

Exhibit 1.1

Constitution

of

Pharmaxis Ltd

ACN 082 811 630

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Pharmaxis Ltd

ACN 082 811 630

Constitution

Part 1 - Preliminary

1. Name

The Company's name is Pharmaxis Ltd or other name adopted from time to time.

2. Nature of Company

The Company is a public company limited by shares.

3. Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company.

Part 2 – Shares

4. Issue of shares

Without limiting the Company's powers under the Corporations Act, the Company (under the control of the Directors) may:

4.1 issue shares in the Company; and

4.2 grant options over unissued shares in the Company,

on any terms, with any rights or restrictions attached to the shares, at any time, and for any consideration the Directors decide.

5. Preference shares

5.1 The Company may issue preference shares on terms approved by special resolution of the Company as to:

5.1.1 repayment of capital;

5.1.2 participation in surplus assets and profits;

5.1.3 cumulative and non-cumulative dividends;

5.1.4 voting; and

5.1.5 priority of payment of capital and dividends in relation to other shares or classes of preference shares.

5.2 The Company may issue new preference shares that rank equally with existing preference shares. A new issue is taken not to vary the rights attached to the existing preference shares.

5.3 The Company may only redeem redeemable preference shares according to their terms of issue.

6. Variation of classes and class rights

6.1 Subject to the Corporations Act, the Company may:

6.1.1 vary or cancel rights attached to shares in a class of shares; and

6.1.2 convert shares from one class to another by:

(a) special resolution of the Company; and

(b) approval of the holders of shares in that class by:

(i) special resolution passed at a meeting of the holders of shares in that class; or

(ii) the written consent of shareholders with at least 75% of the votes in that class.

6.2 Part 5 of this constitution (with the necessary changes) applies to meetings of holders of a class of shares.

6.3 The Company may issue new shares that rank equally with existing shares. The new issue is taken not to vary the rights attached to the existing shares.

7. Alteration of share capital

The Company in general meeting may convert its shares into a larger or smaller number of shares.

8. Reduction of capital and buy-backs

Subject to the Corporations Act and the Listing Rules if the Company is listed, the Company may:

8.1 reduce its share capital; and

8.2 buy-back shares in itself.

9. Brokerage

The Company may pay brokerage or commission if a person takes up securities in the Company.

10. Joint holders

10.1 Two or more persons may hold a share only as joint tenants.

- 10.2 Subject to the Corporations Act and the Listing Rules if the Company is listed, the Company need not register more than three persons as joint holders of a share.

11. Trust not recognised

Except as required by law or this constitution, the Company need not recognise:

- 11.1 that a person holds a share on trust; or
11.2 any interest in a share except the registered holder's absolute ownership of the whole share.

12. Share and option certificates and statements

- 12.1 When the Company registers securities of any class to a shareholder or option holder, the Company must issue to the shareholder or option holder, without charge, in the discretion of the Directors:
- 12.1.1 one or more certificates for those securities;
 - 12.1.2 if the Company is bound by the operating rules of a prescribed CS facility in relation to those securities, a statement of holdings or similar required by the operating rules; or
 - 12.1.3 any other document that confirms ownership of the securities as the Directors decide.
- 12.2 If the Corporations Act so permits, the Company:
- 12.2.1 need not issue a certificate for the securities; and
 - 12.2.2 may cancel a certificate and not issue a replacement.
- 12.3 The Company must comply with the Corporations Act, the Listing Rules if the Company is listed, and the operating rules of a prescribed CS facility if the Company is bound by those rules, in issuing those certificates, statements of holdings or other documents.
- 12.4 If required to issue a certificate, the Company need issue only one certificate for securities registered in more than one name. The Company must deliver that certificate to any one of the registered holders.
- 12.5 Subject to the Corporations Act, the Listing Rules if the Company is listed, and the operating rules of a prescribed CS facility if the Company is bound by those rules, the Company must issue a replacement certificate for a defaced, worn out, lost or destroyed certificate.

13. Restricted securities

- 13.1 If the Company is listed on ASX, then despite any other provision in this constitution:

- 13.1.1 restricted securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX;
 - 13.1.2 the Company may ask ASTC to apply a holding lock to prevent a transfer;
 - 13.1.3 the Company must refuse to acknowledge a disposal (including registering a transfer) of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
 - 13.1.4 during a breach of the Listing Rules relating to restricted securities, or a breach of a Restriction Agreement, the holder of the restricted securities is not entitled to any Dividend or distribution, or voting rights, in respect of the restricted securities.
- 13.2 In this clause:
- 13.2.1 **dispose** has the same meaning as in the Listing Rules; and
 - 13.2.2 **restricted securities** has the same meaning as in the Listing Rules.

Part 3 - Calls, liens and forfeiture

14. Calls

- 14.1 Subject to the Listing Rules if the Company is listed, and subject to the terms of issue, the Directors may make calls on the holder of a share for any unpaid portion of the issue price of that share at any time.
 - 14.2 The Directors may make a call payable by instalments.
 - 14.3 While the Company is listed on ASX, the Directors must give to the shareholder:
 - 14.3.1 the period of notice of the call required by the Listing Rules; and
 - 14.3.2 a call notice containing the information required by the Listing Rules.
- While the Company is not listed on ASX, the Company must give to the shareholder at least 14 days' notice of a call, specifying the amount payable, and the time and place of payment.
- 14.4 A call is made when the Directors resolve to make the call.
 - 14.5 The Directors may revoke or postpone a call or extend the time for payment.
 - 14.6 A call is still valid if either or both:
 - 14.6.1 a shareholder does not receive notice of the call; or
 - 14.6.2 the Company accidentally does not give notice of the call to a shareholder.

- 14.7 A shareholder must pay to the Company:
- 14.7.1 the amount called, by the time and at the place specified;
 - 14.7.2 if the amount called is not paid by that time, interest at the rate fixed in this Part on an unpaid call (or instalment) from the date the call (or instalment) becomes presently payable until and including the date of payment; and
 - 14.7.3 costs incurred by the Company in respect of the non-payment or late payment of the call.
- 14.8 Joint holders of a share and their respective personal representatives are all jointly and severally liable to pay all calls on the share.
- 14.9 If, by the terms of issue of a share, an amount is payable on issue or at a fixed date, the Company is taken to have properly called that amount and given proper notice of it.
- 14.10 The Directors may waive all or any part of an amount payable under this clause or the terms of issue of a share.
- 14.11 The Directors may recover an amount presently payable under this clause from a shareholder in all or any of the following ways:
- 14.11.1 by suing the shareholder for debt;
 - 14.11.2 by enforcing the lien on the share; or
 - 14.11.3 by declaring forfeit the share.
- 14.12 A debt is sufficiently proved by evidence that:
- 14.12.1 the shareholder is registered as a holder or a joint holder of the share; and
 - 14.12.2 the resolution for the call is recorded in the minute book.
- 14.13 The Directors may authorise the Company:
- 14.13.1 to accept from a shareholder an amount paid before call;
 - 14.13.2 to pay interest on the amount paid before call, at any rate the Directors decide, from the date of payment until and including the date the call becomes presently payable; and
 - 14.13.3 to repay the amount to the shareholder.
- 14.14 An amount paid before call is ignored in determining a Dividend or surplus in a winding up.

