

**DATED THIS**

**DAY OF**

**2014**

**UNIVERSITI MALAYSIA SABAH**

**AND**

**Company Name**  
(Company No. xxxxxx)

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***LICENSING AND  
COMMERCIALIZATION AGREEMENT***

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**THIS LICENSING AND COMMERCIALIZATION AGREEMENT** (hereinafter referred to as “**this Agreement**”) is made as of ..... 201...

**BETWEEN**

**UNIVERSITI MALAYSIA SABAH**, a public university established under the Universities and University Colleges Act 1971) with its principal office at Jalan UMS, 88400 Kota Kinabalu, Sabah (hereinafter referred to as “**UMS**”), of the one part;

**AND**

**XXXXXXX** (Company No: ..... ) having its business address at ..... (hereinafter referred to as “**LICENSEE**”) of the other part.

(UMS and LICENSEE hereinafter referred to collectively as the “Parties” and each of them as a “Party”).

**BACKGROUND**

- A. UMS is public University which strives to enhance and strengthen its academic development and has taken various initiatives to complement its educational excellence. UMS has entered into various collaborative arrangements with other parties to enhance mutual collaboration and joint venture in academic and research development and sharing of expertise and resources;
- B. UMS through ..... of its faculty ..... has developed technical information relating to a process for producing “.....”; and
- C. UMS at the request of LICENSEE has agreed to grant a licence to LICENSEE for utilizing the technical information at Facility, with the objective of manufacturing and commercializing “.....” products, subject to the terms and conditions set forth herein;

**THE AGREEMENT IS NOW WITNESSETH as follows:**

**Clause 1 Definitions & Interpretation**

1.1 For the purposes of this Agreement, the following words and phrases shall, where they appear in capital letters, have the following meaning:

**EFFECTIVE DATE** means the date of this Agreement.

**FACILITY** Means the facility in which the LICENSEE operates the LICENSED PROCESS and which embodies any of the UMS’s TECHNICAL INFORMATION to be maintained

in confidence and made available to LICENSEE hereunder.

**FORCE MAJEURE**

means any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Party to perform and, without limiting the generality thereof, includes—

- (1) Strikes, lockouts or other industrial actions;
- (2) Civil commotion, riot, invasion, war threat or preparation for war;
- (3) Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster;
- (4) Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
- (5) Political or governmental interference or actions within the normal operations of any Party.

**GROSS SALES VALUE**

means

- (1) in respect of any arm's length transaction exclusively for money, the invoiced ex-works sales value of the LICENSED PRODUCTS; and
- (2) in respect of any sale or other disposal of any LICENSED PRODUCTS or part thereof otherwise than on an arm's length basis exclusively for money, the higher of the fair market price and the invoiced ex-works sales value of the LICENSED PRODUCTS.

**IMPROVEMENTS**

mean all improvements, modifications or adaptations to any part of UMS's TECHNICAL INFORMATION AND KNOW HOW which might reasonably be of commercial interest to either Party in the manufacture of the LICENSED PRODUCTS or in the implementation of UMS's TECHNICAL INFORMATION.

**INTELLECTUAL PROPERTY**

means

- (a) Inventions; manner, method or process of manufacture; method or principle of construction; or design; plan, drawing or design; or scientific, technical or engineering information or document;
- (b) Improvement, modification or development of any of the foregoing;
- (c) Patent, application for a patent, right to apply for a patent or similar rights for or in respect of any intellectual Property referred to in paragraph (a) or (b);
- (d) Trade secret, know-how, confidential information or right of secrecy or confidentiality in respect of any information or document or other intellectual Property referred to in paragraph (a) or (b);
- (e) Copyright or other rights in the nature of copyright subsisting in any works or other subject matter referred to in paragraph (a) or (b);
- (f) Registered and unregistered trademark, registered design, application for registration of a design, right to apply for registration of a design or similar rights for or in respect of any work referred to in paragraph (a) or (b);
- (g) Any Intellectual Property in addition to the above which falls within the definition of intellectual property rights contained in Article 2 of the World Intellectual Property Organisation Convention of July 1967; and
- (h) Any other rights arising from intellectual activities in the scientific, literary or artistic fields;

Whether vested before or after the date of this Agreement and whether existing in Malaysia or otherwise and for the duration of the rights.

