenue when (or as) the entity satisfies a performance obligation. Guidance is provided on topics such as the point in which revenue is recognized, accounting for variable consideration, costs of fulfilling and obtaining a contract and various related matters. New disclosures about revenue are also introduced.	Annual reporting periods commencing on or after January 1, 2018 Earlier application is permitted.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

b. Principles of consolidation

i. Subsidiaries

The consolidated financial statements incorporate the assets and liabilities of all subsidiaries of Mesoblast Limited ("Company" or "Parent Entity") as of June 30, 2015 and the results of all subsidiaries for the year then ended. Mesoblast Limited and its subsidiaries together are referred to in this financial report as the Group or the consolidated entity.

Subsidiaries are all entities (including structured entities) over which the Group has control. The Group controls an entity when the Group is exposed to, or has rights to, variable returns from its involvement with the entity and has the ability to affect those returns through its power to direct the activities of the entity.

Subsidiaries are fully consolidated from the date on which control is transferred to the Group. They are deconsolidated from the date that control ceases.

The acquisition method of accounting is used to account for business combinations by the Group.

Intercompany transactions, balances and unrealized gains on transactions between Group companies are eliminated. Unrealized losses are also eliminated unless the transaction provides evidence of the impairment of the asset transferred. Accounting policies of subsidiaries have been changed where necessary to ensure consistency with the policies adopted by the Group.

ii. Employee share trust

The Group has formed a trust to administer the Group's employee share scheme. This trust is consolidated, as the substance of the relationship is that the trust is controlled by the Group.

c. Segment reporting

The Group predominately operates in one segment as set out in Note 2.

d. Foreign currency translation

(i) Functional and presentation currency

Items included in the financial statements of each of the Group's entities are measured using the currency of the primary economic environment in which the entity operates (the "functional currency"). The functional currency of Mesoblast Limited is the AUD. The consolidated financial statements are presented in USD, which is the Group's presentation currency.

(ii) Translations and balances

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the transaction at period end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognized in net loss, except when they are deferred in equity as qualifying cash flow hedges and qualifying net investment hedges or attributable to part of the net investment in a foreign operation.

Non-monetary items that are measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined. Translation differences on assets and liabilities carried at fair value are reported as part of the fair value gain or loss. For example, translation differences on non-monetary

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Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

assets and liabilities such as equities held at fair value through profit or loss are recognized in net loss as part of the fair value gain or loss and translation differences on non-monetary assets such as equities classified as available for sale financial assets are recognized in other comprehensive income.

(iii) Group companies

The results and financial position of all the Group entities (none of which has the currency of a hyperinflationary economy) that have a functional currency different from the presentation currency are translated into the presentation currency as follows:

- assets and liabilities for the balance sheets presented are translated at the closing rate at the date of that balance sheets;
- income and expenses for the statements of comprehensive income are translated at average exchange rates (unless this is not a reasonable approximation of the cumulative effect of the rates prevailing on the transaction dates, in which case income and expenses are translated at the dates of the transactions); and all resulting exchange differences are recognized in other comprehensive income.

(iv) Other

On consolidation, exchange differences arising from the translation of any net investment in foreign entities, and of borrowings and other financial instruments designated as hedges of such investments, are recognized in other comprehensive income. When a foreign operation is sol or any borrowings forming part of the net investment are repaid, the associated exchange differences are reclassified to net loss, as part of the gain or loss on sale.

Goodwill and fair value adjustments arising on the acquisition of a foreign entity are treated as assets and liabilities of the foreign entities and translated at the closing rate.

e. Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. Amounts disclosed as revenue are net of returns, trade allowances, rebates and amounts collected on behalf of third parties.

The Group recognizes revenue when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the entity and specific criteria have been met for each of the Group's activities as described below. The Group bases its estimates on historical results, taking into consideration the type of customer, the type of transaction and the specifics of each arrangement.

Revenue is recognized for the major business activities as follows:

(i) Commercialization revenue

Development and commercialization revenue generally includes non-refundable up-front license and collaboration fees, milestone payments, the receipt of which is dependent upon the achievement of certain clinical, regulatory or commercial milestones, as well as royalties on product sales of licensed products, if and when such product sales occur, and revenue from the supply of products. Development and commercialization revenue was $15,004, $15,004 and $18,685 for the years ended June 30, 2015, 2014 and 2013, respectively.

Where such arrangements can be divided into separately identifiable components (each component constituting a separate earnings process), the arrangement consideration is allocated to the different components based on their relative fair values and recognized over the respective performance period in accordance with

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

IAS 18 Revenue. Where the components of the arrangement cannot be divided into separate units, the individual deliverables are combined as a single unit of accounting and the total arrangement consideration is recognized over the estimated collaboration period. Such analysis requires considerable estimates and judgments to be made by the Group, including the relative fair values of the various elements included in such agreements and the estimated length of the respective performance periods.

Amounts received prior to satisfying the revenue recognition criteria are recorded as deferred revenue in our consolidated balance sheets. Amounts expected to be recognized as revenue within the 12 months following the balance sheet date are classified as deferred revenue, current portion. Amounts not expected to be recognized as revenue within the 12 months following the balance sheet date are classified as deferred revenue, non-current portion.

Cephalon arrangement

In December 2010, the Group entered into a development and commercialization agreement (the "DCA") with Cephalon, Inc., now a wholly-owned subsidiary of Teva Pharmaceutical Industries Ltd (collectively "Teva"), which allows for Teva to obtain world-wide rights to commercialize specific products based on the Group's proprietary adult stem cell technology platform. As part of the DCA, the Group received $130,000 as a non-refundable up-front payment.

Further payments up to $1,700,000 may be received on achievement of certain regulatory milestones with respect to each product Teva may choose to capitalize. The milestones are based on approvals in specific indications of product candidates in certain major jurisdictions. The Group would also be entitled to receive future royalty payments for supply of commercialized product as escalating double digit percentage of net sales of certain product candidates. No such payments have been received.

The Group analyzed the arrangement to determine whether the components which include a license, participation in a joint steering committee, a development program, and manufacturing and supply services, can be separated or must be treated as a single transaction in assessing revenue recognition criteria.

As the Group's obligations in relation to the steering committee and the development program are substantive and cannot be readily separated from the initial license transfer, the Group has not accounted for the license as a separate component. As the Group cannot readily estimate the costs required to complete the development program, due to significant uncertainties as development is the joint responsibility of the Group and Teva, revenue has been recognized on a straight line basis over the estimated development term of the main product, being MPC-150-IM. If the Group shortens or lengthens the development period then the amount of revenues recognized would change.

For the years ended June 30, 2015, 2014 and 2013, the Group recognized $15,004, $15,004 and $18,685 of revenue respectively being the amortization of the initial payment over the estimated development program term. The Group has a policy of reviewing the estimated development program term on a quarterly basis. The estimated development program term is refined with reference to the Joint Steering Committee's expectation of the timeline to complete development. The Group extended the estimated development program timeline in the year ended June 30, 2013 following the Joint Steering Committee's approval of the program protocol and associated development timelines. No revenue has been recognized for any future development milestones or royalties specified in the DCA as we cannot reliably estimate whether we would become entitled to such payments.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

JCR arrangement

In October 2013, the Group acquired all of Osiris' business and assets. These assets included assumption of a collaboration agreement with JCR, a research and development oriented pharmaceutical company in Japan.

Under the JCR Agreement, JCR is responsible for all development and manufacturing costs including sales and marketing expenses. With respect to the First JCR Field, the Group is entitled to payments when JCR reaches certain development and commercial milestones and to escalating double-digit royalties. These royalties are subject to possible renegotiation downward in the event of competition from non-infringing products in Japan. With respect to the Second JCR Field, the Group is entitled to a double digit profit share. Revenue recognized under this model is limited to the amount of cash received or for which the Group is entitled, as JCR has the right to terminate the agreement at any time. Royalty revenue is recognized upon the sale of the related products provided the Group has no remaining performance obligations under the arrangement.

For the years ended June 30, 2015, 2014 and 2013, the Group recognized $2,000, $Nil and $Nil of commercialization revenue, respectively. This revenue was recognized on achievement of a substantive milestone being the filing for marketing approval in Japan for MSC product TEMCELL. No further performance obligations are required of the Group in relation to this income.

(ii) Interest revenue

Interest revenue is accrued on a time basis by reference to the principal outstanding and at the effective interest rate applicable, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount.

(iii) Research and development tax incentive

The Australian Government replaced the research and development tax concession with the research and development tax incentive from July 1, 2011. The provisions provide refundable or non-refundable tax offsets.

The research and development tax incentive applies to expenditure incurred and the use of depreciating assets in an income year commencing on or after July 1, 2011. A refundable tax offset is available to eligible companies with an annual aggregate turnover of less than AUD 20,000. Eligible companies can receive a refundable tax offset of 45% of their research and development spending. Up to June 30, 2013 the rate of the refundable tax offset is 45%, after that date the rate is 43.5%.

The Group's research and development activities are eligible under an Australian government tax incentive for eligible expenditure from July 1, 2011. Management has assessed these activities and expenditure to determine which are likely to be eligible under the incentive scheme. At each period end management estimates and recognizes the refundable tax offset available to the Group based on available information at the time.

f. Research and development undertaken internally

The Group currently does not have any capitalized development costs. Research expenditure is recognized as an expense as incurred. Costs incurred on development projects, which consist of preclinical and clinical trials, manufacturing development, and general research, are recognized as intangible assets when it is probable that the project will, after considering its commercial and technical feasibility, be completed and generate future economic benefits and its costs can be measured reliably.

The expenditure capitalized comprises all directly attributable costs, including costs of materials, services, direct labour and an appropriate proportion of overheads. Other development costs that do not meet these criteria are expensed as incurred. Development costs previously recognized as expenses, are not recognized as an asset in

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

a subsequent period, and will remain expensed. Capitalized development costs are recorded as intangible assets and amortized from the point at which the asset is ready for use on a straight-line basis over its useful life.

g. Income tax

The income tax expense or benefit for the period is the tax payable on the current period's taxable income based on the applicable income tax rate for each jurisdiction adjusted by changes in deferred tax assets and liabilities attributable to temporary differences and to unused tax losses.

The current income tax charge is calculated on the basis of the tax laws enacted or substantively enacted at the end of the reporting period in the countries where the Group's subsidiaries and associates operate and generate taxable income. Management periodically evaluates positions taken in tax returns with respect to situations in which applicable tax regulation is subject to interpretation. It establishes provisions where appropriate on the basis of amounts expected to be paid to the tax authorities.

Deferred income tax is provided in full, using the liability method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. However, the deferred income tax is not accounted for if it arises from initial recognition of an asset or liability in a transaction other than a business combination that at the time of the transaction affects neither accounting, nor taxable profit or loss. Deferred income tax is determined using tax rates (and laws) that have been enacted or substantially enacted by the end of the reporting period and are expected to apply when the related deferred income tax asset is realized or the deferred income tax liability is settled.

Deferred tax assets are recognized for deductible temporary differences and unused tax losses only if it is probable that future taxable amounts will be available to utilize those temporary differences and losses.

Deferred tax liabilities and assets are not recognized for temporary differences between the carrying amount and tax bases of investments in controlled entities where the parent entity is able to control the timing of the reversal of the temporary differences and it is probable that the differences will not reverse in the foreseeable future.

Deferred tax assets and liabilities are offset when there is a legally enforceable right to offset current tax assets and liabilities and when the deferred tax balances relate to the same taxation authority. Current tax assets and tax liabilities are offset where the entity has a legally enforceable right to offset and intends either to settle on a net basis, or to realize the asset and settle the liability simultaneously.

Current and deferred tax is recognized in net loss, except to the extent that it relates to items recognized in other comprehensive income or directly in equity. In this case, the tax is also recognized in other comprehensive income or directly in equity, respectively.

h. Leases

Leases in which a significant portion of the risks and rewards of ownership are not transferred to the Group as lessee are classified as operating leases (Note 15). Payments made under operating leases (net of any incentives received from the lessor) are charged to profit or loss on a straight-line basis over the period of the lease.

Lease income from operating leases where the Group is sub-leasing to a third party is recognized in income on a straight-line basis over the lease term.

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Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

i. Business combinations

The acquisition method of accounting is used to account for all business combinations, regardless of whether equity instruments or other assets are acquired. The consideration transferred for the acquisition of a subsidiary comprises the fair values of the assets transferred, the liabilities incurred and the equity interests issued by the Group. The consideration transferred also includes the fair value of any asset or liability resulting from a contingent consideration arrangement and the fair value of any pre-existing equity interest in the subsidiary. Acquisition-related costs are expensed as incurred. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are, with limited exceptions, measured initially at their fair values at the acquisition date. On an acquisition-by-acquisition basis, the Group recognizes any noncontrolling interest in the acquiree either at fair value or at the non-controlling interest's proportionate share of the acquiree's net identifiable assets.

The excess of the consideration transferred and the amount of any non-controlling interest in the acquiree over the fair value of the net identifiable assets acquired is recorded as goodwill. If those amounts are less than the fair value of the net identifiable assets of the subsidiary acquired and the measurement of all amounts has been reviewed, the difference is recognized directly in net loss as a bargain purchase.

Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value as at the date of exchange. The discount rate used is the entity's incremental borrowing rate, being the rate at which a similar borrowing could be obtained from an independent financier under comparable terms and conditions.

Contingent consideration is classified either as equity or a financial liability. Amounts classified as a financial liability are subsequently remeasured to fair value with changes in fair value recognized in profit or loss.

j. Impairment of assets

Goodwill and intangible assets that have an indefinite useful life are not subject to amortization and are tested annually for impairment or more frequently if events or changes in circumstances indicate that they might be impaired. Other assets are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

An impairment loss is recognized for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to dispose and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash inflows which are largely independent of the cash inflows from other assets or groups of assets (cash-generating units). Non-financial assets (other than goodwill) that have suffered impairment are reviewed for possible reversal of the impairment at the end of each reporting period.

k. Cash and cash equivalents

For the purpose of presentation in the statement of cash flows, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions, other short-term and highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

l. Trade and other receivables

Trade receivables and other receivables represent the principal amounts due at balance date less, where applicable, any provision for doubtful debts. An estimate for doubtful debts is made when collection of the full

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

amount is no longer probable and there is objective evidence of impairment. Debts which are known to be uncollectible are written off in the statement of comprehensive income. All trade receivables and other receivables are recognized at the value of the amounts receivable, as they are due for settlement within 60 days and therefore do not require remeasurement.

m. Investments and other financial assets

(i) Classification

The Group classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss,
- available-for-sale financial assets,
- loans and receivables, and
- held-to-maturity investments.

The classification depends on the purpose for which the investments were acquired. Management determines the classification of its investments at initial recognition and, in the case of assets classified as held-to-maturity, re-evaluates this designation at the end of each reporting period. See Note 5 for details about each type of financial asset.

(ii) Reclassification.

The Group may choose to reclassify a non-derivative trading financial asset out of the held for trading category if the financial asset is no longer held for the purpose of selling it in the near term. Financial assets other than loans and receivables are permitted to be reclassified out of the held for trading category only in rare circumstances arising from a single event that is unusual and highly unlikely to recur in the near term. In addition, the Group may choose to reclassify financial assets that would meet the definition of loans and receivables out of the held for trading or available-for-sale categories if the Group has the intention and ability to hold these financial assets for the foreseeable future or until maturity at the date of reclassification

Reclassifications are made at fair value as of the reclassification date. Fair value becomes the new cost or amortized cost as applicable, and no reversals of fair value gains or losses recorded before reclassification date are subsequently made. Effective interest rates for financial assets reclassified to loans and receivables and held-to-maturity categories are determined at the reclassification date. Further increases in estimates of cash flows adjust effective interest rates prospectively.

(iii) Recognition and derecognition.

Regular way purchases and sales of financial assets are recognized on trade-date, the date on which the Group commits to purchase or sell the asset. Financial assets are derecognized when the rights to receive cash flows from the financial assets have expired or have been transferred and the Group has transferred substantially all the risks and rewards of ownership.

When securities classified as available-for-sale are sold, the accumulated fair value adjustments recognized in other comprehensive income are reclassified to profit or loss as gains and losses from investment securities.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

(iv) Measurement

At initial recognition, the Group measures a financial asset at its fair value plus, in the case of a financial asset not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition of the financial asset. Transaction costs of financial assets carried at fair value through profit or loss are expensed in profit or loss.

Loans and receivables and held-to-maturity investments are subsequently carried at amortized cost using the effective interest method. Available-for-sale financial assets and financial assets at fair value through profit or loss are subsequently carried at fair value. Gains or losses arising from changes in the fair value are recognized as follows:

- for 'financial assets at fair value through profit or loss' – in profit or loss within other income or other expenses
- for available for sale financial assets that are monetary securities denominated in a foreign currency – translation differences related to changes in the amortized cost of the security are recognized in profit or loss and other changes in the carrying amount are recognized in other comprehensive income
- for other monetary and non-monetary securities classified as available for sale in other comprehensive income.

Dividends on financial assets at fair value through profit or loss and available-for-sale equity instruments are recognized in profit or loss as part of revenue from continuing operations when the Group's right to receive payments is established.

Interest income from financial assets at fair value through profit or loss is included in the net gains/(losses). Interest on available-for-sale securities calculated using the effective interest method is recognized in the income statement as part of revenue from continuing operations.

Details on how the fair value of financial instruments is determined are disclosed in Note 5(f).