15. Indemnity from taxation

- 15.1 If the Company is required by law to pay an amount (including a tax) in respect of a shareholder or a share held by that shareholder or a Dividend in respect of a share held by that shareholder:
- 15.1.1 the shareholder or the shareholder's personal representative must:
- (a) indemnify the Company against that liability; and
 - (b) on demand, reimburse the Company for any payment by the Company, and pay to the Company interest on it at the rate fixed under this Part from the date of payment by the Company until and including the date the shareholder reimburses the Company and pays any costs incurred by the Company because of the payment; and
- 15.1.2 subject to clause 24, the Company may refuse to register a transfer of any shares by or to the shareholder or the shareholder's personal representative until payment of all amounts presently payable under this clause.
- 15.2 The Directors may waive any of the Company's rights under this clause.
- 15.3 The Directors may recover an amount presently payable under this clause from a shareholder in both or either of the following ways:
- 15.3.1 by suing the shareholder for debt; or
- 15.3.2 by enforcing the lien on the share.

16. Forfeiture

- 16.1 The Directors may resolve that a shareholder's share is forfeited if:
- 16.1.1 the shareholder does not pay a call or instalment on the share when presently payable;
- 16.1.2 the Company gives the shareholder notice:
- (a) requiring payment of that call or instalment, any interest on it and any costs incurred by the Company because of the non-payment; and
 - (b) stating that the share will be forfeited if the shareholder does not pay to the Company, at the place named, the total amount within 14 days (or any longer period stated) after the notice is given; and
- 16.1.3 the shareholder does not pay the total amount within that period.
- 16.2 When a share is forfeited, the Company must:

16.2.1 notify the former holder that the share is forfeited; and

16.2.2 record the forfeiture and date of forfeiture in the register of shareholders.

A failure to do this does not invalidate the forfeiture.

16.3 The former holder of a forfeited share must pay to the Company:

16.3.1 all calls, instalments, interest and costs in respect of the share to the date of forfeiture; and

16.3.2 interest at the rate fixed in this Part on those amounts from the date of forfeiture until and including the date of payment.

16.4 The forfeiture of a share extinguishes:

16.4.1 the former shareholder's interest in the share; and

16.4.2 all claims against the Company in respect of the share, including all Dividends presently payable by the Company on the share.

16.5 Subject to the Listing Rules if the Company is listed, the Company may sell or otherwise dispose of a forfeited share on any terms and in any way the Directors decide.

16.6 A certificate by a Director or secretary of the Company that the share was forfeited on a specified date is sufficient evidence of the matter, unless it is proved to be incorrect.

16.7 The Directors may:

16.7.1 waive any of the Company's rights under this clause; and

16.7.2 before sale or re-issue of a forfeited share, annul the forfeiture on any terms the Directors decide.

17. Lien

17.1 The Company has a first ranking lien on:

17.1.1 each share registered to a shareholder;

17.1.2 Dividends on the share; and

17.1.3 proceeds of sale of the share, for:

17.1.4 an unpaid call or instalment that is due but unpaid on the share;

17.1.5 if the share was acquired under an employee incentive scheme or an employee share or option plan, an amount owing to the Company for acquiring the share;

- 17.1.6 any amounts the Company is required by law to pay (and has paid) in respect of the shares of that shareholder or deceased former shareholder; and
- 17.1.7 any indemnity amount or any interest and costs presently payable to the Company under this Part.
- 17.2 The Company may sell a share to enforce the lien if:
 - 17.2.1 an amount secured by the lien is presently payable;
 - 17.2.2 the Company gives the shareholder notice:
 - (a) requiring payment of that amount, any interest on it and any costs incurred by the Company because of the non-payment; and
 - (b) stating that the share will be sold if the shareholder does not pay to the Company, at the place named, the total amount within 14 days (or any longer period stated) after service of the notice; and
 - 17.2.3 the shareholder does not pay the total amount within that period.
- 17.3 The Directors may waive any of the Company's rights under this clause.
- 17.4 Registration by the Company of a transfer of a share releases any lien on that share, insofar as the lien relates to money owing by the transferor or previous transferor, unless the Company gives the transferee notice of its claim.

18. Sale

- 18.1 The Directors may authorise a person to sign a transfer of a forfeited share or a share sold to enforce a lien.
- 18.2 The Company must apply the sale price from:
 - 18.2.1 the sale of a forfeited share; and
 - 18.2.2 the sale of a share sold to enforce a lien, in the following order:
 - 18.2.3 to the costs of the sale;
 - 18.2.4 to the amount presently payable by the former holder to the Company; and
 - 18.2.5 to the former holder or the former holder's personal representative, on receipt of the certificate for the share.
- 18.3 The Company must register the purchaser of the share as the holder of the share.

- 18.4 The purchaser need not enquire whether the Company:
- 18.4.1 properly exercised its powers in respect of the share; or
 - 18.4.2 properly applied the sale price for the share.

These matters do not affect the title of the purchaser.

- 18.5 Unless expressly agreed, the purchaser is not liable for calls and other amounts presently payable in respect of the share before the sale.

19. Interest

- 19.1 A shareholder must pay interest under this Part to the Company:
- 19.1.1 at a rate the Directors decide; or
 - 19.1.2 if the Directors do not decide a rate, at 10% per annum.
- 19.2 Interest payable to the Company accrues daily.
- 19.3 The Company may capitalise interest monthly or at any other intervals the Directors decide.

Part 4 - Transfer of shares

20. Instruments of transfer

Subject to this constitution, a shareholder may transfer a share:

- 20.1 in the case of transfers effected through a prescribed CS facility, in accordance with the operating rules of the CS facility;
- 20.2 by an instrument of transfer in any common form or other form approved by the Directors; and
- 20.3 by any other method of transferring securities recognised by the Corporations Act and ASX if the Company is listed, and also approved by the Directors.