<b>LICENSED PROCESS</b>	means a process for producing “.....” as further described in <b>SCHEDULE A.</b>
<b>LICENSED PRODUCTS</b>	means the products which may be manufactured and produced based on the LICENSED PROCESS and the UMS’s TECHNICAL INFORMATION.
<b>LICENSEE</b>	means <b>XXXXXXXXXXXXXXXXXXXX</b> (Company No: ..... ) with its principal office at .....
<b>MAIN INVENTOR</b>	means <b>XXXXXXXXXXXXXXXXXXXX</b> from the faculty of science and natural resources of UMS who is the UMS Staff responsible for the development of the LICENSED PROCESS and identified by UMS as part of the RESEARCH TEAM.
<b>RESEARCH TEAM</b>	means and includes the MAIN INVENTOR and member(s) of staff of UMS responsible for or involved in the development of the LICENSED PROCESS and identified by UMS as the co-inventor(s) of the LICENSED PROCESS, and the RESEARCH TEAM shall include such other staff, employees and students of UMS, from time to time working together with or under the direct or indirect supervision or direction of such the MAIN INVENTOR, on the LICENSED PRODUCTS, as declared in writing by UMS from time to time.
<b>SUB-LICENSING REVENUE</b>	means all cash, sub-licensing fees, good will fees, research fees and all other payments and the cash equivalent thereof, which are paid to LICENSEE by any third party or any new company equities and shares acquired by LICENSEE from third party due to sub-licensing.
<b>UMS</b>	means <b>UNIVERSITI MALAYSIA SABAH</b> , a public university established under the Universities and University Colleges Act 1971) with its principal office at Jalan UMS, 88400 Kota Kinabalu, Sabah.
<b>UMS’s TECHNICAL INFORMATION</b>	means technical information relating to LICENSED PROCESS necessary to commercially manufacture the LICENSED PRODUCTS including material composition, raw materials specifications, process equipment specifications, processing conditions, output standards and quality assurance methods.

- 1.2** In this Agreement, unless there is something in the subject or context inconsistent with such construction or unless it is otherwise expressly provided
- 1.2.1 words denoting one gender include all other genders and words denoting the singular include the plural and vice versa;
  - 1.2.2 words denoting persons include corporations, and vice versa, and also include their respective heirs, personal representatives, successors in title or permitted assigns, as the case may be;
  - 1.2.3 where a word or phrase is given a defined meaning in this Agreement, any other of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
  - 1.2.4 where a word or phrase indicates an exception to any of the provisions of this Agreement, and a wider construction is possible, such word or phrase is not to be construed *ejusdem generis* with any foregoing words or phrases and where a word or phrase serves only to illustrate or emphasis any of the provisions of this Agreement such word or phrase is not to be construed, or to take effect, as limiting the generality of such provision;
  - 1.2.5 any reference to a recital, sub-paragraph, paragraph, sub-clause, clause, schedule, appendix, annex, or party, is to the relevant recital, sub-paragraph, paragraph, sub-clause, clause, schedule, appendix, annex or party of, or to, this Agreement and any reference to this Agreement or any of the provisions hereof includes all amendments and modifications made to this Agreement from time to time in force;
  - 1.2.6 any reference to a statutory provision includes any modification, consolidation or reenactment thereof for the time being in force, and all statutory instruments or orders made pursuant thereto;
  - 1.2.7 any reference to “pay” or cognate expressions, includes payments made in cash or by way of bank drafts (drawn on a bank licensed to carry on banking business under the provisions of the Banking and Financial Institutions Act 1989) or effected through inter-bank transfers to the transferable, cleared funds and the word “Ringgit” and the abbreviation “RM” mean the lawful currency of Malaysia;
  - 1.2.8 any reference to “writing”, or cognate expressions, includes, any communication effected by telex, cable, facsimile transmission or other comparable means;
  - 1.2.9 any reference to a “business day” is to a day (not being a Saturday or Sunday) on which banks, licensed to carry on banking business under the provisions of the Banking and Financial Institutions Act 1989, are open for business in Kuala Lumpur and Penang and any reference to a “day”, “week”, “month” or “year” is to that day, week, month or year in accordance with the Gregorian calendar; and

- 1.2.10 if any period of time is specified from a given day, or the day of a given act or event, it is to be calculated of that day and if any period of time falls on a day, which is not a business day, then that period is to be deemed to only expire on the next business day.
- 1.3 The Recitals and Schedule to this Agreement shall have effect and be construed as an integral part of this Agreement, but in the event of any conflict or discrepancy shall, for the purposes of this interpretation and enforcement of this Agreement, be resolved by –
- 1.3.1 Giving the provisions contained in the clauses of this Agreement, priority and precedence over the provisions contained in the Schedule and Recitals to this Agreement; and
- 1.3.2 Giving the provisions contained in the Schedules of this Agreement, priority and precedence over the provisions contained in the Recitals to this Agreement.
- 1.4 The table of contents, headings and sub-headings in this Agreement are inserted merely for convenience of reference and shall be ignored in the interpretation and construction of any of the provision herein contained.