(v) Impairment

The Group assesses at the end of each reporting period whether there is objective evidence that a financial asset or group of financial assets is impaired. A financial asset or a group of financial assets is impaired and impairment losses are incurred only if there is objective evidence of impairment as a result of one or more events that occurred after the initial recognition of the asset (a 'loss event') and that loss event (or events) has an impact on the estimated future cash flows of the financial asset or group of financial assets that can be reliably estimated. In the case of equity investments classified as available-for-sale, a significant or prolonged decline in the fair value of the security below its cost is considered an indicator that the assets are impaired.

Assets carried at amortized cost

For loans and receivables, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows (excluding future credit losses that have not been incurred) discounted at the financial asset's original effective interest rate. The carrying amount of the asset is reduced and the amount of the loss is recognized in profit or loss. If a loan or held-to-maturity investment has a variable interest rate, the discount rate for measuring any impairment loss is the current effective interest rate determined under the contract. As a practical expedient, the Group may measure impairment on the basis of an instrument's fair value using an observable market price.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

If, in a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognized (such as an improvement in the debtor's credit rating), the reversal of the previously recognized impairment loss is recognized in profit or loss.

Assets classified as available-for-sale

If there is objective evidence of impairment for available-for-sale financial assets, the cumulative loss –measured as the difference between the acquisition cost and the current fair value, less any impairment loss on that financial asset previously recognized in profit or loss – is removed from equity and recognized in profit or loss.

Impairment losses on equity instruments that were recognized in profit or loss are not reversed through profit or loss in a subsequent period.

If the fair value of a debt instrument classified as available-for-sale increases in a subsequent period and the increase can be objectively related to an event occurring after the impairment loss was recognized in profit or loss, the impairment loss is reversed through profit or loss

n. Derivatives

Derivatives are initially recognized at fair value on the date a derivative contract is entered into and are subsequently remeasured to their fair value at the end of each reporting period.

(i) Derivatives that do not qualify for hedge accounting

Certain derivative instruments do not qualify for hedge accounting. Changes in the fair value of any derivative instrument that does not qualify for hedge accounting are recognized immediately in profit or loss and are included in other income or other expenses.

o. Property, plant and equipment

Plant and equipment are stated at historical cost less accumulated depreciation and impairment. Cost includes expenditure that is directly attributable to the acquisition of the item.

Subsequent cost are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associates with the item will flow to the Group and the cost of the item can be measured reliably. All other repairs and maintenance are charged to profit and loss during the reporting period in which they are incurred.

Property, plant and equipment, other than freehold land, are depreciated over their estimated useful lives using the straight line method (see Note 6(a)).

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at the end of each reporting period.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount.

Gains and losses on disposal of plant and equipment are taken into account in determining the profit for the year.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

p. Intangible assets

(i) Goodwill

Goodwill is measured as described in Note 21(i) – Business combinations. Goodwill on acquisition of subsidiaries is included in intangible assets (Note 6(b)). Goodwill is not amortized but it is tested for impairment annually or more frequently if events or changes in circumstances indicate that it might be impaired, and is carried at cost less accumulated impairment losses. Gains and losses on the disposal of an entity include the carrying amount of goodwill relating to the entity sold.

Goodwill is allocated to cash generating units for the purpose of impairment testing. The allocation is made to those cash generating units or groups of cash generating units that are expected to benefit from the business combination in which the goodwill arose, identified according to operating segments (Note 2).

(ii) Trademarks and licenses

Trademarks and licenses have a finite useful life and are carried at cost less accumulated amortization and impairment losses.

(iii) In-process research and development acquired

In-process research and development that has been acquired as part of a business acquisition is considered to be an indefinite life intangible asset on the basis that it is incomplete and cannot be used in its current form. Indefinite life intangible assets are not amortized but rather are tested for impairment annually at 31 May of each year, or whenever events or circumstances present an indication of impairment.

In-process research and development will continue to be tested for impairment until the related research and development efforts are either completed or abandoned. Upon completion of the related research and development efforts, management determines the remaining useful life of the intangible assets and amortizes them accordingly. In order for management to determine the remaining useful life of the asset, management would consider the expected flow of future economic benefits to the entity with reference to the product life cycle, competitive landscape, obsolescence, market demand, any remaining patent useful life and various other relevant factors.

In the case of abandonment, the related research and development efforts are considered impaired and the asset is fully expensed.

q. Trade and other payables

Payables represent the principal amounts outstanding at balance date plus, where applicable, any accrued interest. Liabilities for payables and other amounts are carried at cost which approximates fair value of the consideration to be paid in the future for goods and services received, whether or not billed. The amounts are unsecured and are usually paid within 30 to 60 days of recognition.

r. Provisions

Provisions are recognized when the Group has a present legal obligation as a result of a past event, it is probable that the Group will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation.

Provisions are measured at the present value of management’s best estimate of the expenditure required to settle the present obligation at the end of the reporting period. The discount rate used to determine the present value is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. The increase in the provision due to the passage of time is recognized as interest expense.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

Provisions are recorded on acquisition of a subsidiary, to the extent they relate to a subsidiary's contingent liabilities, if it relates to a past event, regardless of whether it is probable the amount will be paid.

s. Employee benefits

A liability is recognized for benefits accruing to employees in respect of wages and salaries, bonuses, annual leave and long service leave.

Liabilities recognized in respect of employee benefits which are expected to be settled within 12 months after the end of the period in which the employees render the related services are measured at their nominal values using the remuneration rates expected to apply at the time of settlement.

Liabilities recognized in respect of employee benefits which are not expected to be settled within 12 months after the end of the period in which the employees render the related services are measured as the present value of the estimated future cash outflows to be made by the Group in respect of services provided by employees up to reporting date.

The obligations are presented as current liabilities in the balance sheet if the entity does not have an unconditional right to defer settlement for at least twelve months after the reporting period, regardless of when the actual settlement is expected to occur.

Termination benefits are payable when employment is terminated by the Group before the normal retirement date, or when an employee accepts voluntary redundancy in exchange for these benefits. The Group recognizes termination benefits at the earlier of the following dates: when the Group can no longer withdraw the offer of those benefits and when the entity recognizes costs for a restructuring that is within the scope of IAS 37 and involves the payment of termination benefits.

t. Share-based payments

Share-based payments are provided to eligible employees, directors and consultants via the Employee Share Option Plan ("ESOP") and the Australian Loan Funded Share Plan ("LFSP"). The terms and conditions of the LFSP are in substance the same as the employee share options and therefore they are accounted for on the same basis.

Equity-settled share-based payments with employees and others providing similar services are measured at the fair value of the equity instrument at grant date. Fair value is measured using the Black-Scholes model. The expected life used in the model has been adjusted, based on management's best estimate, for the effects of non-transferability, exercise restrictions, and behavioural considerations. It does not make any allowance for the impact of any service and non-market performance vesting conditions. Further details on how the fair value of equity-settled share-based transactions has been determined can be found in Note 18.

The fair value determined at the grant date of the equity-settled share-based payments is expensed on a straight-line basis over the vesting period, based on management's estimate of shares that will eventually vest, with a corresponding increase in equity. At the end of each period, the entity revises its estimates of the number of shared-based payments that are expected to vest based on the non-market vesting conditions. It recognizes the impact of the revision to original estimates, if any, in profit or loss, with a corresponding adjustment to equity.

Mesoblast Limited

Notes to Consolidated Financial Statements (continued)

21. Summary of significant accounting policies (continued)

u. Contributed equity

Ordinary shares are classified as equity.

Transaction costs arising on the issue of equity instruments are recognized directly in equity as a reduction of the proceeds of the equity instruments to which the costs relate. Transaction costs are the costs that are incurred directly in connection with the issue of those equity instruments and which would not have been incurred had those instruments not been issued.

v. Loss per share

(i) Basic losses per share

Basic losses per share is calculated by dividing:

- the loss attributable to equity holders of the Group, excluding any costs of servicing equity other than ordinary shares;
- by the weighted average number of ordinary shares outstanding during the financial year, adjusted for bonus elements in ordinary shares issued during the year.

(ii) Diluted losses per share

Diluted losses per share adjusts the figures used in the determination of basic earnings per share to take into account

- the after income tax effect of interest and other financing costs associated with dilutive potential ordinary shares; and
- the weighted average number of shares assumed to have been issued for no consideration in relation to dilutive potential ordinary shares.

w. Goods and services tax (“GST”)

Revenues, expenses and assets are recognized net of the amount of GST except where the GST incurred on a purchase of goods and services is not recoverable from the taxation authority, in which case the GST is recognized as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated with the amount of GST included. The net amount of GST recoverable from, or payable to, the taxation authority is included as part of receivables or payables in the Balance Sheet.

Cash flows are included in the statement of cash flow on a gross basis. The GST component of cash flows arising from investing and financing activities, which is recoverable from, or payable to, the taxation authority, are classified as operating cash flows.

x. Comparative figures

Comparatives have been reclassified where necessary so as to be consistent with the figures presented in the current year.

y. Rounding of amounts

Amounts in the financial statements have been rounded off to the nearest thousand dollars, or in certain cases, the nearest dollar.

American Depositary Shares
representing ordinary shares

Mesoblast Limited

Prospectus

J.P. Morgan **Credit Suisse**

, 2015

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information that is different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, ADSs only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our ADSs.

No action is being taken in any jurisdiction outside the United States to permit a public offering of the ADSs or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus applicable that jurisdiction.

Until , 2015, (the 25th day after the date of this prospectus) all dealers that buy, sell or trade in our ADSs, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to their unsold allotments or subscriptions.

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 961M, 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 trade 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 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 Indemnity, Insurance and Access, the forms of which are filed as Exhibit 10.23 and 10.24 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, 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 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 April 12, 2015, we issued 15,298,837 ordinary shares to Celgene Corporation. Consideration per share was A$3.82 per share, for an aggregate amount of approximately A$58.5 million. The issuance was exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act.
- On March 14, 2013, we issued 26,970,979 ordinary shares to institutional investors in Australia and certain other countries. Consideration per share was A$6.30, for an 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 an 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 an 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 granted the following options to certain of our officers, directors, employees and consultants under our Employee Stock Option Plan:

- options to purchase 9,825,000 of our ordinary shares at exercise prices per share ranging from A$4.02 to A$5.80 in the year ended June 30, 2015. Of those 9,825,000 options, 2,985,000 options were granted as remuneration for the repurchase and cancellation of 2,985,000 of our ordinary shares held in trust for certain of our officers.
- options to purchase 5,395,000 of our ordinary shares at exercise prices per share ranging from A$5.92 to A$6.79 in the year ended June 30, 2014; and
- options to purchase 4,345,000 of our ordinary shares at exercise prices per share ranging from A$6.29 to A$6.70 in the year ended June 30, 2013.

In addition, we issued the following fully-paid ordinary shares upon exercise of employee options, ranging from A$0.37 to A$8.48 per share:

- 1,043,798 ordinary shares in the year ended June 30, 2015;
- 987,300 ordinary shares in the year ended June 30, 2014; and
- 2,552,816 ordinary shares in the year ended June 30, 2013.

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 New York, New York on this day of , 2015.

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:

Signature	Title	Date
_____ **Brian Jamieson**	Chairman of the Board of Directors	, 2015
_____ **Silviu Itescu**	Executive Director and Chief Executive Officer (Principal Executive Officer)	, 2015
_____ **Paul Hodgkinson**	Chief Financial Officer (Principal Financial and Accounting Officer)	, 2015
_____ **William Burns**	Director	, 2015
_____ **Donal O'Dwyer**	Director	, 2015
_____ **Eric Rose**	Director	, 2015
_____ **Ben-Zion Weiner**	Director	, 2015
_____ **Michael Spooner**	Director	, 2015

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 New York, New York on , 2015.

By _____

Name: **Michael Schuster**
Title: **New Product and Technology Evaluation, Investor Relations**

EXHIBIT INDEX

Exhibit Number	Description
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 , as depositary, and Owners and Holders of the American Depositary Shares.
4.2*	Form of American Depositary Receipt evidencing American Depositary Shares (included in Exhibit 4.1).
5.1	Form of 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	Amendment #1 to Purchase Agreement by and between Mesoblast International Sàrl and Osiris Therapeutics, Inc., dated December 17, 2014.
10.9	License Agreement by and between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., Ltd. dated August 26, 2003.
10.10	Amendment 1 to License Agreement by and between Osiris Acquisition II, Inc. and JCR Pharmaceuticals Co., Ltd., dated June 27, 2005.
10.11	Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated January 1, 1993.
10.12	Amendment Number 1 to Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated November 3, 1993.
10.13	Amendment to the Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated October 18, 1999.
10.14	Third Amendment to Technology Transfer and License Agreement by and between Case Western Reserve University and Osiris Therapeutics, Inc., dated October 27, 2003.
10.15	Intellectual Property Assignment Deed by and between Mesoblast Limited and Medvet Science Pty Ltd, dated October 4, 2004.
10.16	Deed of Option and Assignment and Termination, by and between Mesoblast Limited and Peter MacCallum Cancer Institute, dated August 10, 2010.

Exhibit Number	Description
10.17#*	Loan Funded Share Plan Rules, as amended, and form of loan agreement thereunder.
10.18#	Employee Share Option Plan Rules, and form of option agreement thereunder.
10.19#	Employment Agreement, dated August 8, 2014, by and between Mesoblast Limited and Silviu Itescu.
10.20	Agreement of Sub-Sublease, by and between Mesoblast Limited and Carlo Pazolini (USA), LLC, dated September 23, 2013.
10.21	Sublease, by and between Mesoblast Limited and CIT Group Inc., dated September 27, 2011.
10.22	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.
10.23	Form of 2012 Deed of Indemnity, Insurance and Access.
10.24	Form of 2014 Deed of Indemnity, Insurance and Access.
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

* To be filed by amendment.
\# Indicates management contract or compensatory plan.

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**.

CERTIFICATE

Issued by the

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

Jeffrey Lucy
Acting Chairman

Exhibit 3.2

Constitution of Mesoblast Limited

Melbourne office
Ref: AXG.LGT.1753918

Table of Contents

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 CHESS 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.

Exhibit 5.1

[Form of Opinion of Minter Ellison]

[ ] September 2015

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Mesoblast Limited
55 Collins Street
Melbourne Vic 3000

Dear Sirs

Mesoblast Limited Registration Statement on Form F-1

1. Background

1.1 We have acted as Australian legal counsel to Mesoblast Limited (**Company**), a company incorporated under the laws of the Commonwealth of Australia, in connection with its public filing of a registration statement on Form F-1 as amended to the date of this letter (**Registration Statement**) under the U.S. Securities Act of 1933, as amended (**Securities Act**) with the U.S. Securities and Exchange Commission (**Commission**).

1.2 The Registration Statement relates to the public offering by the Company, as set out in the prospectus forming part of the Registration Statement (**Prospectus**) of American Depositary Shares (**ADS**) representing fully paid ordinary shares without par value in the Company (**Shares**) to be issued and sold by the Company.

1.3 We understand that the ADS are to be sold to the Underwriters for resale to the public as described in the Registration Statement and pursuant to an underwriting agreement, to be entered into between the Company and the underwriters (**Underwriting Agreement**).

1.4 The Registration Statement, including the Prospectus, is referred to in this letter collectively (and unless the context requires otherwise) as the **Documents**.

2. Documents examined and searches conducted and relied on by us

2.1 For the purposes of this opinion, we have examined and relied on copies of the following documents:

(a) the Registration Statement, in the form received by us on [ ] 2015;

(b) a draft of the Prospectus forming part of that Registration Statement;

(c) a certificate dated [ ] 2015 signed by the directors of the Company (**Directors**) certifying the accuracy and completeness of the constitution of the Company, and minutes of meetings of the Directors held on [ ] 2015 and [ ] 2015;

(d) the documents referred to in the certificate;

(e) a search of the electronically available public register of the Company available on the on-line database of the Australian Securities and Investments Commission on [ ] am/pm on [ ] 2015; and

(f) a search of the Company on the publicly available electronic Insolvency Notices register on [ ] am/pm on [ ] 2015.

3. Assumptions in providing this letter

For the purposes of this opinion, we have assumed:

(a) the genuineness of all signatures;

(b) the authenticity and completeness of all documents submitted to us as originals;

(c) all documents submitted to us as copies conform with the originals, and all copy documents are complete and up to date;

(d) all relevant original documents continue in full force and effect and all signatures, seals, dates, duty stamps and markings appearing on all documents and copy documents submitted to us are genuine;

(e) any documents which purport to be governed by the law of any jurisdiction other than the laws of the Commonwealth of Australia are legal, valid and binding obligations of all parties to those documents and none of the execution, delivery or performance of any document by any party to the document violates or contravenes or is rendered invalid, not binding or unenforceable under any applicable law under any jurisdiction other than the laws of the Commonwealth of Australia; and

(f) all public records and searches which we have examined are accurate and the information disclosed by the searches conducted by us is true and complete and such information has not since been altered and the searches did not fail to disclose any information which had been delivered for registration, lodgment or filing against the Company's records but which did not appear on the public records at the date of our search.

4. Limitations and qualifications

4.1 This opinion, which is governed by and to be interpreted in accordance with, the laws of the State of Victoria, Australia, is given only with respect to the laws of that State and of the Commonwealth of Australia that are in effect on the date of this opinion. We have not investigated and do not express any view about, any law other than that of Australia.