21. Registration

- 21.1 If a security transfer is effected through a prescribed CS facility, the Company must comply with the operating rules of the CS facility in respect of that transfer and must not fail to register or give effect to the transfer if it is a proper ASTC transfer of that security.
- 21.2 If an instrument of transfer is used, it must be:
- 21.2.1 a proper instrument of transfer for the purpose of the Corporations Act;
 - 21.2.2 delivered to the Company's share registry, together with any evidence the Directors require to prove:

- (a) the title of the transferor;
- (b) the transferor's right to transfer the shares; and
- (c) it is a proper instrument of transfer for the purpose of the Corporations Act.

22. Effect of transfer

Subject to the operating rules of the CS facility if the Company is bound by those rules, a transferor of shares remains the holder of the shares until the transfer is registered and the name of the transferee is entered in the register of shareholders as the owner of the shares.

23. No charge

The Company must not charge a fee to register a transfer.

24. Refusal to register transfer

24.1 If the Company is not listed on ASX, the Directors may refuse to register a transfer of shares only if:

- 24.1.1 clause 15, 20 or 21 is not complied with;
- 24.1.2 the shares are not fully paid;
- 24.1.3 the Company has a lien on the shares; or
- 24.1.4 the transfer is not a proper instrument of transfer for the purpose of the Corporations Act.

24.2 If the Company is listed on ASX, the Company must not prevent, delay or interfere with the generation of a proper ASTC transfer. However, the Company may ask ASTC to apply a holding lock to prevent a proper ASTC transfer where permitted by the Corporations Act or the Listing Rules. The Company must ask for the application of such a holding lock if the Corporations Act or the Listing Rules so require.

24.3 The Directors must give notice of any refusal to the security holder and any broker lodging the transfer. The notice must set out the reason for the refusal. Failure to do so does not invalidate the decision of the Directors.

25. Suspension of registration

Subject to the Corporations Act, the Listing Rules if the Company is listed, and the operating rules of the prescribed CS facility if the Company is bound by those rules, the Directors may suspend registration of transfers of shares in the Company at the times and for the periods they decide. The periods of suspension must not exceed an aggregate total of 30 days in any calendar year.

26. Company retains instrument of transfer

- 26.1 The Company may keep an instrument of transfer after registration.
- 26.2 If demand is made within 12 months after the Company gives notice of a refusal to register and there is no allegation of fraud, the Company must return the instrument of transfer to the depositor.

27. Death of shareholder

- 27.1 If a shareholder (other than a joint shareholder) dies, the Company must recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's shares.
- 27.2 If a shareholder who owns shares jointly dies, the Company must recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.
- 27.3 Whether the deceased shareholder owned the shares solely or jointly, the estate of the deceased shareholder is not released from any liability in respect of the shares.

28. Transmission

- 28.1 If a person is entitled to shares because of a Transmission Event and gives the Directors the information they reasonably require to establish the person's entitlement:
 - 28.1.1 the person may:
 - (a) by giving notice to the Company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed instrument of transfer to the Company, transfer the shares to another person; and
 - 28.1.2 the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder or deceased shareholder.
- 28.2 On receiving a notice under clause 28.1.1(a), the Company must register the person as the holder of the shares.
- 28.3 A transfer under clause 28.1.1(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

Part 5 - Proceedings of shareholders

29. One shareholder

While the Company has only one shareholder:

29.1 it may pass a resolution by the shareholder recording it and signing the record; and

29.2 the rest of this Part does not apply.

30. Annual general meetings

Subject to the Corporations Act, the Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year.

31. Who may call meetings of shareholders

31.1 A Director may call and arrange a meeting of shareholders at such reasonable time and place as the Director decides.

31.2 The Directors may call and arrange a meeting of shareholders at such reasonable time and place as the Directors decide.

31.3 The Directors must call and arrange a meeting of shareholders when requested by the shareholders as specified in the Corporations Act.

31.4 The shareholders specified in the Corporations Act may call a meeting of shareholders.

32. How to call meetings of shareholders

32.1 When required by the Corporations Act, at least 28 days' notice must be given of a general meeting. If 28 days' notice is not required by the Corporations Act, at least 21 days' notice must be given of a general meeting. However, unless prohibited by the Corporations Act, the Company may call on shorter notice:

32.1.1 an annual general meeting, if all the shareholders entitled to attend and vote at the annual general meeting agree beforehand; and

32.1.2 any other general meeting, if shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.

32.2 Notice of a meeting must be given to shareholders, Directors, the auditor and, if the Company is listed, ASX.

32.3 A notice of a general meeting must:

32.3.1 set out the place, date and time for the meeting;

32.3.2 state the general nature of the meeting's business;

32.3.3 if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and

32.3.4 contain a statement setting out the following information:

- (a) that the shareholder has the right to appoint a proxy;
 - (b) that the proxy need not be a shareholder of the Company; and
 - (c) that a shareholder who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
- 32.3.5 if the Company is listed on ASX, specify a place and a fax number, and may specify an electronic address, for the purposes of receipt of proxy appointments;
- 32.3.6 if the Company is listed on ASX, contain a proxy form in accordance with the requirements (if any) of the Listing Rules; and
- 32.3.7 contain anything else required by the Corporations Act or, if the Company is listed on ASX, the Listing Rules.
- 32.4 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- 32.4.1 the consideration of the annual financial report, Directors' report and auditor's report;
 - 32.4.2 the election of Directors;
 - 32.4.3 the appointment of the auditor; or
 - 32.4.4 the fixing of the auditor's remuneration.
- 32.5 Non-receipt of notice of a meeting, or failure to give proper notice of a meeting to a person entitled to receive it, does not invalidate anything done at the meeting if:
- 32.5.1 the failure was accidental;
 - 32.5.2 the person gives notice to the Company that the person waives proper notice or agrees to the thing done at the meeting; or
 - 32.5.3 the person attends the meeting and:
 - (a) does not object at the start of the meeting to the holding of the meeting; or
 - (b) if the notice omitted an item of business (including an item of business referred to in clause 32.4), does not object to the consideration of the business when it is presented to the meeting.