## **Clause 2 RESPONSIBILITIES OF UMS**

### **2.1 Transfer of UMS's TECHNICAL INFORMATION**

- (a) UMS shall within three (3) months of the EFFECTIVE DATE hand over to LICENSEE, relevant documents on UMS's TECHNICAL INFORMATION required for the implementation of the LICENSED PROCESS at the Facility to the authorized representatives of LICENSEE.
- (b) Subject to the payment of the Consultancy Fee and the out-of-pocket expenses referred to in Sub-Clause 8.2 herein and all costs and expenses incidental to the carrying out of the training arrangements being borne by the LICENSEE, UMS shall provide training on the implementation of the of UMS's TECHNICAL INFORMATION for up to three (3) of LICENSEE's personnel having the requisite qualifications, commencing from the fourth month of this Agreement for three (3) months thereafter. Such training shall be conducted by the UMS at the Facility via a maximum of two (2) visits per month.
- (c) The transfer of UMS's TECHNICAL INFORMATION shall be deemed as completed on performance of UMS, the tasks stipulated in Clause 2.1(a) and 2.1(b).

### **2.2 Technical Assistance and Advice**

Subject to the payment of the Consultancy Fee and the out-of-pocket expenses referred to in Sub-Clause 8.3 herein, UMS shall ensure that the UMS MAIN INVENTOR and/or the UMS RESEARCH TEAM provides the technical assistance

and advice in the implementation of UMS's TECHNICAL INFORMATION, for the whole duration provided therein. Such technical assistance and advice shall be conducted by UMS via a maximum of two (2) visits per month, to the LICENSEE's site in the address stated herein.

### **Clause 3 No Warranty**

- 3.1 The transfer of UMS's TECHNICAL INFORMATION by UMS shall not be construed as a warranty by UMS of the novelty, utility, saleability and workability of the LICENSED PROCESS and/or UMS's TECHNICAL INFORMATION.
- 3.2 UMS does not give warranty, representation or undertaking as to the volume or quality of the LICENSED PRODUCTS which may be manufactured through the use of UMS's TECHNICAL INFORMATION.

### **Clause 4 Improvements**

- 4.1 The Parties shall forthwith disclose to the other Party, in such detail as may reasonably be required for assessment of commercial viability, all IMPROVEMENTS that it may develop or acquire over UMS's TECHNICAL INFORMATION during the period of this Agreement.
- 4.2 IMPROVEMENTS that UMS discloses to the LICENSEE under Sub-clause 4.1 shall be deemed to be part of the UMS's TECHNICAL INFORMATION for the purposes of the rights granted to the LICENSEE under this Agreement.
- 4.3 All INTELLECTUAL PROPERTY rights, title and interests in and to all of IMPROVEMENTS made solely or jointly by either Party over UMS's TECHNICAL INFORMATION shall reside with UMS.

### **Clause 5 Confidentiality**

- 5.1 Each Party shall -
  - 5.1.1 maintain and keep confidential all information pertaining to UMS's TECHNICAL INFORMATION and all other information that it may acquire from the other Party in the course of this Agreement; and
  - 5.1.2. respect the other's proprietary rights in UMS's TECHNICAL INFORMATION and all other information that it may acquire from the other Party in the course of this Agreement exclusively for the purposes of this Agreement; and
  - 5.1.3. use the information pertaining to UMS's TECHNICAL INFORMATION and all other information that it may acquire from the other Party in the course of this Agreement exclusively for the purposes of this Agreement; and
  - 5.1.4. disclose the information pertaining to the UMS's TECHNICAL INFORMATION and all other information that it may acquire from the other Party in the course of this Agreement only to those of its employees and contractors and sub-licenses pursuant to this Agreement (if any) to whom

and to the extent that such disclosure is reasonably necessary for the purpose of this Agreement.