4.2 We have relied on the assumptions contained in section 129 of the Corporations Act with respect to the Company.

4.3 We express no view on any matter requiring skill or expertise of a non-legal nature, such as financial, statistical, accounting, commercial or actuarial matters.

4.4 This opinion is limited to the matters stated in this letter, and no opinion is implied or may be inferred beyond the matters expressly stated.

5. Opinion

5.1 Based on and subject to the above, in our opinion:

(a) the Company is duly incorporated and validly existing under the laws of Australia and in 'good standing' (as the term 'good standing' is not defined under the laws of the Commonwealth of Australia, we have assumed that the expression means that there are no current orders for the winding up of the Company, no appointment of a liquidator of the Company, no appointment of a receiver to all or a substantial part of its assets and no notice of its proposed deregistration); and

(b) on issue of the Shares against payment for the Shares offered under the Documents, the Shares will be validly issued, fully paid and 'non-assessable' (for the purposes of this opinion, the term 'non-assessable' when used to describe the liability of a person as the registered holder of shares is not a concept known under the laws of the Commonwealth of Australia, so we have assumed those words to mean that holders of such Shares, having fully paid all amounts due on the issue of such Shares, are under no personal liability under the Corporations Act to contribute to the assets and liabilities of the Company on a winding up of the Company in their capacity solely as holders of such Shares).

5.2 This opinion is deemed to be given as at the date of the effectiveness of the Registration Statement and will speak as at that date and we do not undertake any obligation to advise you of any changes (including but not limited to any subsequently enacted, published or reported laws, regulations or binding authority) that may occur or come to our attention after the date of this letter which may affect our opinion.

6. Consent

We consent to the use of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus. In giving this consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated under that Act.

Yours faithfully

Partner

Contact: Bart Oude-Vrielink Direct phone: +61 3 8608 2942 Direct fax: +61 3 8608 1151
Email: bart.oude-vrielink@minterellison.com
Partner responsible: John Steven Direct phone: +61 3 8608 2934
Our reference: JJS:BFO 1070678

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 10.1

EXECUTION COPY
CONFIDENTIAL

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.

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 beings 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:

Term	Section Defined	Term	Section Defined
Agreement	Preamble	Enforcement Action	9.3(b)
Alliance Manager	3.2	[***]	[***]
Angioblast	Preamble	[***]	[***]
Angioblast Competing Activities	2.4(b)	[***]	[***]
Angioblast Indemnitees	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 Indemnitees	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		

Term	Section Defined
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 is 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

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

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

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.

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 synopsizes to the JSC for such informational purposes. In the event a Third Party is unwilling to allow Angioblast provide such synopsizes to the JSC, then Angioblast shall use good faith efforts to obtain the right to provide such synopsizes 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 synopsizes is likely to present a material adverse risk to the Products for use in the Field in the Territory. For clarity, (i) any synopsizes 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 synopsizes 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

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

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.

(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

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 [***],

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

(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.

(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 a 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;

(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

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 Indemnitee 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 Indemnitee. 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 Indemnitee; 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 "Indemnitee") shall promptly notify the other Party (the "Indemnitor") in writing of any Third Party Claim, in respect of which the Indemnitee 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 Indemnitee 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 Indemnitee otherwise than under this ARTICLE XII. The Indemnitee 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

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

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.

By: _____

Name: _____

Title: _____

CEPHALON INC.

By: _____

Name: _____

Title: _____

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.

CONFIDENTIAL

EXHIBIT 1.6
[***]

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.

CONFIDENTIAL

EXHIBIT 1.8
[***]

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.

CONFIDENTIAL

EXHIBIT 3.1
[***]

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.

CONFIDENTIAL

EXHIBIT 4.2
[***]

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.

CONFIDENTIAL

EXHIBIT 6.3
[***]

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.

CONFIDENTIAL

EXHIBIT 7.4
[***]

EXHIBIT 7.8
[***]

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.

CONFIDENTIAL

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.

(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

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.

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 10.2

CONFIDENTIAL

● 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").

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.

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 Anigoblast, 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 shell 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

[***]

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 10.3

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.

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.

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.

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.

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

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

Executive Steering Committee Charter

[***]

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 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"

This Clinical Trial Agreement (the "Agreement"), effective as of July 28th, 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.

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.

"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.

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

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

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 1of 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.

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.

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

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

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

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.

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 WARRANTS 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.

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.

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

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

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:

/s/ Gary H. Gibbons	7/24/14
Gary H. Gibbons, MD Director, NHLBI	Date
/s/ Michael Lauer	7/22/14
Dr. Michael Lauer, Director, DCVS, NHLBI	Date

FOR COMPANY:

/s/ Donna Skerrett	7/28/14
(Signature)	Date

Donna Skerrett, MD, MS
Chief Medical Officer
Mesoblast, Inc.
275 Madison Avenue
New York. NY 10016

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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 even 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' 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	/s/ Kevin Hollingsworth
Signature of Director	Signature of Secretary
Brian Jamieson	Kevin Hollingsworth
Name of Director (please print)	Name of Secretary (please print)

Executed by Cephalon International Holdings, Inc. by its duly authorised representative/s:

Signature of Director	Signature of Director/Secretary
Name of Director (please print)	Name of Director/Secretary (please print)

Exhibit 10.6

Lonza

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:

No. of months prior to scheduled delivery	Cancellation Payment (% of amounts otherwise due for cancelled order)*
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

* 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 storages 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 be 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 though 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) S**TRO-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:

Percentage of Second Singapore Suite Capacity	**Time Period**
[***]	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

conforming 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 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.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last signed by the Parties hereto.

MESOBLAST SWITZERLAND SA

_____ By: _____

Date Name:
Title:

LONZA WALKERSVILLE, INC.

_____ By: _____

Date Name:
Title:

LONZA BIOSCIENCE SINGAPORE PTE. LTD.

_____ By: _____

Date Name:
Title:

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-compendia 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

Lonza

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)

Lonza

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 Pan 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 alterative 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.

Lonza

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):

Percentage of Purpose-Built Facility Capacity	Time Period
[***]	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:

Percentage of Worldwide Requirements	Time Period
[***]	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):

Milestone Event Regarding Construction and Establishment of Purpose-Built Facility	Percentage of Total Escrow Amount to be Placed in Escrow
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	[***]

Lonza

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

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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EXHIBITS

SCHEDULES

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 components(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.

Definition	Section/Exhibit
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

Definition	Section/Exhibit
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)(v) 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 counter-party 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**

/s/ Challancin Ralph	/s/ Silviu Itescu
Signature of director	Signature of director
Challancin Ralph	Silviu Itescu
Print name above	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: _____

Print Name: _____

Title: _____

ASSIGNEE:

Executed by **MESOBLAST INTERNATIONAL SÁRL**

_____ _____

Signature of director Signature of director

_____ _____

Print name above 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 Sàri, 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: _____

Print Name: _____

Title: _____

BUYER:

Executed by **MESOBLAST INTERNATIONAL SÁRL**)
)
)

_____
Signature of director

_____
Print name above

_____
Signature of director

_____
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: _____

Print Name: _____

Title: _____

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: _____

Print Name: _____

Title: _____

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

_____
NOTARY PUBLIC

Acknowledged:

MESOBLAST INTERNATIONAL SARL

By: _____

Print Name: _____

Title: _____

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

_____
NOTARY PUBLIC

Attachment 1 to Intellectual Property Assignment

ATTACHMENT 1 TO INTELLECTUAL PROPERTY ASSIGNMENT

Assigned Patents

Attachment 2 to Intellectual Property Assignment

ATTACHMENT 2 TO INTELLECTUAL PROPERTY ASSIGNMENT

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	Signature of director or company secretary* *delete whichever does not apply
Name (please print)	Name (please print)

Executed by)

Executed by **Osiris Therapeutics Inc.** by its authorized representative:)

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 societé a responsibilité 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 retainment 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	Signature of director
_____	_____
Name (please print)	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 1 – Scope of Transition Services

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

AMENDMENT #1 TO PURCHASE AGREEMENT
between
Osiris Therapeutics, Inc
("OTI")
and
Mesoblast International Sàrl
("MSB")

WHEREAS Osiris and MSB entered into a Purchase Agreement on 10 October 2013 (the "**Agreement**"); and

WHEREAS the parties now wish to amend the Agreement as set forth in this amendment (the "**Amendment**").

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. A new clause 3.1(c)(vi) will be added to the agreement as follows:

> "In the event that Mesoblast Limited has American Depositary Shares listed on the New York Stock Exchange or NASDAQ ("MSB ADSs"), Mesoblast may elect to issue MSB ADSs to OTI as Contingent Consideration or Additional Consideration under this Agreement, instead of MSB Ordinary Shares. If Mesoblast makes this election, (1) the relevant provisions of this Agreement relating to issue of MSB Ordinary Shares will apply mutatis mutandis to an issue of MSB ADSs, including so that any references to the ASX or Listing Rules are appropriately supplemented by references to the relevant stock exchange on which the ADSs are listed and the relevant operating rules of that stock exchange, and (2) the VWAP shall be computed based on the volume weighted average price (in U.S. Dollars) of MSB ADSs on the New York Stock Exchange or NASDAQ."

2. All other terms and conditions of the Agreement shall remain unchanged.

3. Words and phrases defined in the Agreement shall bear the same meaning where used in this Amendment.

4. The Agreement shall be construed in conjunction with this Amendment as an integral part thereof and shall remain of full force and effect, save as specifically amended in this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the last date of signature.

Osiris Therapeutics, Inc

By: /s/ Philip R. Jacoby, Jr.

Name & Title: Philip R. Jacoby, Jr.
Chief Financial Officer

Date: 16/12/2014

Mesoblast International Sàrl

By: /s/ Ralph Challancin

Name & Title: Ralph Challancin
Director

Date: 17/12/2014

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 10.9

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.

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.

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 h s 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.

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.

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:

(a) Five Hundred Thousand Dollars ($500,000.00) upon OSIRIS' completing the technology transfer, including technical assistance, of Section 3.1(a).

(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 Pasty 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.

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.

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.

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.

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.

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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

[***]

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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

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 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 10e6/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.

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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.

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Exhibit 10.10

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]

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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 statue, 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 mall, 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:

/s/ R. James Henderson

Name: R. James Henderson
Title: VP Finance & Administration
Date: March 25, 1993

OSIRIS:
FOR OSIRIS THERAPEUTICS, INC.

/s/ James S. Burns

Name: James S. Burns
Title: President
Date: March 30, 1993

Appendix A

OSIRIS THERAPEUTICS, INC.

Founders & Case Western Reserve University Capitalization

FOUNDING SCIENTISTS*			FOUNDERS		
Shareholder	**Shares**	**%**	**Shareholder**	**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.

Exhibit 10.12

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 entirely 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 WHEROF, 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

By: /s/ Casey Porto
Name: Casey Porto
Title: Associate Vice President
Date: 11-3-03

OSIRIS THERAPEUTICS, INC.

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 18th 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	BY:	(illegible)
Title:	Provost	Title:	Acting Pres/CEO
Date:	10/18/99	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 /s/ Casey Porto
Title Casey Porto, Associate Vice President, Technology Transfer Case Western Reserve University

OSIRIS THERAPEUTICS, INC.

By /s/ Donald W. Fallon
Title Donald W. Fallon
VP, Finance & CEO

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

Table of Contents

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.

Operative Provisions

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 €;

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 S*ystem (*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:

Clone	Isotype	Antigen
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	?	? Megakaryoctes
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)

Clone	Isotype	Antigen
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)		/s/ Dr. Frances Guyett
Signature of director		Signature of director or company secretary* *delete whichever does not apply
(illegible)		Dr. Frances Guyett
Name (please print)		Name (please print)
Executed by **Angioblast Systems, Incorporated** in accordance with its Constitution by its duly authorised officers	)	
		/s/ Silviu Itescu
Signature of authorised officer		Signature of authorised officer
		Silviu Itescu
Name (please print)		Name (please print)

Exhibit 10.16

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 Par**ty) 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		/s/ Craig Bennett
Signature of witness		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.
Les Manson		C. A Bennett
Name of witness (please print)		Name of authorised representative (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:	))))	CEO, Peter Mac 23 July, 2010
/s/ Kate O'Callahan		/s/ Silviu Itescu
Signature of witness		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.
Kate O'Callahan		Silviu Itescu
Signature of witness (please print)		Name of authorised representative (please print) Executive Director 10 August 2010

Exhibit 10.18

Rules of Employee Share Option Plan

Mesoblast Limited
ACN 109 431 870

Middletons Lawyers & Mesoblast

Dated: 10 November 2011

Melbourne office
Ref:LDM.LGT.1753918

Table of Contents

Mesoblast Limited Employee Share Option Plan

1. The plan

The purpose of the Plan is to provide Eligible Employees with an incentive to remain with the Group and to improve the longer-term performance of the Company and its return to shareholders. It is intended that the Plan will enable the Group to retain and attract skilled and experienced employees and provide them with the motivation to make the Group more successful.

2. Eligibility

The Board may determine at any time that any Eligible Employee is not entitled to participate in the Plan if the Eligible Employee's participation would be unlawful.

3. Participation

3.1 Invitation to participate

Subject to these rules, the Board may invite any Eligible Employee selected by it to participate in the Plan.

3.2 Letter of offer to participate

The Board must give to each Eligible Employee invited to participate in the plan, a letter of offer to participate, together with the following information relating to the Options allocated to the Eligible Employee:

(a) the date of grant or intended date of grant;

(b) the total number of Options to be granted;

(c) the Exercise Period;

(d) the Exercise Price or the method of determining the Exercise Price;

(e) the Exercise Conditions attaching to the Options (if any);

(f) the Disposal Restrictions attaching to any Shares issued on exercise (if any);

(g) the Forfeiture Conditions attaching to the Options (if any);

(h) any other terms and conditions relating to the grant which, in the opinion of the Board, are fair and reasonable but not inconsistent with these rules;

(i) in respect of the initial grant made to an Eligible Employee, a summary, or a copy of these rules; and

(j) any other information or documents required to be notified by the Corporations Act or the Listing Rules.

3.3 Participant bound by application form, rules and constitution

By completing and returning the Application Form, a Participant agrees to be bound by the terms of the Application Form, these rules and the Constitution.

4. Grant of options

4.1 Grant of options

The Board may grant Options to a Participant on acceptance of a duly signed and completed Application Form.

4.2 No payment for options

Unless otherwise determined by the Board, no payment is required for the grant of Options under the Plan.

4.3 Options non-transferable

An Option granted under the Plan is not capable of being transferred or encumbered by a Participant, unless the Board determines otherwise. The Company has no obligation to apply for quotation of the Options on the ASX.

4.4 Option certificate

The Company must issue a Certificate to a Participant in respect of the Options granted to that Participant. The Company must comply with the provisions of the Constitution, the Listing Rules and the Corporations Act relating to the issue of the Certificate.

4.5 Limit on issues of new shares

The number of Shares that would be issued were Options granted under this rule 4 to be exercised, when aggregated with the number of Shares that would be issued were each outstanding offer or option to acquire unissued shares, being an offer made or option acquired pursuant to the Plan or any other employee share scheme extended only to employees or directors of the Group, to be accepted or exercised (as the case may be), disregarding any offer made, or option acquired or share issued by way of or as a result of an offer to directors of the Company, must not exceed:

(a) In respect of Shares over which US incentive stock options may be issued 10,000,000 and

(b) In respect of options issued to Australian residents, that limit imposed under ASIC Class Order [CO 03/184]

5. Exercise of options

5.1 Manner of exercise of options

The exercise of any Option granted under the Plan may only be effected in such form and manner as the Board may prescribe.

5.2 Exercise conditions

Subject to rules 5.3 and 6, an Option granted under the Plan may only be exercised:

(a) if all the Exercise Conditions have been met;

(b) if the Exercise Price has been paid to the Company or as the Company may direct; and

(c) within the Exercise Period relating to the Option.

An Option granted under the Plan may not be exercised once it has lapsed.

5.3 Control event

Notwithstanding rule 5.2, the Board may determine that an Option may be exercised, whether or not any or all applicable Exercise Conditions have been met, on the occurrence of a Control Event.

5.4 Issue or transfer of shares on exercise

Following exercise of an Option by a Participant, the Company must, within such time as the Board determines, allot and issue or procure the transfer to the Participant of the number of Shares in respect of which the Option has been exercised, credited as fully paid.

5.5 Shares rank equally

Subject to the satisfaction of any applicable Disposal Restrictions, Shares allotted and issued under the Plan must rank equally in all respects with all other Shares from the date of allotment and issue, including:

(a) voting rights; and

(b) entitlements to participate in:

(i) distributions and dividends; and

(ii) future rights issues and bonus issues,

where the record date for determining entitlements falls on or after the date of allotment and issue.

5.6 Quotation on ASX

The Company must apply for quotation on the official list of the ASX of Shares allotted and issued on the exercise of Options as soon as practicable after the allotment and issue of those Shares, so long as Shares are quoted on the official list of ASX at that time.

5.7 Financial assistance

The Company may financially assist a person to pay for the grant of an Option, to pay any Exercise Price for an Option or to acquire Shares under the Plan, subject to compliance with the provisions of the Corporations Act and the Listing Rules relating to financial assistance.

6. Cessation of appointment/employment and lapsing of options

6.1 Cessation of employment as a Bad Leaver

If upon the Participant ceasing employment, the Board determines that the Participant is a Bad Leaver, all rights, entitlements and interests in any unexercised Options (including those that are Vested Options) held by the Participant will be forfeited and will lapse immediately.