33. The right to attend meetings

The chairman of the meeting may refuse any person's (other than a Director) admission to a meeting or require any person (other than a Director) to leave or remain out of the meeting, without limitation, if that person:

- 33.1 in the opinion of the chairman, is not complying with the reasonable directions of the chairman;
- 33.2 has any audio or visual recording device;
- 33.3 has a placard or banner;
- 33.4 has an article the chairman considers to be dangerous, offensive or liable to cause destruction;
- 33.5 refuses to comply with security measures undertaken by the Company at the meeting;
- 33.6 behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- 33.7 is not:
 - 33.7.1 a Director;
 - 33.7.2 a member;
 - 33.7.3 a proxy, attorney or representative of a shareholder; or
 - 33.7.4 the auditor.

34. Membership at a specified time

For the purpose of a particular general meeting, the Directors may decide that the shareholders at a specified time before the meeting, are taken to be the shareholders at the time of the meeting.

35. Quorum

- 35.1 If there are less than 20 shareholders on the register of shareholders (counting joint holders of a share as one shareholder), a quorum for a meeting of shareholders is two shareholders entitled to vote. If there are 20 or more shareholders on the register of shareholders (counting joint holders of a share as one shareholder), a quorum is five shareholders entitled to vote.
- 35.2 In determining whether a quorum is present, the chairman must count shareholders, proxies, attorneys, body corporate representatives and any other persons entitled to vote. However, if a shareholder has more than one proxy, attorney or body corporate representative, the chairman must count only one of them. If an individual is attending both as a shareholder and as a proxy, attorney or body corporate representative, or in any other capacity, the chairman must count them only once.

- 35.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
 - 35.3.1 if the meeting was called on the request of shareholders or by shareholders, the meeting is dissolved; and
 - 35.3.2 any other meeting is adjourned to any day, time and place the Directors decide.
- 35.4 If a quorum is not present within 30 minutes after the time appointed for an adjourned meeting, the meeting is dissolved.

36. Chairman

- 36.1 The chairman of Directors is entitled to chair all meetings of shareholders.
- 36.2 If there is no chairman of Directors, or if the chairman is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the deputy chairman of Directors may chair the meeting. If there is no deputy chairman, or if the deputy chairman is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the Directors present must elect one of themselves to chair the meeting. If they do not do so, the shareholders present must elect a person to chair the meeting.

37. Regulation of meetings

- 37.1 Subject to the Corporations Act, the chairman may regulate the meeting of shareholders in any way consistent with this constitution. Without limitation, the chairman of a meeting of shareholders:
 - 37.1.1 is responsible for the general conduct of, and the procedures to be adopted at, the meeting;
 - 37.1.2 may make rulings or adjourn the meeting without putting a question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
 - 37.1.3 may determine the procedures to be adopted for the casting or recording of votes;
 - 37.1.4 may determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
 - 37.1.5 may terminate debate or discussion on any matter being considered at the meeting and require that matter to be put to a vote;
 - 37.1.6 may refuse to allow debate or discussion on any matter which is not business referred to in the notice of meeting or is not business referred to in clause 32.4;
 - 37.1.7 may refuse to allow any amendment to be moved to a resolution set out in the notice of meeting; and

37.1.8 may delegate to any person any power conferred by this clause 37.

37.2 The powers conferred on the chairman of a meeting of shareholders pursuant to this clause 37 shall not limit the powers otherwise conferred by law.

37.3 Unless the approval of the chairman of the meeting of shareholders is obtained, no person may move at any meeting of shareholders any resolution or any amendment of a resolution.

38. Adjournment

38.1 The chairman may adjourn a meeting of shareholders to any day, time and place with the consent of the shareholders able to vote at the meeting on a show of hands or a poll.

38.2 The chairman must adjourn a meeting of shareholders if the shareholders able to vote and holding a majority of votes at the meeting agree or direct the chairman to do so. The chairman may adjourn the meeting to any day, time and place.

38.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for more than a month.

38.4 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

39. How shareholders make decisions at meetings

39.1 A meeting of shareholders makes a decision by passing a resolution. A resolution is passed if more than 50% of the votes cast by the shareholders entitled to vote are in favour of the resolution (unless the law requires a special resolution).

39.2 A special resolution is passed if:

39.2.1 the notice of the meeting sets out an intention to propose the special resolution and states the resolution; and

39.2.2 it is passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution.

40. How voting is carried out

40.1 Unless a poll is properly requested, a resolution put to the vote at a meeting of shareholders must be decided on a show of hands.

40.2 If a poll is properly requested, the result of the poll is the resolution of the meeting.

40.3 A declaration by the chairman that a resolution is passed, or passed by a particular majority, or lost, and an entry to that effect in the minutes, are sufficient evidence of that fact, unless proved incorrect.

41. Polls

- 41.1 A poll may be requested on any resolution.
- 41.2 A poll may be requested by:
 - 41.2.1 at least five shareholders entitled to vote on the resolution;
 - 41.2.2 shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
 - 41.2.3 the chairman.
- 41.3 A poll may be requested:
 - 41.3.1 before a vote is taken;
 - 41.3.2 before the voting results on a show of hands are declared; or
 - 41.3.3 immediately after the voting results on a show of hands are declared.
- 41.4 A request for a poll may be withdrawn.
- 41.5 A poll requested on a matter other than the election of a chairman or the question of an adjournment must be taken when and how the chairman directs.
- 41.6 A poll on the election of a chairman or the question of an adjournment must be taken immediately.
- 41.7 A request for a poll does not prevent the meeting dealing with other business.

42. How many votes a shareholder has

- 42.1 Subject to the Listing Rules if the Company is listed, this constitution and any special rights or restrictions attached to a share, at a meeting of shareholders:
 - 42.1.1 on a show of hands, each shareholder present (in person, by proxy, attorney or representative) has one vote; and
 - 42.1.2 on a poll, each shareholder present (in person, by proxy, attorney or representative) has:
 - (a) one vote for each fully paid share they hold; and
 - (b) a fraction of a vote for each partly paid share they hold. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call are ignored.
- 42.2 In the case of an equality of votes, on a resolution at a meeting of shareholders (whether on a show of hands or on a poll), the chairman of the meeting has a casting vote in addition to any vote that the chairman of the meeting has in respect of that resolution.