- 5.2 The obligations contained in sub-clause 5.1 above shall not apply to any information pertaining UMS's TECHNICAL INFORMATION or other information which –
- 5.2.1. prior to receipt thereof from one party was lawfully in the possession of the other and at its free disposal;
  - 5.2.2. is subsequently lawfully disclosed to the recipient party without deriving it directly or indirectly from the other Party; or
  - 5.2.3. is or becomes generally available to the public in Malaysia through no act or default of the recipient party or its agents or employees.
- 5.3 Notwithstanding the foregoing provisions in this Agreement, at the LICENSEE's request, UMS may agree to:
- 5.3.1 LICENSEE disclosing under confidentiality arrangements acceptable to UMS, any of the information pertaining to UMS's TECHNICAL INFORMATION to actual or potential customers for the LICENSED PRODUCTS in so far as such disclosure is reasonably necessary to promote the sale or use of the LICENSED PRODUCTS; and
  - 5.3.2 LICENSEE making available under confidentiality arrangements acceptable to UMS, to a reasonable number of mutually acceptable contractors, UMS's TECHNICAL INFORMATION adequate to enable such contractors to carry out construction and installation of necessary structure or equipment to be used for the manufacture of the LICENSED PRODUCTS in the FACILITY.
- 5.4 Neither Party shall disclose any terms or conditions of this Agreement to any third party without the prior written consent of the other Party. However, a Party may disclose the terms and conditions of this Agreement, (a) on a need-to-know basis to its legal and financial advisors/counsels to the extent such Party's activities expressly permitted by this Agreement and ordinary and customary business operations, and (b) to a third party in connection with (i) an equity investment in such Party, transaction by such party, or (ii) a merger, consolidation, change in control of similar transaction by such Party, or (iii) the transfer or sale of all or substantially all of the assets of such Party. Notwithstanding the foregoing, 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, and each Party may disclose such information, as modified by mutual written agreement of the Parties, without the consent of the other Party.
- 5.5 The obligations of this Clause 5 shall not apply to the extent that a Party is required to disclose information by applicable law, 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.

- 5.6 The Parties' obligations under Clause 5 shall terminate five (5) years after the expiration or termination of this Agreement.

## **Clause 6 Grant of Rights**

- 6.1 UMS hereby agrees that it shall grant to the LICENSEE, and the LICENSEE hereby agrees that it shall accept –
- 6.1.1 Exclusive licence to use the UMS's TECHNICAL INFORMATION in Malaysia to manufacture the LICENSED PRODUCTS, on terms and conditions as set forth in this Agreement; and
  - 6.1.2 An exclusive licence to use, sell or otherwise deal in the LICENSED PRODUCTS manufactured in Malaysia, on terms and conditions to be set forth in this Agreement.
- 6.2 LICENSEE shall be entitled to sub-license of any of the rights granted or to be granted under sub-clauses 6.1 and 6.2 hereof, provided that:
- 6.2.1 LICENSEE has obtained prior written consent from UMS for the sub-license and complies with the provisions of all the sub-clauses of Clause 6 hereof;
  - 6.2.2 LICENSEE shall not grant any rights which are inconsistent with the rights granted to and obligations of LICENSEE hereunder and the sub-license agreement contains provisions requiring the sub-licensee to observe and perform provisions relating to confidentiality, non-assignability, and termination contained in this Agreement;
  - 6.2.3 the sub-license agreement has provisions prohibiting the sub-licensee from further sub-licensing the rights granted or to be granted under sub-clauses 6.1 and 6.2, and express provisions automatically terminating the sub-license agreement on the termination of this Agreement;
  - 6.2.4 any act or omission of a sub-licensee, if performed by the LICENSEE which would be a breach of this Agreement, then such act or omission shall be deemed to be a breach by LICENSEE of this Agreement;
  - 6.4.5 LICENSEE shall at all times indemnify and keep indemnified UMS against all or any costs, claims, damages or expenses incurred by UMS, or for which UMS may become liable, as a result of the default or negligence of any sub-licensee; and
  - 6.4.6 LICENSEE shall within thirty (30) days of the grant of any sub-license provide UMS with a true copy of the sub-license agreement at LICENSEE' own expense.