6.2 Cessation of employment as a Leaver

If upon the Participant ceasing employment, the Board determines the Participant is a Leaver:

(a) A Leaver may retain Vested Options, however, they must be exercised within 60 days of cessation of employment (or within a longer period if so determined by the Board), after which time they will lapse.

(b) Unvested Options will normally be forfeited and lapse.

6.3 Liquidation

On Liquidation, all Options which are not Vested Options will lapse.

6.4 Fraud

If, in the opinion of the Board, a Participant (or, where a Participant is a person nominated by an Eligible Employee, the employee or director who nominated the Participant) has acted fraudulently or dishonestly, the Board may determine that any Option granted to that Participant should lapse, and the Option will lapse accordingly.

6.5 Forfeiture conditions

An Option will lapse on the occurrence of a Forfeiture Condition relating to that Option, unless the Board determines otherwise.

6.6 Lost Options

A Participant may submit a request to the Board that an Option granted to that Participant should lapse. On receipt of that request, the Board may determine that the Option should lapse, in which case the option will lapse accordingly.

6.7 End of exercise period

If an Option has not lapsed earlier in accordance with this rule 6, it will lapse at the end of the Exercise Period.

7. Changes in circumstances

7.1 Reconstruction

In the event of any reconstruction (including consolidation, subdivision, reduction, capital return, buy back or cancellation) of the share capital of the Company, the number of Options to which each Participant is entitled and/or the Exercise Price of those Options must be reconstructed in accordance with the Listing Rules. Options must be reconstructed in a manner which will not result in any additional benefits being conferred on Participants which are not conferred on other shareholders of the Company.

7.2 Participation in new issues

Subject to the Listing Rules, a Participant is only entitled to participate (in respect of Options granted under the Plan) in a new issue of Shares to existing shareholders generally if the Participant has validly exercised his or her Options within the relevant Exercise Period and become a Shareholder prior to the relevant record date, and is then only entitled to participate in relation to Shares of which the Participant is the registered holder.

7.3 Adjustment to exercise price - rights issues

Subject to the Listing Rules, if there is a Pro Rata Issue (except a Bonus Issue) to the holders of Shares, the Exercise Price of an Option will be reduced according to the following formula:

$$O' = O - \frac{E[P - (S + D)]}{N+1}$$

where:

O' = the Exercise Price immediately following the adjustment;

O = the Exercise Price immediately prior to the adjustment;

E = the number of Shares into which one Option is exercisable;

P = the average market price per Share (weighted by reference to volume) during the 5 trading days ending on the day before the ex rights date or ex entitlements date;

S = the subscription price for a Share under the Pro Rata Issue;

D = any dividend due but not yet paid on a Share (except any Share to be issued under the Pro Rata Issue); and

N = the number of Shares with rights or entitlements that must be held to receive a right to one new Share.

7.4 Adjustment to number of underlying securities - bonus issues

Subject to the Listing Rules, if there is a Bonus Issue to the holders of Shares, the number of Shares over which an Option is exercisable will be increased by the number of Shares which the holder of the Option would have received if the Option had been exercised before the record date for the Bonus Issue.

8. Amendment

Subject to the Listing Rules, these rules may be amended or supplemented by resolution of the Board. Unless the resolution of the Board expressly states otherwise, any amendment or supplement to these rules will not apply to any Options granted under these rules which have not yet been exercised.

9. Powers of the Board

9.1 Powers of the Board

The Plan will be managed by the Board, which will have power to:

(a) determine appropriate procedures for the administration of the Plan consistent with these rules;

(b) resolve conclusively all questions of fact or interpretation arising in connection with the Plan;

(c) determine matters falling for determination under these rules in its discretion having regard to the interests of and for the benefit of the Company;

(d) exercise the discretions conferred on it by these rules or which may otherwise be required in relation to the Plan; and

(e) delegate to any one or more persons (for such period and on such conditions as it may determine) the exercise of any of its powers or discretions arising under the Plan.

9.2 Indemnification

The Company must indemnify, and keep indemnified, to the full extent permitted by law, each person who is or has been a director or alternate director of the Company against all proceedings, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be made, brought against, suffered or incurred by the person arising directly or indirectly out of or in connection with the administration of the Plan.

9.3 Commencement of Plan

The Plan will take effect on and from such date as the Board may resolve.

9.4 Termination or suspension of Plan

The Board may terminate or suspend the operation of the Plan at any time.

9.5 Resolution to terminate, suspend, supplement or amend

In passing a resolution to terminate or suspend the operation of the Plan or to supplement or amend these rules, the Board must consider and endeavour to ensure that there is fair and equitable treatment of all Participants.

10. Powers of the administrator

10.1 Appointment of administrator

The Board may appoint an Administrator and may determine the terms and conditions of the Administrator's appointment. The Board may remove the Administrator.

10.2 Role of administrator

The Administrator must administer the Plan in accordance with these rules and any procedures determined by the Board and agreed to as between the Board and the Administrator.

11. Contracts of employment and other employment rights

11.1 Discretion of board

It is a condition of these rules that the Plan may be terminated at any time at the discretion of the Board and that no compensation under any employment contract will arise as a result.

11.2 No right to grant of options

Participation in the Plan does not confer on any Eligible Employee any right to a grant of Options.

11.3 Calculation of employee benefits

The value of the Options do not increase a Participant's income for the purpose of calculating any employee benefits.

11.4 No right to future employment etc.

Participation in the Plan does not confer on any Participant any right to future employment and does not affect any rights which the Company may have to terminate the employment of any Participant.

11.5 Acknowledgment by Participant

It is acknowledged and accepted by each Participant that the terms of the Plan do not form part of the terms and conditions of the Participant's employment contract, nor do the terms of the Plan constitute a contract or arrangement (including any related condition or collateral arrangement) in relation to the Participant's employment contract.

12. Connection with other plans

Unless the Board otherwise determines, participation in the Plan does not affect, and is not affected by, participation in any other incentive or other plan operated by the Company unless the terms of that other plan provide otherwise.

13. Notices

Any notice or direction given under these rules is validly given if it is handed to the person concerned or sent by ordinary prepaid post to the person's last known address or given in any reasonable manner which the Board from time to time determines.

14. General

Notwithstanding any rule, Shares may not be allotted and issued, acquired, transferred or otherwise dealt with under the Plan if to do so would contravene the Corporations Act, the Listing Rules, or any other applicable laws.

15. Plan costs

15.1 Plan Costs

Unless otherwise determined by the Board, the Company must pay all costs, charges and expenses relating to the establishment and operation of the Plan, including all costs incurred in or associated with an allotment, issue or acquisition of Shares for the purposes of enabling Participants to exercise Options granted to them under the Plan.

15.2 Reimbursement

The Company and any Associated Body Corporate of the Company may provide money to the trustee of any trust or any other person to enable them to acquire Shares to be held for the purposes of the Plan, or enter into any guarantee or indemnity for those purposes, to the extent permitted by the Corporations Act. In addition, the Company may require any Associated Body Corporate to enter into any other agreement or arrangement as it considers necessary to oblige that Associated Body Corporate to reimburse the Company for any amounts paid by the Company in connection with this Plan, directly or indirectly, in relation to any employee or director of that Associated Body Corporate.

16. Overseas eligible employees

The Company at the Board's discretion may:

(a) grant options to Eligible Employees and Participants who are resident outside of Australia; and

(b) make regulations for the operation of the Plan which are not inconsistent with these rules to apply to Eligible Employees and Participants who are resident outside of Australia.

17. Governing law

The laws of Victoria, Australia, govern these rules.

18. Definitions and interpretation

18.1 Definitions

In this document, unless the context requires otherwise:

Accounting Standards means the Australian Accounting Standards from time to time and if and to the extent that any matter is not covered by Australian Accounting Standards means generally accepted accounting principles applied from time to time in Australia for a business similar to the Business.

Administrator means the person (if any) selected by the Board to carry out the day to day administration of the Plan as contemplated by rule 10.1.

Application Form means the form that the Board determines is to be used by an Eligible Employee to apply for Options under the Plan.

Associated Body Corporate of the Company means each:

(a) related body corporate of the Company, within the meaning of section 50 of the Corporations Act;

(b) body corporate that has voting power in the Company of not less than 20%; or

(c) body corporate in which the Company has voting power of not less than 20%,

where "voting power" has the meaning in section 610 of the Corporations Act.

ASX means Australian Stock Exchange Limited (ACN 008 624 691).

Bad Leaver is a Participant who ceases to be employed by the Company where the Board determines that the Participant has:

(a) committed any serious or persistent breach of any provisions of employment;

(b) been convicted of any criminal offence which involves fraud or dishonesty;

(c) engaged in any conduct which brings the Company into substantial disrepute;

(d) committed any wrongful or negligent act or omission which has caused the Company substantial liability;

(e) engaged in grave misconduct or recklessness in the discharge of the Participant's duties;

(f) become disqualified from managing corporations in accordance with Part 2D.6 of the Corporations Act or has committed any act that, pursuant to the Corporations Act, may result in the Participant being banned from managing a corporation; or

(g) engaged in any other conduct which the Board reasonably considers to be analogous to, or having a substantially similar seriousness to, any of the circumstances specified in (a) to (f) above.

Board means the board of directors of the Company or a committee appointed by the board of directors of the Company.

Bonus Issue means a Pro Rata Issue of Shares to holders of Shares for which no consideration is payable by them.

Certificate means, in relation to a Participant, the certificate or holding statement (in a form approved by the Board) issued to the Participant which discloses the number of Options entered in the register of Option holders in the name of the Participant.

Company means Mesoblast Ltd ACN 109 431 870.

Constitution means the constitution of the Company.

Control of an entity means having the right:

(a) to vote 50% (or more) of the votes that can be cast on the election or removal of the entity's directors;

(b) to appoint or remove directors who possess 50% (or more) of the votes exercisable by all directors of the entity; or

(c) to 50% (or more) of the profits or distributions of the entity or of its net liquidation proceeds.

For this definition, if the entity does not have a board of directors, 'director' means a member of the entity's governing body with a role similar to a board of directors.

Control Event means any of the following:

(a) an offer is made by a person for the whole of the issued ordinary share capital of the Company (or any part as is not at the time owned by the offeror or any person acting in concert with the offeror) and after announcement of the offer the offeror (being a person who did not Control the Company prior to the offer) acquires Control of the Company;

(b) any other event occurs which causes a change in Control of the Company; or

(c) any other event which the Board reasonably considers should be regarded as a Control Event.

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

Disposal Restrictions means, in relation to an Option, the restrictions (if any) determined by the Board that are required to be satisfied before a Share acquired as a result of the exercise of the Option by the Participant can be sold, transferred or otherwise dealt with by a Participant.

Eligible Employee means an employee or a director of any member of the Group who is determined by the Board to be an Eligible Employee for the purposes of the Plan, or any other person who is determined by the Board to be an Eligible Employee for the purposes of the Plan.

Exercise Conditions means, in relation to an Option, the period of time, performance hurdles and other conditions (if any) determined by the Board that are required to be satisfied before the Option can be exercised.

Exercise Period means, in relation to an Option, the period in which the Option may be exercised specified by the Board under rule 3.2, subject to any variation under rules 5.3 and 6.

Exercise Price means the price per share that needs to be paid in order for the option to convert to ordinary shares of the company, and will be determined by the Board, and will be subject to any adjustment under rule 7.3.

Forfeiture Conditions means, in relation to an Option, the conditions (if any) determined by the Board that will result in the Option lapsing if satisfied.

Group means the Company and each Associated Body Corporate of the Company.

IPO Price means the price per Share at which Shares are offered under the prospectus issued in connection with the initial public offering of Shares in the Company.

Leaver means a Participant who ceases employment and who is not a **Bad Leaver**. A Leaver will include, but is not limited to, a Participant who ceases employment due to resignation or retirement.

Liquidation means the passing of a resolution for voluntary winding up, or the making of an order for the compulsory winding up of the Company.

Listing Rules means the listing rules (as defined in the Corporations Act) made or adopted by the ASX.

Market Price means, in relation to an Option, the volume weighted average market price of Shares sold on the ASX on the 5 trading days immediately before the date of determination.

Option means a right to subscribe for or acquire a Share, subject to any adjustment under rule 7.4.

Participant means an Eligible Employee who has been invited to participate in the Plan and any other person who is nominated by that Eligible Employee (following receipt of an invitation by the Board under rule 3.1) and who is determined by the Board to be a Participant for the purposes of the Plan.

Permanent Disability means, in relation to a Participant, the inability, by reason of physical condition, mental illness or accident, of the Participant to perform substantially all of the duties of the position in which the Participant has been employed or appointed (as determined by the Board).

Plan means the Mesoblast Limited Employee Share Option Plan established and operated in accordance with these rules.

Pro Rata Issue means an issue which has been offered to all holders of Shares on a pro rata basis.

Share means a fully paid ordinary share in the capital of the Company.

Vested Option means an Option in respect of which all Exercise Conditions have been met or which are otherwise exercisable (including as contemplated by rules 5.3 and 6).

18.2 Interpretation

In these rules, unless the context otherwise requires:

(a) a reference to any thing (including an amount or a provision of this document) is a reference to the whole and each part of it;

(b) the singular includes the plural, and vice versa;

(c) the word ‘person’ includes an individual, a body corporate, a firm, an unincorporated body, a society, an association and an authority;

(d) a reference to a particular person includes their legal personal representatives, administrators, successors, substitutes and permitted assigns;

(e) a reference to ‘costs’ includes charges, expenses and legal costs;

(f) a reference to a “rule” or “these rules” is to the rule or these rules (as the case may be) as amended or replaced;

(g) a reference to the Constitution includes a reference to any provision having substantially the same effect which is substituted for or replaces the Constitution;

(h) where a Participant is a director of any member of the Group, but is not also an employee of any member of the Group, a reference to the employment with any member of the Group of that Participant is a reference to that Participant holding office as a director of any member of the Group;

(i) where a Participant is a person nominated by an Eligible Employee, a reference to the employment with any member of the Group of that Participant is a reference to the employment with any member of the Group of that Eligible Employee;

(j) a Participant does not cease to be employed by any member of the Group where the Participant ceases to be employed by one member of the Group but commences employment with another member of the Group provided that the new employment commences within 60 days from the date of termination or such other period as the Board may determine by notice in writing;

(k) a reference to ‘law’ means statute law, common law and equitable principles;

(l) a reference to a particular law includes that law and any subordinate legislation (such as regulations) under it, in each case as amended, replaced, re-enacted or consolidated;

(m) a reference to an accounting term is to that term as it is used in the Accounting Standards;

(n) a reference to ‘dollars’, ‘$’ or ‘A$’ is to the lawful currency of Australia;

(o) a time means that time in Melbourne, Australia;

(p) a reference to a day or a month means a calendar day or calendar month;

(q) if a period of time starts from a given day (or event), it is to be calculated exclusive of that day (or the day the event occurs);

(r) the masculine includes the feminine, and vice versa;

(s) the meaning of any general language is not restricted by any accompanying example and the words ‘includes’, ‘including’ ‘such as’ or ‘for example’ (or similar phrases) are not words of limitation; and

(t) headings in this document are for convenience only and do not affect its meaning.

If (but for this rule) a provision of this document would be illegal, void or unenforceable or contravene the law, this document is to be interpreted as if the provision was omitted.

Exhibit 10.19

Employment Agreement

MESOBLAST LIMITED
ACN 109 431 870

and

PROFESSOR SILVIU ITESCU

Employment Agreement

Date 8 August 2014

Parties

1. **Mesoblast Limited** ACN 109 431 870 of Level 39, 55 Collins Street, Melbourne, Victoria 3000 (the **Company**).
2. **Professor Silviu Itescu** (the **Employee**).

OperativeProvisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

Act means the Fair Work Act 2009 (Cth) as amended or replaced from time to time;

Agreement means this agreement;

Award means any award applicable at any time to the Employee's employment with the Company;

Business means the functions and business activities carried out by the Company in relation to developing and commercialising stem cell intellectual property and technology throughout the world in the field of regenerative medicine;

Business Premises means the Company's premises at which the Employee predominantly works during the Employment;

Commencement Date means the effective date of 1 April 2014;

Confidential Information means:

(a) all Information regarding the current or future business interests, methodology or affairs of the Company or any Related Entity of the Company;

(b) all Information relating to the property, assets and technology of the Company or any Related Entity of the Company, including without limitation their Intellectual Property Rights;

(c) all other Information belonging or relating to the Company or any Related Entity of the Company;

(d) all Information which the Employee knows, or ought reasonably to be expected to know, is confidential to the Company or any Related Entity of the Company;

but excluding any Information which is lawfully already in the public domain, or becomes part of the public domain other than due to the fault of the Employee or any person for whom the Employee is responsible;

Corporations Act means the Corporations Act 2001 (Cth);

Financial Year means the year from 1 July to 30 June;

Information means any information, whether oral, graphic, electronic, written or in any other form, including:

(a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data; and

(b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered;

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity, including:

(a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets, the right to have Confidential Information kept confidential and other results of intellectual effort in the scientific, technological, bio-technological, industrial, literary or artistic and commercial fields, whether or not registered or capable of registration;

(b) any application or right to apply for registration of any of those rights;

(c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and

(d) all renewals and extensions of these rights;

Law means:

(a) principles of law or equity established by decisions of courts;

(b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and

(c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Related Entity has the meaning given to that term in the Corporations Act;

Restraint Area is each of the following areas separately:

(a) within Australia; and

(b) within Australia and the United States of America.