- 42.3 If a share is held jointly and more than one shareholder votes the share, only the vote of the shareholder whose name appears first in the register of shareholders counts.
- 42.4 The parent or guardian of an infant shareholder may vote that infant's share, if the parent or guardian satisfies the Directors of the relationship or appointment before the meeting. If the infant's parent or guardian votes the share, the infant shareholder must not vote.
- 42.5 A person may vote a share if:
- 42.5.1 the person is entitled to be registered as the holder of the share because of a Transmission Event; and
 - 42.5.2 the person satisfies the Directors of that entitlement before the meeting.
- The shareholder must not vote a share if another person does so under this sub-clause.
- 42.6 A shareholder must not vote a share if:
- 42.6.1 a call or other amount is presently payable in respect of the share;
 - 42.6.2 the shareholder is in breach of a Restriction Agreement in respect of the share; or
 - 42.6.3 the Listing Rules or the Corporations Act require the Company to disregard the shareholder's vote in respect of the share.
- 42.7 The chairman must disregard any vote by a shareholder who is not entitled to vote.

43. Challenging a right to vote

- 43.1 A challenge to a right to vote at a meeting of shareholders may only be made:
- 43.1.1 before the meeting, to the Directors; or
 - 43.1.2 at the meeting, to the chairman of the meeting.
- 43.2 The challenge must be decided by the Directors or the chairman (as the case may be), which decision is final.

44. Proxies, attorneys and representatives

- 44.1 A shareholder, who is entitled to vote at a meeting of shareholders, may vote:
- 44.1.1 on a show of hands:
 - (a) personally;
 - (b) by one proxy;
 - (c) by one attorney; or

(d) if a shareholder is a body corporate, by its representative, or by one proxy; or

44.1.2 on a poll:

(a) personally;

(b) if the shareholder is entitled to cast two or more votes at the meeting, by not more than two proxies;

(c) by one attorney; or

(d) if a shareholder is a body corporate, by its representative, or if the shareholder is entitled to cast two or more votes at the meeting, by not more than two proxies.

44.2 A proxy, attorney or representative need not be a shareholder of the Company.

44.3 A shareholder may appoint a proxy, attorney or representative for all or for particular meetings of shareholders.

44.4 An appointment of an attorney or representative must be in a form approved by the Directors.

44.5 An appointment of a proxy is valid if it is signed by the shareholder making the appointment and it contains the following information:

44.5.1 the shareholder's name and address;

44.5.2 the Company's name;

44.5.3 the proxy's name or the name of the office held by the proxy; and

44.5.4 the meetings at which the appointment may be used.

The chairman may decide to accept a proxy even if it contains only some of that information.

44.6 Unless otherwise specified in the appointment, the proxy, attorney or representative may:

44.6.1 agree to short notice for the meeting;

44.6.2 even if the appointment directs how to vote on a particular resolution:

(a) vote on an amendment to the particular resolution, a motion not to put the particular resolution or any similar motion; and

(b) vote on a procedural motion, including a motion to elect the chairman, to vacate the chair or adjourn the meeting;

44.6.3 speak at the meeting in respect of any resolution at a meeting in which the proxy, attorney or representative (as applicable) may vote;

- 44.6.4 vote (but only to the extent allowed by the appointment); and
 - 44.6.5 request, or join in a request, for a poll on any resolution at a meeting of shareholders in which the proxy may vote.
 - 44.7 If a person represents two or more shareholders, on a show of hands that person has only one vote for those shareholders voting in favour of a resolution and one vote for those voting against a resolution.
 - 44.8 If a shareholder appoints two proxies or two attorneys in one instrument and both are present, on a show of hands only the first named proxy or attorney may vote.
 - 44.9 The appointment may specify the proportion or number of votes that the proxy or attorney may exercise. If the shareholder appoints two proxies or two attorneys and the appointment does not specify the proportion or number of the shareholder's votes each proxy or attorney may exercise, on a poll each proxy or attorney may exercise half of the votes.
 - 44.10 A later appointment of a proxy or attorney revokes an earlier one if both appointments could not be validly exercised at the meeting.
 - 44.11 An appointment may specify the way a proxy or attorney is to vote on a particular resolution. A proxy may vote only as directed.
 - 44.12 An appointment of a proxy is effective only if the Company receives the appointment (and any authority under which the appointment was signed or certified copy of the authority) at least 48 hours before the meeting or resumed meeting, unless the Directors decide to reduce that time. For the avoidance of doubt, where a meeting is resumed, any proxies received by the Company only apply to the items of business of the meeting which have not been resolved. The Company receives an appointment or authority when it is received at any of the following:
 - 44.12.1 the Company's registered office;
 - 44.12.2 a fax number at the Company's registered office; or
 - 44.12.3 a place, fax number or electronic address specified for the purpose in the notice of meeting.
- These requirements also apply to an appointment of an attorney.
- 44.13 Unless the Company receives written notice of the matter before the start or resumption of a meeting, a vote by a proxy, attorney or representative is valid even if:
 - 44.13.1 there is a Transmission Event in respect of the shareholder;
 - 44.13.2 the appointment of the proxy, attorney or representative is revoked;
 - 44.13.3 the shareholder revokes the authority under which the proxy was appointed by a third party; or

44.13.4 the shareholder becomes an externally-administered body corporate.

44.14 A vote by a proxy, attorney or representative is valid even if the shareholder transfers the share for which the appointment was given, if the transfer is not registered at the time of the meeting (or at any earlier time fixed by the Directors so that shareholders at that time are taken to be shareholders at the time of the meeting).

44.15 A proxy or attorney may take part in a meeting of shareholders even if the appointor or representative is present. However, if the appointor or representative votes on a resolution, the proxy or attorney must not vote.

45. Proportional takeovers

45.1 If offers are made under a proportional takeover bid for securities of the Company:

45.1.1 the registration of a transfer giving effect to a takeover contract for the bid is prohibited unless and until a resolution (an **approving resolution**) to approve the bid is passed in accordance with this clause;

45.1.2 a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the bid was made, held bid class securities is entitled to vote on an approving resolution;

45.1.3 the Directors may determine whether an approving resolution is voted on:

(a) at a meeting, convened and conducted by the Company, of the persons entitled to vote on the resolution; or

(b) by means of a postal ballot conducted by the Company in accordance with the procedure set out in this clause; and

45.1.4 an approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.

45.2 The provisions that apply to a general meeting of the Company apply, with such modifications as the Directors decide are necessary, to a meeting convened under this clause.