## **Clause 7      RESPONSIBILITIES OF LICENSEE**

### **7.1      LICENSEE shall:**

- 7.1.1      Be responsible for the fulfillment of all procedural, legal, operational requirements for the commercial implementation of UMS's TECHNICAL INFORMATION. If applicable, LICENSEE shall bear all cost and expenses for purposes of obtaining any standard certification of the LICENSED PRODUCTS from any authorized/government authority or body.
- 7.1.2      Employ its best endeavour to work UMS's TECHNICAL INFORMATION and sell the LICENSED PRODUCTS on a commercial scale. The LICENSEE shall commence with the commercialization of UMS's TECHNICAL INFORMATION within three (3) years from the completion of the transfer of UMS's TECHNICAL INFORMATION as defined in Sub-Clause 2.1.
- 7.1.3      LICENSEE shall use its best efforts to bring LICENSED PRODUCTS to market through a thorough, vigorous and diligent program and to continue active, diligent marketing efforts throughout the life of this Agreement.
- 7.1.4      LICENSEE shall deliver to UMS within three (3) months from the signing of this Agreement, a business plan for development of LICENSED PRODUCTS, which includes number and kind of personnel involved, time budgeted and planned for each phase of development and other items as appropriate for the development of the LICENSED PRODUCTS. Quarterly reports describing progress toward meeting the objectives of the business plan shall be provided.
- 7.1.5      Adhere to the technical advise of the MAIN INVENTOR/RESEARCH TEAM of UMS to ensure the quality of the LICENSED PRODUCTS.
- 7.1.6      LICENSEE shall maintain or cause to be maintained any insurance for the LICENSED PRODUCTS and such insurance shall be for product liability and third party injury for the amount as recommended by the insurance advisors. UMS shall be named as joint insured in the said insurance and the LICENSEE shall submit a copy of such policies to UMS.
- 7.1.7      LICENSEE shall have complete responsibility over the use of UMS's TECHNICAL INFORMATION provided to LICENSEE hereunder and the installation, alteration, operation, maintenance, and repair of the FACILITY.
- 7.1.8      To the extent of the amount insured under any insurance scheme taken pursuant to Sub-Clause 7.1.6, the LICENSEE shall indemnify UMS against any loss, damages, costs or expenses which are awarded against or incurred by UMS as a result of any claim or threatened claim concerning the use by the LICENSEE or any other agents, servants, representatives and/or associates of UMS's TECHNICAL INFORMATION or any defect in or otherwise in connection with the manufacture, use, sale of or any other dealing in any of the LICENSED PRODUCTS by or for the LICENSEE or any other agents, servants, representatives and/or associates and likewise

UMS shall indemnify LICENSEE against any loss, damages, costs or expenses which are awarded against or incurred by LICENSEE as a result of any claim or threatened claim concerning proper usage by LICENSEE of UMS's TECHNICAL INFORMATION.

- 7.1.9 The LICENSEE shall conduct clinical trial (if any) and obtain relevant certificate in relating to the LICENSED PRODUCT from relevant authority as required by law or any rules in Malaysia.

## **Clause 8 Financial Provisions**

8.1 In consideration of UMS agreeing to grant a licence to use UMS's TECHNICAL INFORMATION to manufacture the LICENSED PRODUCTS, and agreeing to grant a licence to use, sell or otherwise deal in the LICENSED PRODUCTS manufactured under the aforesaid license:

8.1.1 The LICENSEE shall, upon the signing of this Agreement make a payment of **Malaysian Ringgit** ..... to UMS as a Licence Fee, in accordance with the following Schedule of Payment:

- (a) ..... to be paid upon signing of this Agreement;
- (b) ..... to be paid within one (1) month from the EFFECTIVE DATE ("2<sup>nd</sup> payment");

8.1.2 LICENSEE shall make to UMS or its nominee, royalty payments for LICENSED PRODUCTS manufactured by LICENSEE which are sold or used or otherwise disposed of on a commercial basis at any time during the duration of this Agreement on the following basis:-

- (a) The royalty rate is fixed at Five percent (5%) of Gross Sales Value of LICENSED PRODUCTS to be paid by LICENSEE.
- (b) Five percent (5%) of all SUB-LICENSING REVENUE where LICENSEE has not carried out any development on the LICENSED PRODUCTS but directly sub-licenses its rights to its sub-licensee; and
- (e) Five percent (5%) of all SUB-LICENSING REVENUE where LICENSEE has carried out development which must be to the satisfaction of UMS on the LICENSED PRODUCTS before sub-licensing its rights to its sub-licensee.

8.2 In consideration of the technical assistance, advise and training rendered to by UMS through the MAIN INVENTOR/RESEARCH TEAM, in relation to the transfer of UMS's TECHNICAL INFORMATION during this agreement, LICENSEE shall pay UMS all cost incurred (transportation/traveling, accommodation, meals and other expenses including subsistence) which shall also be borne by the LICENSEE in accordance with their usual entitlement in UMS. This payment shall be made to

UMS.