Restrained Duties means duties the same or similar to those performed by the Employee in the course of the Employment;

Restraint Period is the period commencing on the Termination Date and ending on the expiry of each of the following periods after the Termination Date separately:

(a) 6 months;

(b) 9 months; and

(c) 12 months;

Term means the period of 3 years from the Commencement Date;

Termination Date means the date of termination or expiry of this Agreement for any reason.

1.2 Interpretation

In this Agreement, 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 Agreement;

(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) the word "person" includes a natural person and any body or entity whether incorporated or not;

(g) the word "month" means calendar month and the word "year" means 12 months;

(h) 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;

(i) a reference to a thing includes a part of that thing;

(j) 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;

(k) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";

(l) money amounts are stated in Australian currency unless otherwise specified; and

(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 which performs most closely the functions of the defunct body.

2. Position

(a) The Employee will continue to be employed by the Company in the position of Managing Director and Chief Executive as from the Commencement Date in accordance with the terms of this Agreement (the **Employment**).

(b) The Employee will report to the Board.

3. Commencement and Term

The Employment will commence on the Commencement Date and will continue for the Term unless terminated in accordance with clause 10.3 of this Agreement. After the expiry of the Term, the Employee's employment will continue until terminated by the Company in accordance with clause 10.1 or 10.3 or by the Employee in accordance with clause 10.1.

4. Recognition of prior service

(a) The Company acknowledges that the Employee was employed by the Company before the Commencement Date and this Agreement regulates the Employee's employment terms only from the Commencement Date.

(b) The Company will recognise:

(i) the Employee's continuous service from the date the Employee originally commenced employment with the Company for the purpose of all service related benefits; and

(ii) any accrued entitlements of the Employee to annual leave, personal leave and long service leave with the Company immediately prior to the Commencement Date.

5. Duties and Obligations

5.1 Duties

During the Employment, the Employee is to perform the usual duties of a managing director and Chief Executive of a listed company of the size and nature of the Company and such duties as are required to achieve the objectives set out by the Board of Directors from time to time.

5.2 Obligations

At all times during the Employment, the Employee must:

(a) show the utmost good faith and devote the whole of the Employee's working time and attention to the business of the Company and, if the Company so directs, to the business of any Related Body Corporate of the Company;

(b) use the Employee's best endeavours at all times to promote the interests and welfare of the Company and any Related Body Corporate of the Company;

(c) honestly, faithfully and diligently obey and perform all lawful orders and instructions of the Company or the person to whom the Employee reports;

(d) honestly, faithfully and diligently perform the duties and exercise the powers which from time to time may be assigned to the Employee by the Company or by the person to whom the Employee reports;

(e) act in the best interests of the Company and any Related Body Corporate of the Company at all times;

(f) use the Employee's best endeavours to promote the development, profitability, interests and welfare of the Company and any Related Body Corporate of the Company;

(g) not misuse the Company's property or services, or allow such misuse by other persons;

(h) as soon as practicable upon becoming aware thereof inform the Company of any act of dishonesty pertaining to the business, property or transactions of the Company on the part of any person which may have come to the Employee's knowledge; and

(i) keep the terms of the Employee's remuneration confidential.

5.3 Other appointments

(a) During the Employment, the Employee may not take up any other employment or engagement (paid or unpaid) without the prior written consent of the Company.

(b) Without limiting clause 5.3(a), the Employee will not, during the Employment, without the prior written consent of the Company, undertake any appointment, position or work that:

(i) results in the Employee competing with the Company;

(ii) otherwise adversely affects the Company; or

(iii) hinders the Employee's performance of duties owed to the Company.

5.4 Conflict of interest

(a) The Employee will ensure that there is no conflict between the Company's interests and the Employee's personal interests.

(b) The Employee will make full and complete disclosure to the Company of the existence, nature and extent of any conflict or potential conflict of interest that the Employee may have in any manner or capacity whatever with the Employee's duties or obligations under this Agreement.

(c) The Employee must not solicit or accept from any person any remuneration or benefit for the discharge of the Employee's duties other than the remuneration and benefits available to the Employee from the Company under this Agreement.

(d) The Employee must immediately report to the Company any remuneration or benefit the Employee receives from another person and the Employee must not deal with or otherwise dispose of any such remuneration or benefit without the prior written consent of the Company.

(e) The Employee must avoid any circumstance where a person or persons can improperly influence or receive unduly favourable treatment from the Company.

5.5 Company Policies

(a) The Employee must comply with all policies and procedures of the Company.

(b) Notwithstanding clause 5.5(a), the policies and procedures of the Company:

(i) are for the benefit of the Company and do not impose any contractual obligations on the Company;

(ii) are not incorporated into and do not form part of this Agreement; and

(iii) may be departed from by the Company in individual cases.

5.6 Common law duties

Nothing in this Agreement is intended to limit the Employee's duties of good faith and fidelity to the Company or any other duties implied at common law.

6. Employment Locations

The Employee's primary place of work will be Melbourne, Australia. However, the Employee may be required to work at other locations as directed by the Company.

7. Hours of Work

The Employee is required to work 38 hours per week plus all such reasonable additional hours as required to properly perform his duties in accordance with this Agreement or as directed by the Company.

8. Remuneration

8.1 Total Remuneration Package

In consideration of the duties provided and to be provided by the Employee, the Employee will be entitled to the Total Remuneration Package accruing and payable with respect to the period beginning on the Commencement Date, comprising:

(a) Base Salary pursuant to clause 8.2; and

(b) Additional Benefits pursuant to clause 8.3.

The Employee is not to receive benefits under or participate in any long term incentive plans utilised by the Company.

8.2 Base Salary

The Employee will be paid a Base Salary of $960,000 gross per annum (exclusive of superannuation) paid monthly into the Employee's nominated bank account.

8.3 Additional Benefits

The Employee will also, as applicable, be entitled to/eligible to receive the following additional benefits:

(a) mobile phone, lap top computer, car parking at the Employee's primary place of work;

(b) a cash bonus of up to 100% of the Base Salary (as varied in accordance with clause 8.7 from time to time) gross per annum in each Financial Year, to be determined by the Board having regard to the achievement by the Employee of the key performance indicators (**KPIs**) as set by the Board from time to time in relation to each Financial Year.

8.4 Offset

(a) To the extent that the Employee's Total Remuneration Package exceeds the Employee's entitlements under the Award or pursuant to the Act at any time, the Employee's Total Remuneration Package is inclusive of and paid in full satisfaction of all payments and benefits that the Company is legally obliged to provide to the Employee, including any overtime payments or other payments for hours worked in excess of ordinary hours, and including all entitlements the Employee has to payments (including wages, overtime and allowances) under the Award or pursuant to the Act.

(b) To the extent that the Employee's Total Remuneration Package exceeds the Employee's entitlements under the Award or pursuant to the Act, the Company may (to the fullest extent permitted by law) offset against this amount any future increases in the rates and allowances contained in the Award or pursuant to the Act.

(c) Notwithstanding this clause or anything else in this Agreement, the Award is not incorporated into and does not form part of this Agreement.

(d) The Employee hereby authorises the Company to make deductions from any payments owing to the Employee to recover any debt owed by the Employee to the Company (to the fullest extent permitted by law), including as a result of previous over-payment to the Employee.

8.5 Expenses

Except as expressly provided for in this Agreement, the Employee will be reimbursed for all expenses which are in the Company's opinion reasonably incurred by the Employee in the course of the Employment, subject to provision of receipts or other documentary evidence to the Company's satisfaction.

8.6 Superannuation

The Company will in addition to the Base Salary make contributions on the Employee's behalf to a complying superannuation fund at the minimum level required to meet the Company's statutory obligations under applicable superannuation legislation.

8.7 Annual Review

At or shortly after the end of each Financial Year, the Company will review the Employee's Total Remuneration Package (as detailed in this clause 8) and consult with the Employee regarding any proposed increase. Any recommended increases to the Total Remuneration Package are at the absolute discretion of the Company's Board of Directors.

9. Leave

9.1 Annual leave

(a) The Employee will be entitled to 4 weeks annual leave for every 12 months' service on a pro-rata and cumulative basis in accordance with the Act.

(b) Annual leave is to be taken at a time agreed with the Company or failing agreement as directed by the Company in accordance with the Act.

9.2 Personal/Carer's Leave

(a) The Employee will be entitled to 10 days personal/carer's leave per annum, which includes sick leave, on a pro-rata and cumulative basis, in accordance with the Act.

(b) To claim any period of personal/carer's leave, the Company may require the Employee to provide a medical certificate from a registered health practitioner or, if that is not reasonably practicable, a statutory declaration from the Employee, in an appropriate form.

(c) Personal/carer's leave will not be paid out on termination of the Employment.

9.3 Parental Leave

The Employee will be entitled to unpaid parental leave in accordance with the Act.

9.4 Long Service Leave

The Employee will be entitled to long service leave in accordance with applicable State legislation.

9.5 Public Holidays

The Employee will be entitled to paid leave on days declared public holidays in accordance with the Act.

10. Termination of Employment

10.1 Termination on notice

(a) Subject to clause 10.3, the Company may after expiry of the Term terminate the Employment at any time by giving the Employee 12 months' notice in writing.

(b) The Employment may be terminated by the Employee by giving the Company 12 months' notice in writing.

(c) In the case of termination by the Company under clause 10.1(a) or by the Employee under clause 10.1(b), the Company may make a payment to the Employee in lieu of part or all of the notice period in a sum equal to the Base Salary the Employee would have earned if the Employee had been given the relevant period of notice.

(d) If the Employee does not give the Company the period of notice referred to in this clause in writing or the Employee leaves the Employment during the period of notice, the Employee agrees that the Company is entitled to withhold (to the fullest extent permitted by law) from any monies owing to the Employee an amount representing the salary the Employee would have earned for the number of weeks or days of the notice period that the Employee did not work.

10.2 Garden Leave

(a) Following the giving of notice by the Company or the Employee under clause 10.1, the Company may for part or all of the notice period at its sole discretion direct the Employee to:

(i) perform alternative duties; or

(ii) perform no duties and not attend for work.

(b) Clause 10.2(a) does not affect the Company's right to at any time make payment in lieu of part or all of the notice period in accordance with clause 10.1(c).

10.3 Summary Dismissal

(a) The Company may terminate the Employment summarily without notice or any payment in lieu of notice to the Employee if the Employee:

(i) commits serious misconduct;

(ii) commits a serious or persistent breach of any term or condition of this Agreement;

(iii) refuses or fails to comply with a lawful and reasonable directive of the Company;

(iv) engages in any fraudulent or dishonest conduct;

(v) is intoxicated at work to the extent that the Employee cannot perform the Employee's duties;

(vi) is convicted of any serious or indictable criminal offence;

(vii) engages in any conduct which in the reasonable opinion of the Company may bring the Company into disrepute;

(viii) is prohibited by Law from taking part in the management of the Company;

(ix) becomes of unsound mind (as determined by 2 independent medical practitioners selected by the Board) or a person whose person or estate is liable to be dealt with in any way under any Law relating to mental health and in either instance is incapable of undertaking his duties to the full extent required under this Agreement (as determined by the Board, excluding the Employee should the Employee be a director of the Company); or

(x) is made bankrupt or enters into any composition or arrangement with or for the benefit of his creditors generally.

10.4 Resignation as director

(a) On termination of the Employment pursuant to clause 10.3 only, the Employee will in writing resign from the Employee's position as director of the Company or any Related Body Corporate without compensation for loss of office as director.

(b) The Employee hereby irrevocably appoints the Company and each of its directors severally as and to be the attorney of the Employee to do anything and execute any document which the Employee is required to do or execute to effect the Employee's resignation pursuant to clause 10.4(a) and which the Employee has failed to do or execute.

10.5 Incapacity of Employee

If the Employee is or will be prevented by physical or mental incapacity from carrying out his duties for more than 3 consecutive months, or 3 months in total in any 12 month period, then the Company may terminate the Employment by payment of 12 months Base Salary in lieu of notice.

10.6 Deduction of Monies

The Company is hereby authorised by the Employee to deduct (to the fullest extent permitted by law) from any final payment on termination of the Employment, any monies owed by the Employee to the Company or any Related Entity of the Company including to recover any previous over-payment of remuneration to the Employee.

10.7 Return Of Company Property

On termination of the Employment, the Employee must as soon as practicable return to the Company all property, materials and items belonging to the Company or any Related Entity of the Company in the Employee's possession custody or control.

10.8 Accrued Entitlements on Termination

Any payment by the Company in respect of accrued but unpaid or untaken annual leave or long service leave on termination of the Employment, will be calculated on the basis of the Base Salary pursuant to clause 8.2.

11. Confidential Information

11.1 Acknowledgment of Employee

The Employee acknowledges that through the course of the Employment or otherwise, the Employee may obtain access to, or become aware of, Confidential Information which is of commercial value to the Company and which is owned by and will at all times remain the property of the Company or a Related Entity of the Company.

11.2 Obligations of the Employee

The Employee must:

(a) only use the Confidential Information for the purposes of performing, and to the extent necessary to perform, the Employee's duties in the course of employment with the Company;

(b) not memorise, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance of the Employee's duties;

(c) keep in the strictest confidence all Confidential Information and, unless required by law, not disclose to any person any Confidential Information without the consent of the Company;

(d) not use, or modify any Confidential Information for the Employee's own use or benefit or the use or benefit of any third party;

(e) co-operate with the Company in any action the Company may take to protect the confidentiality of the Confidential Information; and

(f) promptly, at the request of the Employer at any time, disclose and deliver up to the Company, all Confidential Information including copies in the Employee's possession, custody or control.

11.3 Unauthorised disclosure

The Employee must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information, including the following precautions:

(a) the Employee must at all times store all Confidential Information safely and securely;

(b) except with the prior written authority of the Company, the Employee must not remove any Confidential Information from the premises at which it is stored except where it is necessary to do so for the sole purpose of performing his duties under this Agreement;

(c) the Employee must immediately notify the Company in writing of any actual, threatened or suspected unauthorised disclosure of any Confidential Information; and

(d) the Employee must take all reasonable measures to minimise any unauthorised dissemination of any Confidential Information which is in any way related to or resulting from an act or failure to act by the Employee.

11.4 Authorised disclosure

Nothing in this Agreement prohibits any disclosure of Confidential Information by the Employee where such disclosure is authorised by the Company or is necessary to comply with any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body, provided that prior to any disclosure, the Employee:

(a) notifies the Company within a reasonable time of the full details of the circumstances and content of the proposed disclosure;

(b) uses reasonable endeavours to comply with any reasonable request by the Company concerning the proposed disclosure; and

(c) gives the Company a reasonable opportunity to challenge in a court or other appropriate body the legality of the Employee's obligation to disclose the Confidential Information.

11.5 Cessation of use

Immediately on the written request of the Company, the Employee must:

(a) cease the use of all Confidential Information;

(b) deliver to the Company all documents and other materials in the Employee's possession, power or control containing, recording or constituting that Confidential Information or, at the option of the Company, destroy, and certify to the Company that the Employee has destroyed, those documents and materials; and

(c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

11.6 Survivorship

The Employee's obligations under this clause 11 survive the termination of the Employment for any reason.

12. Intellectual Property

(a) The Employee hereby assigns to the Company absolutely and beneficially the whole of the Employee's right, title and interest in the world, whether presently existing or which arises at a date after the date of this Agreement in and to all Intellectual Property Rights acquired, developed or created by the Employee:

(i) in the course of his employment with the Company;

(ii) prior to the Commencement Date, where the Employee was providing services for the Company or Business (which includes in anticipation of the incorporation of the Company), the shareholders of the Company or for the benefit of any of the Company, its shareholders or the Business;

(iii) which in any way affect, relate to or are connected with the Business; or

(iv) with the use of any of the Company's or a Related Entity's resources, including the Company's or a Related Entity's computer/s or other information technology equipment, the Company's or a Related Entity's laboratory or other research and development facilities or at the Company's or a Related Entity's premises,

(collectively, the **Assigned Intellectual Property Rights**)

(b) The Employee hereby agrees and undertakes to promptly disclose to the Company any Assigned Intellectual Property Rights upon acquisition, creation or development.

(c) The Employee acknowledges and agrees that the Company will own all right, title and interest in and to all of the Assigned Intellectual Property Rights immediately upon creation, acquisition or development of the Assigned Intellectual Property Rights.

(d) The Employee irrevocably agrees to promptly execute all documents, forms and authorisations and do all acts and things that the Company considers to be necessary or desirable to give effect to this Agreement and to absolutely vest in the Company full right, title and interest in and to all of the Assigned Intellectual Property Rights.

(e) At the Company's request and expense, the Employee undertakes to assist the Company, whether during the course of or subsequent to the termination of the Employment, in connection with any controversy or legal proceeding relating to the Assigned Intellectual Property rights and in obtaining domestic or foreign patent or other protection covering the same.

(f) The Employee hereby irrevocably appoints the Company and each of its directors severally as and to be the attorney of the Employee to do anything and execute any document which the Employee is required to do or execute pursuant to or in connection with the assignment of Intellectual Property Rights under this Agreement and which the Employee has failed to do or execute. This power of attorney is granted to secure the performance of the Employee's obligations to the Company in relation to the assignment of Intellectual Property Rights under this Agreement.