45.3 In a postal ballot:

45.3.1 the Company must send a notice of postal ballot and ballot paper, to all persons holding shares in the relevant class, at least 14 days (or any shorter period the Directors decide) before the ballot closing date;

45.3.2 non-receipt of a notice of postal ballot or ballot paper, or accidental failure to give a notice of postal ballot or ballot paper to a shareholder entitled to receive them, does not invalidate the postal ballot or any resolution passed under the postal ballot;

- 45.3.3 the notice of postal ballot must contain the text of the proposed resolution and the ballot closing date, and may contain any other information the Directors consider appropriate;
- 45.3.4 each ballot paper must specify the name of the shareholder entitled to vote;
- 45.3.5 a postal ballot is only valid if the ballot paper is properly completed and:
 - (a) if the shareholder is an individual, signed by the individual or a duly authorised attorney; or
 - (b) if the shareholder is a corporation, executed by the corporation in any way permitted by its constitution or the Corporations Act or by a duly authorised officer or duly authorised attorney;
- 45.3.6 a postal ballot is only valid if the Company receives the ballot paper (and any authority under which the ballot paper is signed or a certified copy of the authority) before the close of business on the ballot closing date at the registered office or share registry of the Company or any other place specified for that purpose in the notice of postal ballot; and
- 45.3.7 a person may revoke a postal ballot vote by notice received by the Company before the close of business on the ballot closing date.

Part 6 – Directors

46. Number of Directors

- 46.1 There must be at least three Directors and at most nine Directors.
- 46.2 The Company in general meeting may:
 - 46.2.1 increase or reduce the number of Directors; and
 - 46.2.2 decide in what rotation the increased or reduced number retires.

47. Appointment of Directors

- 47.1 The Directors may appoint a Director.
- 47.2 The Company in general meeting may appoint a Director.
- 47.3 A person is eligible for election as a Director at a general meeting only if:
 - 47.3.1 the person is a Director retiring under the next clause and notifies the Company that he or she is available for re-election; or
 - 47.3.2 the person has signed a consent to nomination and lodged it at the Company's registered office.

The Company must accept these notices and nominations up to 30 Business

Days (the same applies in the case of a meeting that shareholders requested the Directors to call) before the general meeting. The Directors may decide to accept these notices and nominations closer to the date of the general meeting. Subject to the Corporations Act, an employee of the Company may be appointed a Director and a Director of the Company may be appointed an employee of the Company.

48. Compulsory retirement

- 48.1 The following Directors automatically retire at the end of each annual general meeting:
- 48.1.1 any Director appointed by the Directors since the last annual general meeting;
 - 48.1.2 one third (or if that is not a whole number, the next lowest whole number) of the other Directors (not counting the managing Director) provided that there must be at least one retiring Director; and
 - 48.1.3 any Director (not counting the managing Director) for whom this would be the third annual general meeting since their last appointment or three years since their last appointment (whichever is the longer).
- 48.2 The Directors who must retire under clause 48.1.2 are those Directors who have been longest in office since their initial appointment on registration or their last election (whichever is later). If they became Directors on the same day, they may agree who retires. If they do not agree, they must select by lot who retires.
- 48.3 This clause does not apply to the managing Director.

49. Vacation of office

A Director ceases to be a Director if:

- 49.1 the Corporations Act so provides;
- 49.2 the Director resigns by notice to the Company;
- 49.3 the Company in general meeting removes the person as a Director;
- 49.4 the Director is absent, without the consent of the Directors, from all Directors' meetings over any six month period;
- 49.5 the Director becomes mentally incapable and the Director's estate or property has had a personal representative or trustee appointed to administer it;
- 49.6 the Director automatically retires under the previous clause; or
- 49.7 the Director is an executive Director, the Director ceases to be an executive of the Company.

50. Alternate Directors

- 50.1 A Director may appoint an alternate for a specified period if the alternate is approved by a majority of Directors.
- 50.2 An appointment is only effective if:
- 50.2.1 it is in writing;
 - 50.2.2 both the alternate and the appointor signs it; and
 - 50.2.3 the Company is given notice of it.
- 50.3 The appointor may terminate the alternate's appointment at any time.
- 50.4 A termination is effective only if:
- 50.4.1 it is in writing;
 - 50.4.2 the appointor signs it; and
 - 50.4.3 the Company is given notice of it.
- 50.5 The alternate need not be a shareholder or Director of the Company.
- 50.6 The alternate is entitled to notice of Directors' meetings.
- 50.7 If the appointor is not present, the alternate may:
- 50.7.1 attend the Directors' meeting, be counted in the quorum, speak, and vote in the place of the appointor; and
 - 50.7.2 exercise any other powers (except the power to appoint an alternate) that the appointor may exercise.
- 50.8 A person may only act as an alternate for one Director.
- 50.9 If the appointor ceases to be a Director, the alternate cannot exercise the appointor's powers.
- 50.10 Where:
- 50.10.1 an appointor ceases to be a Director; and
 - 50.10.2 that appointor's alternate purports to do an act as a Director,
- that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actually knowing that the appointor has ceased to be a Director, as if the appointor had not ceased to be a Director.
- 50.11 The Company may pay an alternate remuneration in the amount the relevant appointor decides, in reduction of the appointor's remuneration.

50.12 While acting as a Director, an alternate is an officer of the Company and not the agent of the appointor.

51. Remuneration

51.1 The Company may remunerate each Director as the Directors decide, but the total amount of the remuneration of non-executive Directors may not exceed the amount fixed by the Company in general meeting for that purpose (if any).

51.2 A Director's remuneration may be any combination of:

51.2.1 a stated salary;

51.2.2 a fixed sum for each attendance at a Directors' meeting; and

51.2.3 if a non-executive Director, a share of the amount fixed under clause 51.1 of this clause, divided among them as the Directors decide and in default equally.

51.3 A Director's remuneration must not include a commission on, or percentage of, operating revenue.

51.4 A stated salary or a share of a fixed amount accrues from day-to-day.

51.5 The Company must also pay travelling and other expenses that a Director properly incurs on the Company's business.

51.6 If a Director performs extra or special services for the Company, the Company may pay to the Director any special remuneration the Directors decide, in addition to the Director's normal remuneration.

51.7 The Company may pay a former Director, or the estate of a Director who dies in office, a benefit for past services as the Directors decide. This must not exceed the amount permitted by the Corporations Act and the Listing Rules if the Company is listed.

51.8 The Company may establish or support superannuation or similar funds for the Directors, as the Directors decide or as required by law.