- 8.3 In consideration of the technical assistance, advice and training rendered to by UMS through the MAIN INVENTOR/RESEARCH TEAM, in relation to the transfer of UMS's TECHNICAL INFORMATION during the first three months of the Agreement as set out in Sub-Clause 2.1(a) and 2.1(b), LICENSEE shall pay UMS a Consultancy Fee based on per visit. This Consultancy Fee is excluding their out of pocket expenses (transportation/traveling, accommodation, meals and other expenses including subsistence) which shall also be borne by the LICENSEE in accordance with their usual entitlement in UMS. This Consultancy Fee payment shall be made on a monthly basis by or before 7th day of each month and this payment shall be made to UMS.
- 8.4 The royalties and other sums payable shall be paid as follows:
- 8.4.1 LICENSEE shall pay to UMS the royalties and other sums of monies by yearly;
- 8.4.2 the LICENSEE shall send to UMS a written statements showing:
- (a) the quantity of the LICENSED PRODUCTS sold or otherwise disposed of on a commercial basis by the LICENSEE during that Year;
  - (b) the GROSS SALES VALUE in respect of that quantity of LICENSED PRODUCTS so disposed;
  - (c) the amount of royalties and other sum of monies payable within that year;
- 8.4.3 LICENSEE shall forthwith pay to UMS the royalties and other sums of monies in respect of that year in accordance with sub-clause 8.4.1 and any breach of this obligation shall constitute a material breach of this Agreement.
- 8.4.4 the royalties and other sums of monies due shall be made without deduction of withholding taxes or duties that may be imposed except in so far as the LICENSEE is required to deduct the same to comply with the applicable laws, and the LICENSEE shall endeavour to provide UMS with all the necessary documents to enable UMS to obtain double taxation relief.
- 8.4.5 the payment of royalties and other sums of monies must be accompanied with a statement setting out the types of LICENSED PRODUCTS sold, the total GROSS SALES VALUE and the period to which the payment relate.
- 8.5 All payments to be made by the LICENSEE to UMS:
- (a) if by way of cheque shall be made in the name of UNIVERSITI MALAYSIA SABAH at the following address:

Universiti Malaysia Sabah  
Jalan UMS  
88400 Kota Kinabalu  
Sabah

- (b) if by way of telegraphic transfer into the account of UMS, ....., .....,  
**Branch; Account No.:** .....,

- 8.6 UMS shall at all times be entitled to claim additional compensation of one percent (1%) per month for all monies including the Licence Fee, royalty, consultancy fee that remain unpaid for longer than ninety (90) days after a written notification of such payments becoming due being made to the LICENSEE. In the event that LICENSEE fails to pay this additional compensation as demanded by UMS, the LICENSEE shall be construed as having committed a material breach of this Agreement entitling UMS to give notice of termination in accordance with Sub-Clause 11.1. Notwithstanding the above, UMS may on written request by the LICENSEE waive the above additional compensation amount or allow longer period for payment by the LICENSEE.

## **Clause 9 Records and Inspection**

### **9.1 LICENSEE shall:**

- 9.1.1 Keep true and accurate accounts and records in sufficient detail showing the quantity, sales, invoice, purchase orders/records, description and value of the LICENSED PRODUCTS sold and the amount of the SUB-LICENSING REVENUE received to enable the amount of all royalties or other sums payable under this Agreement to be determined;
- 9.1.2 true and accurate accounts and records in sufficient detail showing the quantity, description and value of the LICENSED PRODUCTS sold to enable the amount of all royalties or other sums payable under this Agreement to be determined;
- 9.1.3 at the absolute request of UMS from time to time, allow UMS or its agent to inspect those accounts and records and, to the extent that they relate to the calculation of those royalties or other sums, to take copies of them;
- 9.1.4 at its own expense, obtain and submit to UMS, within one hundred and fifty (150) days after the end of each year in respect of which royalties are payable, a certificate by the LICENSEE's auditors that the written statement submitted to UMS pursuant to sub-clause 8.4.2 in respect of each year is true and accurate; and in the event there is a shortfall of the amount of royalties or other sums paid, the LICENSEE shall within thirty (30) days of the date of certificate pay the shortfall to UMS, together with the reasonable costs and expenses incurred by UMS in making inspections as per Sub-clause 9.1.3.

- 9.2 The provisions of this clause shall remain in full force and effect after the termination of this Agreement for any reason whatsoever until the settlement of all subsisting claims of UMS under this Agreement.