(g) The Employee's obligations under this clause 12 will survive the termination of the Employment for any reason.

13. Moral Rights

(a) To the extent that the Employee has any moral rights in any work (whether or not currently in existence) created, made, delivered, produced, contributed to or otherwise provided by the Employee to the Company in the course of the Employment (collectively **Works**), the Employee hereby irrevocably and unconditionally consents, to the fullest extent permitted by law (whether present or future), pursuant to the *Copyright Act 1968 (Cth)*, to the Company, its successors, assignees and licensees, 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 the Company 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;

(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 the Company or the Employee or any other person in relation thereto;

(iii) doing any act or omission that would constitute derogatory treatment of the Works; and

(iv) combining or juxtaposing the Works with anything else,

for any purpose whatsoever, whether such acts or omissions occur before or after the date on which that consent is given.

(b) The Employee warrants that the consent obtained pursuant to this clause will be a genuine consent and complies with the provisions of the *Copyright Act 1968 (Cth)* and that the Employee has not relied on any statement or representation made by the Company or anyone acting on behalf of the Company.

14. Non-Competition

14.1 Obligations of the Employee

The Employee must not, in any capacity including on the Employee's own account or as a member, shareholder, unitholder, director, partner, joint venturer, employee, trustee, beneficiary, principal, agent, adviser, contractor, consultant, manager, associate, representative or financier or in any other way or by any other means:

(a) during the Restraint Period and in the Restraint Area, perform Restrained Duties for a business, activity or operation which is the same as, substantially similar to, or competitive with the Business or any material part of the Business;

(b) during the Restraint Period and in the Restraint Area, participate in, be interested in, assist with or otherwise be directly involved, engaged, concerned or interested in a business, activity or operation which is the same as, substantially similar to, or competitive with the Business or any material part of the Business;

(c) during the Restraint Period, solicit, entice away, interfere with, or endeavour to solicit, entice away, or interfere with, any person, firm, corporation or entity which was or is a client or customer of the Company and with whom the Employee had direct dealings in the course of the Employment in the 12 month period ending on the Termination Date;

(d) during the Restraint Period, canvass, solicit, or entice, or endeavour to canvas, solicit or entice, any person who was or is an employee, contractor or director of the Company, and with whom the Employee had direct dealings in the course of the Employment in the 12 month period ending on the Termination Date, to leave that office, engagement or employment;

(e) during the Restraint Period, interfere with the business of the Company or any Related Entity of the Company, or divulge to any person any information, including Confidential Information, concerning the business of the Company or any Related Entity of the Company; or

(f) during the Restraint Period, interfere to the detriment of the Company or any Related Entity of the Company with the relationship between the Company or any Related Entity of the Company and any of their clients, customers, employees or suppliers.

14.2 General

(a) Nothing in this clause 14 prevents the Employee from holding in aggregate less than 5% of the issued shares of a body corporate, or interests in a registered managed investment scheme, included on the official list of a financial market (as defined in the Corporations Act).

(b) Each covenant in clause 14.1, each paragraph of the Restraint Area definition and each paragraph of the Restraint Period definition is a separate and independent covenant by the Employee. They are to be combined and each combination is a separate covenant and restriction, although they are cumulative in effect.

(c) For the avoidance of any doubt, if any of the separate and independent covenants or restrictions set out in this clause is or becomes invalid or unenforceable for any reason:

(i) 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;

(ii) in any other case the offending provision must be severed from these terms, in which event the remaining provisions of these terms operate as if the severed provision had not been included; and

(iii) without limiting the above, if the covenant or restriction in question would be valid or enforceable if any activity was deleted or the area or time was reduced, then that provision must be read down by deleting that activity, or reducing that period or area, to the minimum extent necessary to achieve that result.

(d) The Employee acknowledges that each of the restrictions imposed by this clause:

(i) is reasonable in its extent (as to duration, geographical area and restrained conduct) having regard to the interests of each party to this Agreement;

(ii) extends no further, in any respect, than is reasonably necessary for the maintenance and protection of the business of the Company and its goodwill; and

(iii) does not unreasonably restrict the Employee's right to carry on the Employee's profession or trade.

14.3 Survivorship

The Employee's obligations under this clause 14 survive the termination of the Employment for any reason.

15. Suspension

Where the Company considers it necessary, it may suspend the Employee on full pay, whilst it conducts an investigation into any concerns relating to the Employee's conduct or performance as an employee or for any other reason.

16. Changes to position, duties, remuneration, or location

(a) The Employee's employment with the Company will continue to be subject to the terms of this Agreement, unless varied or replaced by an agreement agreed to by both parties in writing, despite any change to the Employee's duties, remuneration or location.

(b) This Agreement may only be varied by a document in writing signed by or on behalf of each party.

17. Corporations Act

(a) Notwithstanding any provision of this Agreement, but subject to this clause 17, the Company is not required to pay or provide, or procure the payment or provision of, any monies or benefits to the Employee which it is not permitted to pay or provide under the provisions of Part 2D.2, Division 2 of the Corporations Act without obtaining shareholder approval.

(b) To the extent that this Agreement requires any such payments or benefits to be provided to the Employee, the Company will take all necessary steps to seek shareholder approval for the payment or provision of those monies and/or benefits to the Employee.

(c) If shareholder approval for the payment or provision of the monies and/or benefits to the Employee is not obtained, those payments and/or benefits must be reduced to the extent required to ensure compliance with this clause and the Corporations Act.

(d) In the event that the Company pays or provides any monies or benefits to the Employee in excess of the amount permitted to be paid or provided to the Employee under the Corporations Act without shareholder approval, the Employee must, on receiving written notice from the Company, immediately repay or return those monies or benefits to the Company.

18. General

18.1 Entire understanding

(a) This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications and agreements between the parties as to the terms and conditions of the Employee's employment, including any prior written or verbal undertakings or statements.

(b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

18.2 No adverse construction

This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

18.3 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 Agreement.

18.4 No waiver

(a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement 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 Agreement.

(c) A waiver of a breach does not operate as a waiver of any other breach.

18.5 Severability

Any provision of this Agreement which is invalid in any jurisdiction must in relation to that jurisdiction:

(a) be read down to the minimum extent necessary to achieve its validity, if applicable; and

(b) be severed from this Agreement in other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

18.6 No assignment

A party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of each other party.

18.7 Consents and approvals

Where anything in this Agreement depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

18.8 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

18.9 Governing law and jurisdiction

(a) This Agreement is governed by and must be construed in accordance with the Law of the State of 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 Agreement, its performance or subject matter.

18.10 Counterparts

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

18.11 Conflicting provisions

If there is any conflict between the main body of this Agreement and any Schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

18.12 Non merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.

Executed as an agreement

Signed by **Professor Silviu Itescu** in the presence of:)
)

/s/ Silviu Itescu
Signature

/s/ Jenny Zafiris
Signature of witness

Jenny Zafiris
Name of witness
(please print)

Executed by **Mesoblast Limited** ACN 109 431 870 in accordance with section 127(1) of the *Corporations Act 2001 (Cth):*)
)
)
)

/s/ Brian Jamieson
Signature of director

Brian Jamieson
Name (please print)

/s/ Jenni Pilcher
Signature of company secretary

Jenni Pilcher
Name (please print)

Exhibit 10.20

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

CIT INVENTORY	ITEMS	QUANTITY
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
	Keys for all Furniture & File Cabinets	
H “A” Office Modular Desk Sets	P Top Desk With 2 Rectangular Worksurfaces	
—Elective Elements	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

CIT INVENTORY	ITEMS	QUANTITY
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 refereed 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

Exhibit 10.21

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**").

W I T N E S S E T H:

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

Months	Monthly Base Rent	Annual Base Rent
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 fall 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: /s/ Eric S. Mandelbaum
Name: Eric S. Mandelbaum
Title: Senior Vice President

SUBTENANT:

MESOBLAST, INC.
a Delaware corporation

By: /s/ Michael Schuster
Name: Michael Schuster
Title: EVP, Global Therapeutic Program

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

CIT INVENTORY	ITEMS	QUANTITY
A Conference Room 3A	Steelcase Convene Wedge 8' Table	1
	Steelcase Convene Credenza 60x24	1
	Keilhauer Elite Mid Back Faux (Ultrasuede) Chairs	8
B Pantry	Chairmaster Bar Stools	3
	Subzero Refrigerator	1
	Amana Microwave	1
	Oasis Water Machine	1
	Uline Ice Maker	1
	Dell Monitor	1
D Ladies Room	Gray Trash Receptacle	1
E Other	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	
F "A" Office Modular Desk Sets—Elective Elements	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
G "B" Office Modular Desk Sets—Elective Elements	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

CIT INVENTORY	ITEMS	QUANTITY
H Powered Steelcase Montage Workstation	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
I Powered Steelcase Montage Touchdown	Rounded Work Surface With Box/Box/File	2
	2 Lateral Files	4
	Slat Wall	2
	Monitor Arm	1
	Steelcase Leap Desk Chair	2
J Locker Room	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.aaahardware.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@amatofumiture.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
Woodctiff 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 PAPRANIKU — 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.corn

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 KRENSER
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 Contact: Robert Leon	(212) 481-6100
2. Tri-Star Construction Contact: Mike Barton	(212) 486-0808
3. OPT Contact: Oliver Papraniku	(212) 239-1557
4. J.T. Megan Construction Contact: Maurice Regan	(212) 790-4200

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. Contact: Carmine Sprio	(914) 738-0894
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. Paul Rowley	(914) 237-3000
3. Concept Air Conditioning & Refrigeration Jessica Delgeorge	(718) 326-2660

ELECTRICAL

1. Michael Mazzeo Electric Corp. Contact: Nicholas Imperato	(718) 361-0306
2. E-J Electric Contact: Ed Harley	(718) 786-9400
3. H & L Electric Contact: Barry Berger	(718) 361-6400
4. Polo Electric Contact: Dino Stathis	(212) 627-8220

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

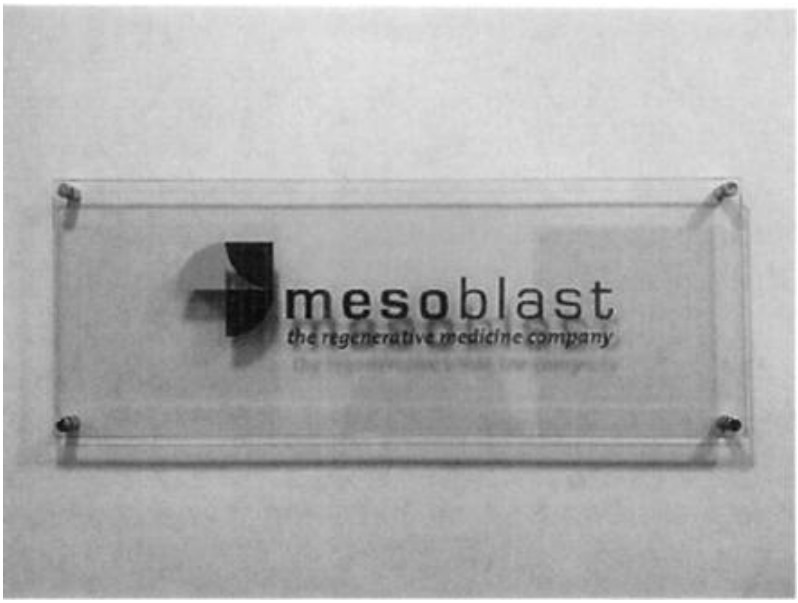

EXHIBIT E

COPY OF PRIME LEASE IS ATTACHED HERETO

EXHIBIT F

FORM OF PRIME LANDLORD'S CONSENT

(See attached)

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: _____

NORTON ROSE FULBRIGHT

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

Contents

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 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'*

Sublease dated

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 it 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 negatived; 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 x 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 irrevocable 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)

Head Landlords' execution

EXECUTED by)
)
and)
)
as attorneys for **COLLINS PLACE PTY LTD**)
(ACN 084 238 497) in the presence of:)
)

By executing this Deed the attorneys state that neither attorney has received notice of revocation of the power of attorney

(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:)

By executing this Deed the attorneys state that neither attorney has received notice of revocation of the power of attorney

(Signature of) Witness

Name of Witness (Block Letters)

Address of witness

Occupation of witness

Concurrent Landlord's execution

EXECUTED by)
)
and)
)
as attorneys for **AMP CAPITAL INVESTORS**)
LIMITED (ABN 59 001 777 591) in the)
presence of:)

By executing this Deed the attorneys state that neither attorney has received notice of revocation of the power of attorney

(Signature of) Witness

Name of Witness (Block Letters)

Address of witness

Occupation of witness

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.

Annexure B
Premises layout

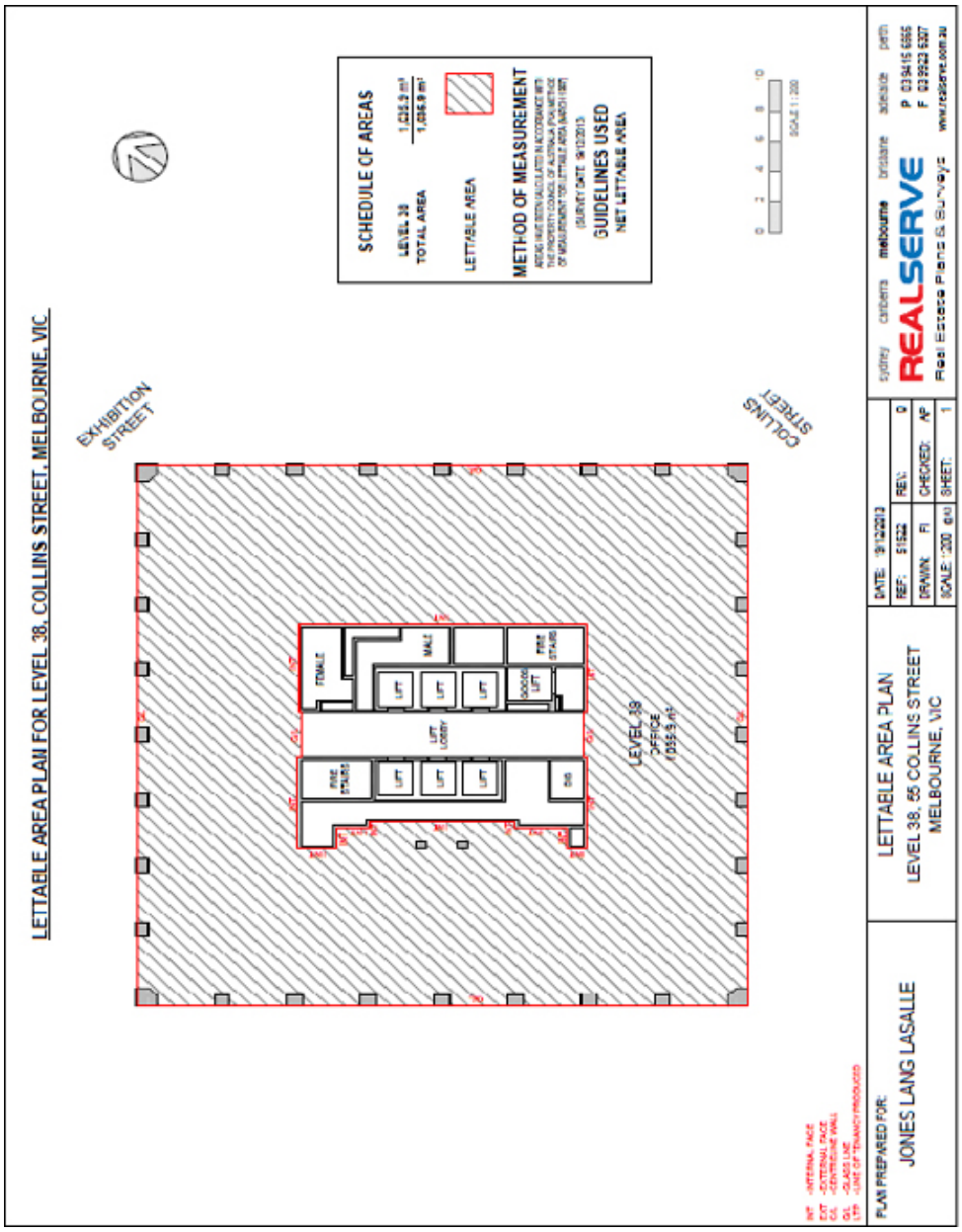

Exhibit 10.23

Form of Deed of Indemnity, Insurance and Access

Mesoblast Ltd
AGN 109 431 870

and

Middletons
Lawyers

Melbourne office
Ref: LGT.AXG.1753918

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Deed of Indemnity, Insurance and Access

Date

Parties

1. **Mesoblast Limited** ACN 109 431 870 do Level 2, 517 Flinders Lane, Melbourne 3000 (**Company**)

2. of (**Director**)

Background

A. The Constitution of the Company permits certain indemnities for officers of the Company.

B. The Company has agreed, subject always to the prohibitions and limitations imposed by law, to indemnify the Director, insure the Director and grant him access to Board documents on the terms and conditions of this Deed.