52. Share qualification

52.1 A Director need not be a shareholder of the Company.

52.2 A Director, who is not a shareholder, may still attend and speak at meetings of shareholders.

53. Director's interests

53.1 Subject to the Corporations Act and the Listing Rules if the Company is listed, a Director may:

53.1.1 hold an office or place of profit (except as auditor) in the Company, on any terms the Directors decide;

- 53.1.2 hold an office or otherwise be interested in any related body corporate or other body corporate in which the Company is interested; and
- 53.1.3 retain benefits for doing so.
- 53.2 Subject to the Corporations Act and the Listing Rules if the Company is listed:
 - 53.2.1 a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present during the consideration of the matter and may not vote on the matter;
 - 53.2.2 a Director (or a Spouse, parent or child of a Director or child of a Spouse, or any entity in which a Director or a Spouse, parent or child of a Director or child of a Spouse has an interest) may contract or make an arrangement with the Company (or a related body corporate or a body corporate in which the Company is interested) in any matter in any capacity;
 - 53.2.3 a Director may sign for the Company, or attest the affixing of the common seal to, any document in respect of that contract or arrangement;
 - 53.2.4 a Director may retain benefits under that contract or arrangement; and
 - 53.2.5 the Company cannot avoid that contract or arrangement because of the Director's interest.

Part 7 - Proceedings of Directors

54. Circulating resolutions

- 54.1 The Directors may pass a resolution without a Directors' meeting being held, if all Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 54.2 Separate copies of a document may be used for signing by Directors, if the wording of the resolution and statement is identical in each copy.
- 54.3 The resolution is passed when the last of the Directors who approves the resolution signs.
- 54.4 Passage of the resolution must be recorded in the Company's minute book.

55. Meetings

- 55.1 The Directors may meet, adjourn and otherwise regulate their meetings as they decide.
- 55.2 A Directors' meeting may be held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

55.3 If a Directors' meeting is held by telephone link-up or other contemporaneous audio or audio visual communication, a Director is taken to be present unless the Director states to the chairman that the Director is disconnecting his or her telephone or communication device.

56. Calling meetings

56.1 Any Director may call a Directors' meeting.

56.2 On the request of any Director, the company secretary must call a Directors' meeting.

57. Notice

57.1 Unless otherwise agreed, reasonable notice of a Directors' meeting must be given to each Director and each alternate.

57.2 The notice must:

57.2.1 specify the day, time and place of the meeting;

57.2.2 state the general nature of the business to be transacted; and

57.2.3 be given at least 48 hours before the meeting, unless all Directors otherwise agree.

57.3 Non-receipt of notice of a meeting, or failure to give notice of a meeting to a Director or an alternate, does not invalidate anything done at the meeting if:

57.3.1 the failure was accidental;

57.3.2 the Director or alternate gives notice to the Company that he or she waives the notice or agrees to the thing done at the meeting; or

57.3.3 the Director or alternate attends the meeting.

58. Quorum

58.1 The quorum for a Directors' meeting is two Directors, unless the Directors otherwise decide.

58.2 In determining whether a quorum is present, the chairman must count alternates. If a Director is also an alternate, the chairman must count the Director as a Director and separately as an alternate. Despite anything else in this clause 58.2, there must always be at least two persons actually present to form a quorum.

58.3 In determining whether a quorum is present, the chairman must not count a Director if he or she is not entitled to vote on a particular resolution under the Corporations Act, the Listing Rules or under this constitution.

58.4 If there are not enough Directors in office to form a quorum, the remaining Directors may act only:

- 58.4.1 to increase the number of Directors to a quorum;
- 58.4.2 to call a general meeting of the Company; or
- 58.4.3 in an emergency.

59. Chairman and deputy chairman

- 59.1 The Directors may elect a Director as chairman for any period they decide.
- 59.2 The Directors may elect a Director as deputy chairman for any period they decide.
- 59.3 The Directors may remove the chairman or deputy chairman.
- 59.4 The Directors may decide that either office is an extra or special service for the Company, for the purpose of deciding special remuneration.
- 59.5 The chairman is entitled to chair each Directors' meeting.
- 59.6 If there is no chairman, or if the chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the deputy chairman may chair the Directors' meeting. If there is no deputy chairman, or if the deputy chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the Directors present must elect one of themselves to chair the meeting.
- 59.7 If the chairman is unable or unwilling to chair a part of the meeting, the deputy chairman may chair that part. If there is no deputy chairman, or the deputy chairman is unable or unwilling to act, the Directors present must elect one of themselves to chair that part.

60. Decisions of Directors

- 60.1 Subject to the Corporations Act, each Director has one vote.
- 60.2 If a Director is also an alternate, the Director has one vote as a Director and one vote as an alternate. If a person is an alternate for more than one Director, the person has one vote for each appointment.
- 60.3 A resolution of the Directors is passed by a majority of votes cast.
- 60.4 Subject to the Listing Rules if the Company is listed, the chairman has a casting vote.

Part 8 - Directors' powers

61. General powers

- 61.1 The business of the Company is managed by or under the direction of the Directors.

- 61.2 The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this constitution requires the Company to exercise in general meeting.

62. Execution of documents

- 62.1 The Company may execute a document without a common seal if the document is signed by:
- 62.1.1 two Directors of the Company; or
 - 62.1.2 a Director and a company secretary of the Company.
- 62.2 If the Company has a common seal, it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- 62.2.1 two Directors of the Company; or
 - 62.2.2 a Director and a company secretary of the Company.
- 62.3 The Company may execute a document only if authorised by the Directors or by a committee of Directors authorised by the Directors to do so. The Directors may also authorise particular persons or classes of persons to execute documents on behalf of the Company subject to such limitations as the Directors decide.
- 62.4 The Directors may decide, generally or in a particular case, that any two Directors or any Director and company secretary may sign certificates for securities of the Company by mechanical or other means.
- 62.5 This clause does not limit the ways in which the Directors may decide that the Company may execute a document (including a deed).

63. Negotiable instruments

The Directors may decide how negotiable instruments (including cheques) may be signed, drawn, accepted, endorsed or otherwise executed.

64. Committee and delegate

- 64.1 The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors or to one Director.
- 64.2 The Directors may revoke or vary that delegation.
- 64.3 A committee or delegate must exercise the powers delegated subject to any directions of the Directors. The effect of the committee or delegate exercising a power in this way is the same as if the Directors exercised it.
- 64.4 Part 7 applies with the necessary changes to meetings of a committee.

64.5 The Directors may decide that membership of a committee or acting as a delegate is an extra or special service for the Company, for the purpose of deciding special remuneration.

65. Attorney and agent

65.1 The Directors may appoint any person to be the attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) the Directors decide.

65.2 The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.

65.3 The Directors may revoke or vary:

65.3.1 the appointment; or

65.3.2 any power delegated to the attorney or agent.

Part 9 - Executive officers

66. Managing Director

66.1 The Directors may appoint one of themselves as managing Director, for any period and on any terms (including as to remuneration) the Directors decide.