#### **Clause 10 Term and Renewal**

- 10.1 This Agreement shall, irrespective of the diverse dates upon which the Parties may have signed this Agreement, come into force on the EFFECTIVE DATE.
- 10.2 This Agreement shall continue and remain in full force and effect, unless terminated pursuant to the following provisions of this Clause, for a period of five (5) years and may be extended for another five (5) years based on the terms and conditions mutually agreed by the parties.
- 10.3 This Agreement may be renewed for a further term and subject to the condition that:
- 10.3.1 LICENSEE has performed all its obligations under this Agreement to the satisfaction of UMS;
  - 10.3.2 that if a Party intends to enter into a further term it shall give a written notice to the other Party not less than ninety (90) days prior to the expiry of this Agreement; and
  - 10.3.3 that the Parties enter into a new agreement in respect of the further term.

#### **Clause 11 Termination**

- 11.1 Either Party shall be entitled to issue a notice to the other Party terminating this Agreement if, at any time –
- 11.1.1 the other Party commits any continuing or material breach of any of its obligations under this Agreement which either –
    - (a) is incapable of remedy; or
    - (b) if capable of remedy, is not remedied within 60 days of its being given notice so to do (In avoidance of doubt, failure by the LICENSEE to make any payments stipulated in Clause 8 and to perform in accordance with Clause 7 shall be considered as material breaches of this Agreement and shall form grounds for UMS to terminate this Agreement under the provision herein); or
  - 11.1.2 A petition is presented or an order is made or a resolution is passed for the winding up of the other Party; or
  - 11.1.3 An administrator or receiver or receiver and manager is appointed over, or distress, attachment or execution is levied or enforced upon, any part of the assets or undertaking of the other Party; or

- 11.1.4 The other Party becomes insolvent or is unable to pay its debts or admits in writing its inability to pay its debts as they fall due or enters into any composition or arrangement with its creditors or makes a general assignment for the benefit of its creditors; or
- 11.1.5 The other Party ceases or threatens to cease to carry on the whole or any substantial part of its business (except for the purposes of a bona fide reconstruction or amalgamation which would not result or cause any failure or inability to duly perform or fulfill any obligation under this Agreement).
- 11.2 If there is no commercialization after three (3) years of this agreement, UMS has the right to terminate this agreement or the LICENSEE shall pay to UMS RM20,000.00 for every 3 months until the expiration of this agreement.
- 11.3 Following the giving of a notice terminating this Agreement and pursuant to any of the provisions of this Agreement, neither of the Parties shall have any further rights or obligations under this Agreement to the other party, except in respect of –
  - 11.3.1 the confidential obligations and pre-existing rights of the Parties hereto;
  - 11.3.2 LICENSEE' obligation to pay royalties or other sums which have accrued due or which will become due in respect of sales under Clause 8;
  - 11.3.3 any right or obligation under this Agreement which is expressed to apply or continue to be binding after the termination of this Agreement; and
  - 11.3.4 any rights or obligations which have accrued in respect of any breach of any of the provisions of this Agreement to either Party prior to such termination.
- 11.4 On termination of this Agreement for any reason hereof, LICENSEE shall continue to have the right for a period of three (3) months from the date of termination to complete deliveries on contracts in force at that date and to dispose of LICENSED PRODUCTS already manufactured subject to payment to UMS of royalties thereon in accordance with Clause 8.
- 11.5 In the event that this Agreement is terminated, the sub-licence granted by the LICENSEE under the terms of clause 6.2 hereunder shall, by written request of the sub- licensee become a direct license between UMS and the sub- licensee so long as the sub- licence does not impose obligations beyond those set forth in this Agreement
- 11.6 The provisions of Confidentiality as set out in clause 5 shall survive five (5) years after the expiration or termination of this Agreement.
- 11.7 Upon expiration or termination of this Agreement for any reasons:
  - 11.7.1 nothing herein shall be construed to release either party from such obligation that matured prior to the effective date of such expiration or



Fax No. 088 – .....

For LICENSEE  
Address

Fax No.  
Attention of Director

### 13.3 Language

Any notices and communications to be given under or in respect of this Agreement shall be in the Bahasa Malaysia or English language or, if in any other language, accompanied by a translation thereof in the English language, certified to be a true and correct translation of the original.

## **Clause 14 Nature of Agreement**

### 14.1 Entire Agreement

This Agreement: –

14.1.1 constitutes the entire agreement and understanding between the Parties with respect to the matters dealt with in this Agreement;

14.1.2 was not entered into by the Parties in reliance of any agreement, understanding, warranty or representation of any party not expressly contained or referred to in this Agreement.