Operative Provisions

1. Definitions and interpretation.

1.1 Definitions. In this Deed:

Authorised Person means any person authorised in writing by the Director and approved by the Company, such approval not to be unreasonably withheld;

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

Board means, as the context requires:

(a) the board of directors of the Company; or

(b) any committee of the board of directors of the Company;

Board Documents includes all:

(a) written communications circulated or made available to the Director by the Company;

(b) minutes of meetings of the Company and the Board; and

(c) documents circulated to directors of the Company in connection with any meetings or deliberations of the Board;

Books means all the financial, technical and commercial information belonging to the Company from time to time, and includes the Board Documents;

Constitution means the Constitution of the Company;

Corporations Act means the *Corporations Act* 2001 (Cth);

Deed means this Deed including the recitals, any schedules and any annexures;

Document has the meaning set out in section 25 of the *Acts Interpretation Act 1901 (Cth)*;

D&O Policy means a contract:

(a) insuring a person against liability incurred by that person in that person's capacity as director or officer of a body corporate; and

(b) allowing the body corporate to obtain reimbursement for any claims paid by it to a director or officer of the body corporate under an indemnity;

Excluded Liability means a liability in respect of which the Company cannot lawfully pay the premium under a D&O Policy and includes a liability the subject of the prohibition in section 1998 of the *Corporations Act*.

GST means goods and services tax under the GST Law.

GST Law has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999.

Indemnities means the indemnities granted to the Director by the Company under this agreement;

Information means all or any part of information contained in or related to a transaction of the Company, a Book or a discussion at a meeting of the Company;

officer has the meaning set out in section 9 of the *Corporations Act 2001 (Cth)*.

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 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 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;

(o) a reference to any legislation, statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901 (Cth)* or the equivalent state legislation, as applicable; and

(p) a reference to the Director includes a reference to the Director's personal representatives.

(q) A term or expression starting with a capital letter:

(i) which is defined in this clause 1, has the meaning given to it in this clause 1,

(ii) which is defined in the *Corporations Act* but is not defined in this Deed, has the same meaning as in the *Corporations Act*; and

(ii) which is defined in A New Tax System (Goods and Services Tax) Act 1999 but is not defined in this Deed, has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999.

2. Indemnity and Disclaimer.

2.1 General Indemnity. To the extent permitted by law and subject to clause 2.3 below, the Company indemnifies the Director against any liability or loss (including liability for negligence or for legal costs to the maximum extent permitted by law) incurred by the Director:

(a) as a director of the Company or a Related Body Corporate of the Company; or

(b) as a result of facts or circumstances relating to the Director's service as a director of the Company or a Related Body Corporate of the Company,

unless the liability did not arise out of conduct in good faith or is for a pecuniary liability order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act.

2.2 Disclaimer. To the extent (if any) permitted by law the Company releases and discharges the Director from all existing and future actions, suits, courses of action, claims and demands arising directly or indirectly from the Directors position acts or omissions as an officer or former officer of the Company other than in respect of conduct by the Director involving:

(a) a wilful breach of duty in relation to the Company; or

(b) a contravention of sections 182 or 183 of the Corporations Act.

2.3 Limited indemnity for costs. The Company has no obligation to indemnify the Director for legal costs and expenses to the extent that the costs and expenses are incurred:

(a) in defending or resisting proceedings in which the Director is found to have a liability for which he or she is not entitled to an indemnity under clause 2.1;

(b) in defending or resisting criminal proceedings in which the Director is found guilty;

(c) in defending or resisting proceedings brought by ASIC (other than costs incurred in investigations prior to commencing proceedings) or a liquidator for a Court order if the grounds for making the order are found by the Court to have been established; or

(d) in connection with proceedings for relief to the Director under the Corporations Act in which the Court denies relief.

3. Claim by Director.

3.1 Notification by Director.

(a) The Director must advise the Company as soon as reasonably practicable after the Director becomes aware of any claim against the Director which could reasonably be expected to give rise to a claim by the Director under the Indemnities.

(b) Failure by the Director to advise the Company as required under paragraph (a) does not affect the rights of the Director to the indemnity.

3.2 Defence of Legal Action. If the Company admits liability under the Indemnities for a claim notified under clause 3.1, the Company is entitled to:

(a) conduct the defence of that claim under its sole management, control and cost;

(b) institute legal proceedings in the name of the Director as part of that defence; and

(c) settle that claim or any legal proceeding arising out of that claim after obtaining the written consent of the Director, which consent cannot be unreasonably withheld;

provided that the Company instructs its lawyers on behalf of both the Company and the Director so that client legal privilege attaches to any documents produced by those lawyers for the benefit of both the Company and the Director.

3.3 Obligations of Director. If the Company admits liability under the Indemnities for a claim notified under clause 3.1, the Director must:

(a) take such action or provide such information as the Company may reasonably require;

(b) assist the Company to the best of the Directors abilities in any action the Company takes to avoid, dispute, defend or appeal any legal action connected with that claim; and

(c) not admit any liability for or settle any action connected to that claim without the prior consent of the Company (such consent not to be unreasonably withheld),

3.4 Reimbursement. The Director is entitled to be reimbursed by the Company for any actual costs of the Director reasonably incurred in taking action on behalf of the Company under clause 32 or clause 3.3.

3.5 Director's Action. The Director may engage separate legal or other representation and participate in a claim or proceeding against the Director by reason of or arising out of the Director being a director of the Company but any expenses incurred by the Director in relation to such representation or participation will only be borne by the Company to the extent that those expenses are the subject of an indemnity provided for in clause 2 and that those expenses incurred in circumstances where the Company has refused to authorise representation or participation by lawyers other than lawyers acting also for the Company and there is a reasonable likelihood that the interests of the Director and of the Company would conflict if the same lawyers were to act on behalf of both the Director and the Company.

4. Payments.

4.1 Payments to Director. Subject to clauses 2.3 and 4.2, the Company must pay to the Director the Directors costs and expenses covered by the indemnities in relation to any proceedings:

(a) at the time the costs and expenses are payable by the Director; and

(b) within fourteen [*14*] days of receipt by the Company of the account for those costs and expenses.

4.2 Repayment by Director. If an amount advanced under clause 4.1, or part thereof, is for costs or expenses for which the Director cannot or could not be indemnified under this Deed then, within 28 days after receipt of a written request from the Company, the Director must repay such monies to the Company.

4.3 Taxation. Where an event giving rise to a payment received by a Director under the Indemnities results in an increase in tax payable by a Director under either the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, the Company shall pay to the Director an additional amount to cover any such increase in tax payable (as well as any tax payable in respect of the additional amount).

4.4 Other Payments. The Director must repay to the Company all amounts received under this Deed for costs incurred:

(a) in defending or resisting proceedings in which the Director is found to have a liability for which the Director could not be indemnified under this Deed; or

(b) to the extent that the Director receives payment under the D&O Policy maintained under clause 5, another insurance policy or another indemnity.

5. Insurance.

5.1 Company's Covenants. The Company must, to the extent permitted by law:

(a) maintain a D&O Policy for its directors including the Director, the terms of which are reasonably prudent given the Company's business and risks;

(b) while the Director is a director of the Company or a Related Body Corporate of the Company, and for at least 7 years after the Director ceases to be a director of the Company or a Related Body Corporate of the Company, maintain and pay the premium on a D&O Policy for the Director;

(c) ensure that the D&O Policy covers the Director against liability:

(i) as a director of the Company or a Related Body Corporate of the Company; or

(ii) as a result of facts or circumstances relating to the Director's service as a director of the Company or a Related Body Corporate of the Company,

including but not limited to liability for negligence or for legal costs.

However the D&O Policy will not provide insurance cover against conduct by the Director involving:

(i) a wilful breach of duty in relation to the Company; or

(ii) a contravention of sections 182 or 183 of the Corporations Act.

(d) pay the premiums payable for the D&O Policy and, to the extent that any portion of the premium for the contract of insurance referred to in this clause may not at law be paid by the Company, the Company must give the Director notice of and a reasonable opportunity to contribute that part of the additional premium which is attributable to the Director;

(e) give the Director a copy of the D&O Policy each year, within one month of its renewal;

(f) the Company must notify the Director in writing as soon as possible after the Board becomes aware of any claim or proceeding or circumstances which give rise or could give rise to a liability of the Director to the Company or which may result in a claim against the Director, including without limitation, if any claim is threatened or made against the Company which may result in a claim being made against the Director; and

(g) if proceedings of the type referred to above are commenced, the Company must give the Director a copy of the documents originating the proceedings or documents equivalent to these and all supporting documents.

5.2 Director's Undertaking. The Director undertakes:

(a) to take such steps as the Company may reasonably require to enable the Company to take out and maintain the D&O Policy at the Company's expense; and

(b) to comply with all obligations and requirements at all times, including but not limited to reporting of any claims, and of circumstances which could give rise to a claim, under the D&O Policy.

6. Access to Company Books.

6.1 Right to Access Books.

(a) The Company must, if requested by the Director, give the Director or an Authorised Person access to the Books if the Director is required to defend a claim or potential claim against the Director.

(b) The Company must give the Director or an Authorised Person a copy of any Books free of charge.

6.2 Obligations of Company. The Company must use its reasonable efforts:

(a) to keep all Books safe and secure from damage; and

(b) to keep a complete set of all Books for the period starting from the date of appointment of the Director to the board of directors of the Company or a Related Body Corporate of the Company, for seven years after the Director ceases to be a director of the Company or a Related Body Corporate of the Company.

6.3 Statutory Rights of Access. This clause 6 does not adversely affect any statutory right of access which the Director may have to the Books, including without limitation, under section 198F of the *Corporations Act*.

6.4 Retention.

(a) The Director is entitled to retain any Board Documents supplied to the Director by the Company and those Board Documents become the property of the Director at the time they are supplied to the Director.

(b) The Company must procure that any notes or memoranda made by the Director in his capacity as a director of the Company become the property of the Director.

6.5 Privilege. If any Board Documents given to the Director include information that is subject to legal professional privilege or client legal privilege the Director must not waive that privilege unless he is a party to the relevant legal proceedings.

7. GST.

7.1 Consideration exclusive of GST. Any consideration or payment obligation in this Deed is exclusive of GST unless stated otherwise.

7.2 Monetary Consideration. This clause 6.2 applies if a Supply made under or in connection with this Deed is a Taxable Supply, for which the consideration is a payment of money.

(a) If this clause applies, the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.

(b) The additional amount under paragraph (b) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relate

7.3 Tax Invoices. A party who receives consideration, whether monetary or otherwise, for a Taxable Supply under this Deed, must give the other party a Tax invoice in a form which complies with the GST Law within 10 Business Days after the end of the month in which the consideration is paid, or an invoice issued, in relation to the Supply, whichever occurs first.

7.4 Payments. Unless otherwise stated in this Deed, the following principles apply when determining the amount of a payment under this Deed:

(a) if a party is entitled under this Deed to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Deed, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and

(b) if a party sets off an amount under this Deed, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph (a).

7.5 Adjustment Event. If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event may be properly accounted for, including the issue of an Adjustment Note.

8. General.

8.1 Continuing Indemnities.

(a) The Indemnities continue in full force and effect without limitation, including on the Director ceasing to be a director of the Company.

(b) Each of the Indemnities is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.

(c) Each Indemnity contained in this Deed:

(i) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and

(ii) survives the termination of this Deed.

8.2 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.

(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.

8.3 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.

8.4 No Waiver.

(a) A waiver of a provision of this Deed or a right or remedy arising under this Deed, including this clause, must be in writing and signed by the party granting it.

(b) 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.

(c) 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.

(d) A waiver of a breach does not operate as a waiver of any other breach.

(e) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

8.5 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.

8.6 Notices. Any notice or other communication to or by a party to this Deed:

(a) may be given by personal service, post or facsimile;

(b) must be in writing, legible and in English addressed as shown below:

(i) If to the Company

Address: c/o Level 2, 517 Flinders Lane, Melbourne 3000
Attention: Kevin Hollingsworth
Facsimile: 03-9629 5466

(ii) If to the Director

Address:
Attention:
Facsimile:

or to any other address last notified by the party to the sender by notice given in accordance with this clause;

(c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the *Corporations Act 2001 (Cth)*; and

(d) is deemed to be given by the sender and received by the addressee:

(i) if delivered in person, when delivered to the addressee;

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

(iii) 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 addressee notified 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.

8.7 Governing Law and Jurisdiction.

(a) This Deed is governed by and must be construed in accordance with the laws of the State of Victoria.

(b) The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

8.8 No Variation and Waiver. This Deed cannot be amended or varied except in writing signed by the parties.

8.9 No Assignment. A party may not assign this Deed or otherwise transfer the benefit of this Deed or a right or remedy under it, without first getting the written consent of the other party.

8.10 Cumulative Rights. The rights and remedies of a party under this Deed do not exclude any other right or remedy provided by law.

8.11 Payments. A payment which is required to be made under this Deed must be in cash or by bank cheque or in other immediately available funds and in Australian dollars.

8.12 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.

Executed as a Deed.

Executed by Mesoblast Ltd ACN 109 431 870 in accordance with section 127(1) of the Corporations Act 2001 (Cth):)
)
)

Signature of Director

Signature of-Director/Secretary

Name of Director (please print)

Name of Director/Secretary (please print)

Signed, Sealed and delivered by _____)
In the presence of:)

Signature

Signature of Witness

Name of Witness (please print)

Melbourne 1 Sydney
wwvv.middletons.com.au

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200 Queen Street
Melbourne VIC 3000
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Form of Deed of Indemnity, Insurance and Access

Mesoblast Limited
ACN 109 431 870

and

Version Updated 15 April 2014

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Deed of Indemnity, Insurance and Access

Date

Parties

1. **Mesoblast Limited** ACN 109 431 870 of Level 39, 55 Collins Street, Melbourne Victoria (**Company**)

2. (“**Director**”) of

Background

A. The Constitution of the Company permits certain indemnities for officers of the Company.

B. The Company has agreed, subject always to the prohibitions and limitations imposed by law, to indemnify and insure the Director on the terms and conditions of this Deed.

C. The Company is required, under the listing rules of the Australian Securities Exchange (“**ASX**”, with the listing rules being “**ASX Listing Rules**”), to disclose to ASX details of directors’ interests in securities and in contracts relevant to securities. The Company is also required to enter into an agreement with directors under which directors are obliged to provide the necessary information to the Company. It is intended by the parties that this Deed incorporate that disclosure agreement between the Director and the Company.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions. In this Deed:

Authorised Person means any person authorised in writing by the Director and approved by the Company, such approval not to be unreasonably withheld;

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

Board means, as the context requires:

(a) the board of Directors of the Company; or

(b) any committee of the board of Directors of the Company;

Board Documents includes all:

(a) written communications circulated or made available to the Director by the Company;

(b) minutes of meetings of the Company and the Board; and

(c) documents circulated to Directors of the Company in connection with any meetings or deliberations of the Board;

Books means all the financial, technical and commercial information belonging to the Company from time to time, and includes the Board Documents;

Constitution means the Constitution of the Company;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Deed means this Deed including the recitals, any schedules and any annexures;

Document has the meaning set out in section 25 of the *Acts Interpretation Act 1901 (Cth)*;

D&O Policy means a contract:

(a) insuring a person against liability incurred by that person in that person's capacity as Director or officer of a body corporate; and

(b) allowing the body corporate to obtain reimbursement for any claims paid by it to a Director or officer of the body corporate under an indemnity;

GST means goods and services tax under the GST Law;

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999*;

Indemnities means the indemnities granted to the Director by the Company under this Deed;

Information means all or any part of information contained in or related to:

(a) the current or future business interests, methodology or affairs of the Company or any Related Body Corporate of the Company;

(b) a Book; or

(c) a discussion at a meeting of the Company;

officer has the meaning set out in section 9 of the Corporations Act;

Permitted Purpose means one or more of the following purposes:

(a) to discharge the Director's duties as an officer of the Company;

(b) the investigation or defence of any claim or any other investigation or proceeding that is anticipated, threatened or commenced that may involve or result in a claim against the Director; or

(c) any other purpose in respect of which the Company gives its written consent;

Related Body Corporate has the meaning as provided in the Corporations Act; and

Securities means securities of the Company or a Related Body Corporate.

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 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 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;

(o) a reference to any legislation, statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901 (Cth)* or the equivalent state legislation, as applicable;

(p) a reference to the Director includes a reference to the Director's personal representatives; and

(q) a term or expression starting with a capital letter:

(i) which is defined in this clause 1, has the meaning given to it in this clause 1;

(ii) which is defined in the Corporations Act but is not defined in this Deed, has the same meaning as in the Corporations Act; and

(iii) which is defined in A New Tax System (Goods and Services Tax) Act 1999 but is not defined in this Deed, has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999.

2. Indemnity and Disclaimer

2.1 General indemnity. To the extent not prohibited by law and the Constitution and subject to the provisions of this clause 2, the Company indemnifies the Director against all losses, liabilities, costs, charges and expenses (**Liabilities**) including without limitation liability for negligence and legal costs (to the maximum extent permitted by law) incurred by the Director:

(a) as a Director of the Company or a Related Body Corporate of the Company; or

(b) as a result of facts or circumstances relating to the Director's service as a Director of the Company or a Related Body Corporate of the Company.

2.2 Commencement of indemnity. The indemnity in clause 2.1 is enforceable without the Director having first to incur any expense or make any payment.

2.3 No indemnity for certain claims. Nothing in this Deed obliges the Company to indemnify the Director or to advance monies to the Director to meet any legal costs incurred by the Director in:

(a) prosecuting any claim in the name of the Director or for the benefit of the Director; or

(b) defending or resisting proceedings brought against the Director by the Company approved by the Board.

2.4 Partial indemnification. If the Company is obliged under this Deed to indemnify the Director for some or a portion of the costs, expenses, judgments, fines, penalties or settlements actually or reasonably incurred by the Director, but not for the total amount thereof, the Company will nevertheless indemnify the Director for that portion for which the Director is entitled to indemnification.

2.5 Limit on liability. The indemnity in clause 2.1 does not operate in respect of any Liabilities of the Director to the extent that the Liabilities are recovered by the Director under a policy of insurance.

3. Claim by Director

3.1 Notification by Director

(a) The Director must advise the Company as soon as reasonably practicable after the Director becomes aware of any claim against the Director which could reasonably be expected to give rise to a claim by the Director under the Indemnities.

(b) Failure by the Director to advise the Company as required under paragraph (a) does not affect the rights of the Director to the indemnity.

3.2 Defence of legal action. If the Company admits liability under the Indemnities for a claim notified under clause 3.1 or otherwise involving the Director (a "**Claim**"), the Company is entitled to:

(a) conduct the defence of that Claim under its sole management, control and cost;

(b) institute legal proceedings in the name of the Director as part of that defence; and

(c) settle that Claim or any legal proceeding arising out of that Claim after obtaining the written consent of the Director, which consent cannot be unreasonably withheld;

provided that the Company instructs its lawyers on behalf of both the Company and the Director so that client legal privilege attaches to any documents produced by those lawyers for the benefit of both the Company and the Director.

3.3 Consultation. Where a Claim is under the management and control of the Company, the Company must:

(a) consult with the Director about material decisions regarding the Claim;

(b) take into account the Director's interests (including the Director's reputation) in making material decisions about the Claim; and

(c) keep the Director reasonably informed of developments regarding the Claim.

3.4 Disputes in relation to settlement of Claims

(a) In the event that:

(i) the Director or the Company recommends in writing to the other that an offer of settlement be made or accepted in respect of a Claim (**Recommended Offer**); and

(ii) the Director or the Company, as the case may be, declines to consent to the making or acceptance of the Recommended Offer,

the Company will (at the Company's expense) brief Senior Counsel to be mutually agreed (or, in default of agreement, as nominated by the President of the Law Institute of Victoria or their nominee), to advise on whether or not the Recommended Offer should be made or accepted, having due regard to the interests of both the Company and the Director.

(b) If Senior Counsel's advice is that the Recommended Offer should be made or accepted, the Company and the Director will:

(i) take such steps as are mutually agreed to make or accept (as the case maybe) the Recommended Offer; and

(ii) thereafter take such steps to settle the Claim as are mutually agreed,

and in default of agreement, will take such steps as Senior Counsel advises, having due regard to the interests of both the Company and the Director.

(c) Nothing in this clause 3.4 is intended to affect the Company's or the Director's rights or entitlements under any D&O Policy or other relevant policy of insurance and, in particular, no offer is required to be made or accepted and no step is required to be taken to the extent that it may prejudice any such right or entitlement.

3.5 Obligations of Director. If the Company admits liability under the Indemnities for a Claim, the Director must:

(a) take such action or provide such information as the Company may reasonably require;

(b) assist the Company to the best of the Director's abilities in any action the Company takes to avoid, dispute, defend or appeal any legal action connected with that Claim;

(c) not admit any liability for or settle any action connected to that Claim without the prior consent of the Company;

(d) upon request by the Company, do everything necessary or desirable which the Company reasonably requests to enable the Company (so far as it is possible) to be subrogated to and enjoy the benefits of the Director's rights in relation to any counterclaims or cross-claims or any claims against any person and render such assistance as may be reasonably requested by the Company for that purpose;

(e) if the Company has not assumed conduct of a Claim, keep the Company fully informed in relation to the status and conduct of that Claim; and

(f) notify any Claim to an insurer or any other person who may be liable to indemnify the Director in respect of that Claim, promptly take all reasonable steps to enforce all the Director's rights against the insurer or other person and comply with all obligations under the terms of the insurance or other indemnity.

3.6 Company's obligations. The Company will immediately notify the Director if any investigation or proceeding is anticipated, threatened or commenced against it that may involve or result in a claim against the Director.

3.7 Reimbursement. The Director is entitled to be reimbursed by the Company for any actual costs of the Director reasonably incurred in taking action on behalf of the Company under clause 3.2 or clause 3.5.

3.8 Director's action. Nothing in this Deed prevents the Director from obtaining independent legal advice or separate legal representation in connection with the conduct of a Claim and the expenses incurred by the Director in so doing will be paid or reimbursed by the Company, but only to the extent those expenses are otherwise payable by the Company under this Deed and are:

(a) incurred prior to the Company (or its insurers) assuming conduct of the Claim; or

(b) incurred with the prior written consent of the Company (which must not be unreasonably withheld); or

(c) incurred in circumstances where there is a reasonable likelihood that the interests of the Director and the Company would conflict if the same lawyers were to act on behalf of both the Company and the Director.

4. Payments

4.1 Payments to Director. Subject to clause 4.2, the Company must pay to the Director the Director's Liabilities covered by the Indemnities:

(a) at the time the costs and expenses are payable by the Director; and

(b) within fourteen days of receipt by the Company of the account for those costs and expenses.

4.2 Reimbursement of the Company. The Director must account to the Company for any amount:

(a) which the Director receives under an insurance policy or other indemnity available to the Director in respect of a payment which has already been made by the Company;

(b) of expenses that were advanced to the Director under clause 2.1 and for which the Company is not permitted by law or the Constitution to indemnify the Director including by reason of an adverse final determination of a court or other judicial body (after exhausting any rights of appeal),

such amount to be reimbursed within 30 days of the Company providing to the Director details of each such amount.

4.3 Taxation. Where an event giving rise to a payment received by a Director under the Indemnities results in an increase in tax payable by a Director under either the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, the Company shall pay to the Director an additional amount to cover any such increase in tax payable (as well as any tax payable in respect of the additional amount).

5. Insurance

5.1 Company's covenants. The Company must, to the extent permitted by law and the Constitution:

(a) maintain a D&O Policy for its Directors including the Director, the terms of which are reasonably prudent given the Company's business and risks;

(b) while the Director is an Director or officer of the Company or a Related Body Corporate of the Company, and for at least 7 years after the Director ceases to be a Director or officer of the Company or a Related Body Corporate of the Company, maintain and pay the premium on a D&O Policy for the Director;

(c) ensure that the D&O Policy covers the Director against liability:

(i) as a Director or officer of the Company or a Related Body Corporate of the Company; or

(ii) as a result of facts or circumstances relating to the Director's service as a Director or officer of the Company or a Related Body Corporate of the Company,

including but not limited to liability for legal costs. However the D&O Policy will not provide insurance cover against conduct by the Director involving:

(i) a wilful breach of duty in relation to the Company; or

(ii) a contravention of sections 182 or 183 of the Corporations Act;

(d) ensure that the D&O Policy is on terms and conditions that, taken as a whole, are not materially less favourable than the D&O Policy taken out or made available at the same time by the Company in respect of any other director or officer of the Company;

(e) pay the premiums payable for the D&O Policy and, to the extent that it is contrary to an applicable law that any portion of the premium for the contract of insurance referred to in this clause is paid by the Company, the Company must give the Director notice of and a reasonable opportunity to contribute that part of the additional premium which is attributable to the Director;

(f) give the Director a copy of the D&O Policy upon reasonable request.

5.2 Notice to Director. The Company must notify the Director immediately on the Company becoming aware that:

(a) the D&O Policy required to be maintained under clause 5.1 has been cancelled or not renewed; or

(b) there is a material diminution in the terms of the D&O Policy maintained under clause 5.1 for the Director.

5.3 Director's undertaking. The Director undertakes:

(a) to take such steps as the Company may reasonably require to enable the Company to take out and maintain the D&O Policy at the Company's expense; and

(b) to comply with all obligations and requirements at all times, including but not limited to reporting of any claims, and of circumstances which could give rise to a claim, under the D&O Policy.

6. Access to Company Books

6.1 Right to access Books

(a) The Company must, if requested by the Director, give the Director or an Authorised Person access to the Books if the Director is required to defend a claim or potential claim against the Director.

(b) The Company must give the Director or an Authorised Person a copy of any Books free of charge.

6.2 Obligations of Company. The Company must use its reasonable efforts:

(a) to keep all Books safe and secure from damage; and

(b) to keep a complete set of all Books for the period starting from the date of appointment of the Director to the board of Directors of the Company or a Related Body Corporate of the Company, for seven years after the Director ceases to be a Director of the Company or a Related Body Corporate of the Company.

6.3 Statutory rights of access. This clause 6 does not adversely affect any statutory right of access which the Director may have to the Books, including without limitation, under section 198F of the Corporations Act.

6.4 Retention. The Company must procure that any notes or memoranda made by the Director in his capacity as a Director or officer of the Company become the property of the Director but with the Company entitled to a copy.

6.5 Privilege. If any Documents given to the Director include information that is subject to legal professional privilege or client legal privilege of the Company, the Director must not waive that privilege.

7. Confidentiality

7.1 Obligations of confidentiality. Without limiting the Director's duties as an officer of the Company, the Director (both during the period in which the Director is an officer of the Company and after the Director ceases to be an officer of the Company) must:

(a) keep all Information confidential unless and to the extent permitted to do so under clause 7.2;

(b) not disclose Information to any person unless and to the extent permitted to do so under clause 7.2; and

(c) not use Information for any purpose other than a Permitted Purpose.

7.2 Exceptions. The obligations in clause 7.1 do not apply to Information if and to the extent that:

(a) the Information is or comes into the public domain (other than as a result of a contravention by the Director of this Deed or any other obligation of confidence);

(b) disclosure of the Information is required by law;

(c) disclosure of the Information is either:

(i) reasonably necessary for a Permitted Purpose; or

(ii) made in confidence to the legal, financial or taxation advisers of the Director,

and either:

(iii) the Company does not have the right to claim legal privilege in respect of some or all of that Information or the proposed disclosure of the Information could not reasonably be expected to jeopardise the Company's ability to claim such privilege; or

(iv) the Company has waived, in writing, its right to claim legal privilege in respect of all or any of that Information; or

(d) the Company has given its prior written consent to the disclosure of the Information.

7.3 Limitation. If the Director is permitted to disclose Information under clause 7.2, the Director must:

(a) disclose only the minimum Information reasonably necessary in the circumstances; and

(b) disclose the Information only to persons who have a need to know and only to the extent that they have a need to know; and any Information so disclosed shall maintain its confidentiality protection for all purposes other than such permitted disclosure.

7.4 Unauthorised disclosure. The Director must take all reasonable precautions to prevent any unauthorised disclosure of Information, including the following precautions:

(a) the Director must at all times store all Information safely and securely;

(b) the Director must immediately notify the Company of any actual, threatened or suspected unauthorised disclosure of any Information;

(c) the Director must promptly, at the request of the Company at any time, disclose and deliver up to the Company, all Information including copies in the Director's possession custody or control; and

(d) the Director must take all reasonable measures to minimise any unauthorised dissemination of any Information which is in any way related to or resulting from an act or failure to act by the Director.

8. ASX Listing Rule disclosures

8.1 Compliance with ASX Listing Rules. The Director will make all disclosures to the Company required by the ASX Listing Rules, including but not limited to those set out in clauses 8.2 to 8.4.

8.2 Initial disclosure. The Director will provide the following information as at the date of appointment:

(a) details of all securities registered in the Director's name. These details include the number and class of the securities;

(b) details of all securities not registered in the Director's name but in which the Director has a relevant interest within the meaning of section 9 of the Corporations Act. These details include the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest;

(c) details of all contracts (other than contracts to which the Company is a party) to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of the Company or a Related Body Corporate. These details include the number and class of the shares or debentures, the name of the registered holder if the shares or debentures have been issued and the nature of the Director's interest under the contract.

The Director will provide the required information as soon as reasonably possible after the date of appointment and in any event no later than three business days after the date of appointment.

8.3 Ongoing disclosure. The Director will provide the following information:

(a) details of changes in securities registered in the Director's name other than changes occurring as a result of corporate actions by the Company. These details include the date of the change, the number and class of the securities held before and after the change, and the nature of the change, for example on-market transfer. The Director will also provide details of the consideration payable in connection with the change, or if a market consideration is not payable, the value of the securities the subject of the change;

(b) details of changes in securities not registered in the Director's name but in which the Director has a relevant interest within the meaning of section 9 of the Corporations Act. These details shall include the date of the change, the number and class of the securities held before and after the change, the name of the registered holder before and after the change and the circumstances giving rise to the relevant interest. The Director will also provide details of the consideration payable in connection with the change, or if a market consideration is not payable, the value of the securities the subject of the change;

(c) details of all changes to contracts (other than contracts to which the Company is a party) to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in or debentures of the Company or a Related Body Corporate. These details include the date of the change, the number and class of the shares or debentures before and after the change, the name of the registered holder if the shares or debentures have been issued and the nature of the Director's interest under the contract.

The Director will provide the required information as soon as reasonably possible after the date of the change and in any event no later than three business days after the date of the change.

8.4 Final disclosure. The Director will provide the following information as at the date of ceasing to be a Director:

(a) details of all securities registered in the Director's name. These details include the number and class of the securities;

(b) details of all securities not registered in the Director's name but in which the Director has a relevant interest within the meaning of section 9 of the Corporations Act. These details include the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest;

(c) details of all contracts (other than contracts to which the Company is a party) to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in or debentures of the Company or a Related Body Corporate. These details include the number and class of the shares or debentures, the name of the registered holder if the shares or debentures have been issued and the nature of the interest under the contract.

The Director will provide the required information as soon as reasonably possible after the date of ceasing to be a director and in any event no later than three business days after the date of ceasing to be a director.

8.5 Agency. The Director authorises the Company to give the information provided by the Director to ASX on the Director's behalf and as the Director's agent.

9. GST

9.1 Consideration exclusive of GST. Any consideration or payment obligation in this Deed is exclusive of GST unless stated otherwise.

9.2 Monetary consideration. This clause 9.2 applies if a Supply made under or in connection with this Deed is a Taxable Supply, for which the consideration is a payment of money.

(a) If this clause applies, the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.

(b) The additional amount under paragraph (a) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relate

9.3 Tax invoices. A party who receives consideration, whether monetary or otherwise, for a Taxable Supply under this Deed, must give the other party a Tax Invoice in a form which complies with the GST Law within 10 Business Days after the end of the month in which the consideration is paid, or an invoice issued, in relation to the Supply, whichever occurs first.

9.4 Payments. Unless otherwise stated in this Deed, the following principles apply when determining the amount of a payment under this Deed:

(a) if a party is entitled under this Deed to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Deed, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and

(b) if a party sets off an amount under this Deed, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph (a).

9.5 Adjustment Event. If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event may be properly accounted for, including the issue of an Adjustment Note.

10. General

10.1 Continuing Indemnities

(a) The Indemnities continue in full force and effect without limitation, including on the Director ceasing to be a Director or officer of the Company.

(b) Each of the Indemnities is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.

(c) Each Indemnity contained in this Deed:

(i) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and

(ii) survives the termination of this Deed.

10.2 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.

(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.

10.3 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.

10.4 No waiver

(a) A waiver of a provision of this Deed or a right or remedy arising under this Deed, including this clause, must be in writing and signed by the party granting it.

(b) 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.

(c) 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.

(d) A waiver of a breach does not operate as a waiver of any other breach.

(e) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

10.5 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.

10.6 Notices. Any notice or other communication to or by a party to this Deed:

(a) may be given by personal service, post or facsimile;

(b) must be in writing, legible and in English addressed as shown below:

(i) If to the Company
Address: Level 39, 55 Collins Street, Melbourne Vic 3000
Attention: Silviu Itescu
Email:

(ii) If to the Director
Address:
Attention:
Email:

or to any other address last notified by the party to the sender by notice given in accordance with this clause;

(c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and

(d) is deemed to be given by the sender and received by the addressee:

(i) if delivered in person, when delivered to the addressee;

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

(iii) 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 addressee notified 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.

10.7 No variation. This Deed cannot be amended or varied except in writing signed by the parties.

10.8 No assignment. A party may not assign this Deed or otherwise transfer the benefit of this Deed or a right or remedy under it, without first getting the written consent of the other party.

10.9 Cumulative rights. The rights and remedies of a party under this Deed do not exclude any other right or remedy provided by law.

10.10 Payments. A payment which is required to be made under this Deed must be in cash or by bank cheque or in other immediately available funds and in Australian dollars.

10.11 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.

10.12 Governing law and jurisdiction

(a) This Deed is governed by and must be construed in accordance with the laws of the State of Victoria.

(b) The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

Executed as a Deed.

Executed by Mesoblast Ltd ACN 109 431 870)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)

Signature of Director

Signature of-Director/Secretary

Name of Director (please print)

Name of Director/Secretary (please print)

Signed, Sealed and delivered
by _____)
In the presence of:)

Signature

Signature of Witness

Name of Witness (please print)

Exhibit 21.1

Subsidiaries of Mesoblast Limited

Legal Entity	Jurisdiction of Organization
Mesoblast Australia Pty Ltd	Australia
Mesoblast Employee Share Trust	Australia
Mesoblast International Sarl	Switzerland
Mesoblast International Sarl Singapore Branch	Singapore
Mesoblast International (UK) Limited	United Kingdom
Mesoblast UK Limited	United Kingdom
Mesoblast, Inc.	United States