### 14.2 Counterparts

This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original, but such counterparts or duplicates shall together constitute but one and the same agreement.

### 14.3 Amendments & additions

No amendment, variation, revocation, cancellation, substitution or waiver of, or addition or supplement, of any of the provisions of this Agreement shall be effective unless it is in writing and signed by both Parties.

### 14.4 Successors & Assigns

This Agreement shall be binding upon and inure for the benefit of the respective permitted assigns and successors-in-title of the Parties.

### 14.5 Assignment

The Parties shall not assign or transfer all or any part of their respective rights under this Agreement or delegate their performance under this Agreement. Any assignment, transfer or delegation which is made with out such prior written approval shall constitute a material breach of this Agreement.

#### 14.6 No Partnership or Agency

The provisions of this Agreement shall not be construed or taken to constitute

- 15.6.1 a partnership between the Parties;
- 15.6.2 either Party to be the agent of the other Party; or
- 15.6.3 an authority to either Party to represent or bind or pledge the credit of the other party in anyway.

#### 14.7 General Covenant

Each party has entered in to this Agreement in good faith and shall give all such assistance and information to the other Party and execute and do and procure all other necessary person or companies, if any, to execute and do all such further acts, deeds, assurance and things as may be reasonably required so that full effect may be given to the terms and conditions of this Agreement.

#### 14.8 Invalidity & Severability

If any provision of this Agreement is or may become under any written law, or is found by any court or administrative body or competent jurisdiction to be, illegal, void, invalid, prohibited or unenforceable then –

- 14.8.1 such provision shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability;
- 14.8.2 the remaining provisions of this Agreement shall remain in full force and effect; and
- 14.8.3 the Parties shall use their respective best endeavours to negotiate and agree a substitute provision which is valid and enforceable and achieves to the greatest extent possible the economic, legal and commercial objectives of such illegal, void, invalid, prohibited or unenforceable term, condition, stipulation, provision, covenant or undertaking.

#### 14.9 Force Majeure

If either Party is prevented or delayed in the performance of any of its obligations under this Agreement by FORCE MAJEURE, and if such party gives written notice thereof to the other party specifying the matters constituting FORCE MAJEURE (together with such evidence as it reasonably can give thereof) and the period for which it is estimated that such FORCE MAJEURE will continue, then the party in question shall be excused from the performance or the punctual performance, as the case may be, of the obligations affected by such FORCE MAJEURE as from the date of such notice and for so long as such FORCE MAJEURE continues.

#### 14.10 Knowledge & Acquiescence

Knowledge or acquiescence by any party of, or in, any breach of any of the provisions of this Agreement shall not operate as, or be deemed to be, a waiver of such provisions and, notwithstanding such knowledge or acquiescence, such party shall remain entitled to exercise its rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

#### 14.11 Rights and Remedies

The rights and remedies provided in this Agreement are cumulative, and are not exclusive of any rights or remedies of the Parties provided at law, and no failure or delay in the exercise or the partial exercise of any such right or remedy or the exercise of any other right or remedy shall affect or impair any such right or remedy.

#### 14.12 Arbitration

Any dispute or difference which may arise between the Parties in connection with this Agreement shall be referred to and determined by a single arbitrator, to be appointed by agreement between the Parties or (in default of such agreement within 30 days of either Party first requesting that a single arbitrator be so appointed) at the request of either Party by the President, for the time being, of the Regional Center for Arbitration at Kuala Lumpur, and such arbitration shall be held in Kuala Lumpur and proceed under the provisions of the Rules of the Regional Center for Arbitration at Kuala Lumpur.

#### 14.13 Law

This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia.

#### 14.14 Waiver

No failure or delay on the part of either Party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy, as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

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[The remaining of this page has been intentionally left blank and the next page is the execution page]

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written

SIGNED BY	]	
	]	
	]	
<b>VICE-CHANCELLOR</b>	]	.....
for and on behalf of	]	
UNIVERSITI MALAYSIA SABAH	]	
In the presence of:		
.....		

SIGNED BY	]	
	]	
<b>DIRECTOR</b>	]	.....
for and on behalf of	]	
<b>XXXX</b>	]	
In the presence of:		
.....		
<b>NAME:</b>		
<b>DESIGNATION:</b>		

**SCHEDULE A**

**Sub-Clause 1.1**

**Brief Description of LICENSED PROCESS**