66.2 Subject to any agreement between the Company and the managing Director, the Directors may remove or dismiss the managing Director at any time, with or without cause.

66.3 The managing Director will not be subject to retirement by rotation.

66.4 The Directors may delegate any of their powers (including the power to delegate) to a managing Director.

66.5 The Directors may revoke or vary:

66.5.1 the appointment; or

66.5.2 any power delegated to the managing Director.

66.6 A managing Director must exercise the powers delegated subject to any directions of the Directors. The effect of the managing Director exercising a power in this way is the same as if the Directors exercised it.

66.7 A person automatically ceases to be managing Director if the person ceases to be a Director or an executive of the Company.

67. Company secretary

67.1 The Directors may appoint one or more company secretaries, for any period and on any terms (including as to remuneration) the Directors decide.

67.2 Subject to any agreement between the Company and the company secretary, the Directors may remove or dismiss the company secretary at any time, with or without cause.

67.3 Unless the Directors otherwise decide, the company secretary is the public officer of the Company.

68. Indemnity

68.1 To the extent permitted by the Corporations Act, the Company:

68.1.1 must indemnify each person who is or has been an Officer of the Company against any liability incurred by the person as an Officer of the Company; and

68.1.2 may pay a premium for a contract insuring an Officer of the Company against that liability.

68.2 Subject to the Corporations Act, the Company may enter into an agreement or deed with an Officer under which the Company must do all or any of the following:

68.2.1 keep a set of the Company's books (including minute books) and allow the Officer and the Officer's advisers access to the books for any period agreed;

68.2.2 indemnify the Officer against any liability incurred by the Officer as an Officer; and

68.2.3 keep the Officer insured for any period agreed in respect of any act or omission by the Officer while an Officer.

68.3 In this clause, **Officer** means an officer of the Company or of a subsidiary of the Company or both.

Part 10 – Dividends

69. Who may determine Dividends

69.1 Subject to any special rights or restrictions attached to a share, the Directors may pay Dividends as they decide but only out of profits.

69.2 The Directors may determine that a Dividend will be payable on a share and fix:

69.2.1 the amount;

69.2.2 the time for payment; and

69.2.3 the method of payment.

The methods of payment may include the payment of cash, the issue of shares

or other securities, the grant of options and the transfer of assets.

69.3 If the Directors do not exercise their power under this clause, the Company in general meeting may.

70. Dividends for different classes

Dividends may be paid:

70.1 on shares of one class but not another; and

70.2 at different rates for different classes.

71. Dividends proportional to paid up capital

71.1 Subject to any special rights or restrictions attached to a share:

71.1.1 the holder of a fully paid share is entitled to the full Dividend on the share (whether the issue price was paid or credited or both); and

71.1.2 the holder of a partly paid share is not entitled to a greater proportion of a Dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on the share.

71.2 Amounts paid or credited as paid in advance of a call are ignored.

72. Transfers before payment of Dividend

Subject to the Listing Rules if the Company is listed, the Directors may fix a record date to identify shareholders entitled to a Dividend. A transferee of shares is entitled to a Dividend on the shares only if:

72.1 the Directors fix a record date and the transfer is registered or left with the Company for registration on or before the record date; or

72.2 the Directors do not fix a record date and the transfer is registered or left with the Company for registration on or before the date the Directors pass the resolution that a Dividend will be payable.

73. No interest

Interest is not payable on a Dividend.

74. Calls

The Directors may deduct from a Dividend payable to or for a shareholder any money presently payable by the shareholder to the Company for calls or otherwise in respect of any shares held by the shareholder.

75. Capitalising profits

- 75.1 The Directors may capitalise any profits and distribute that capital to the shareholders, in the same proportions as the shareholders are entitled in a distribution by Dividend.
- 75.2 The Directors may decide to apply that capital in either or both of the following ways:
- 75.2.1 in paying up amounts unpaid on shares already issued; or
 - 75.2.2 in paying up in full any unissued shares or other securities in the Company.
- 75.3 The shareholders must accept that application of capital in full satisfaction of their interests in the capital.

76. Transfer of assets

The Directors may settle any problem about a distribution under this Part in any way. This may include:

- 76.1 rounding up or down amounts to the nearest whole number;
- 76.2 ignoring fractions;
- 76.3 valuing assets for distribution;
- 76.4 paying cash to any shareholder on the footing of the valuation of the assets; or
- 76.5 vesting assets in trustees on trust for the shareholders entitled.

77. Notice of Dividend

The Company must give to the shareholders notice of any Dividend.

78. Payments

- 78.1 The Company may pay Dividends and other amounts in respect of a share, at the sole discretion of the Directors:
- 78.1.1 by crediting a financial institution account authorised by the shareholder; or
 - 78.1.2 by cheque or warrant posted to:
 - (a) the address of the holder of the share shown in the register of shareholders;
 - (b) if joint holders, to the address (shown in the register of shareholders) of the holder named first in the register of shareholders; or

(c) to any other address which the holder or joint holders direct in writing.

78.2 A cheque may be made payable to bearer or to the order of the shareholder or any other person the shareholder directs.

78.3 Any joint holder of a share may give an effective receipt for the Dividend or other amounts paid in respect of the share.

79. Dividend reinvestment plan

The Directors may:

79.1 implement a dividend reinvestment plan on any terms, under which the Dividends of participants are applied in subscribing for securities of the Company or a related body corporate; and

79.2 amend, suspend or end the plan.

80. Dividend selection plan

The Directors may:

80.1 implement a dividend selection plan on any terms, under which participants may choose:

80.1.1 to receive a Dividend from the Company out of profits derived from a particular source; or

80.1.2 to forego a Dividend from the Company in place of another distribution from the Company or another body corporate or a trust; and

80.2 amend, suspend or end the plan.

81. Unclaimed Dividends

The Directors may invest unclaimed Dividends for the benefit of the Company, until they are claimed or dealt with under a law about unclaimed money.

82. Restricted securities

A shareholder is not entitled to a Dividend on restricted securities (within the meaning of the Listing Rules) under a current Restriction Agreement, while in breach of the agreement.

Part 11 - Winding up

83. Distribution of assets

Subject to any special rights or restrictions attached to shares:

- 83.1 if on a winding up there are enough assets to repay all capital to shareholders, all capital must be repaid to the shareholders and any surplus must be distributed among the shareholders in proportion to the amounts paid on their respective shares before the winding up began; or
- 83.2 if on a winding up there are not enough assets to repay all capital to shareholders, the available assets must be distributed among the shareholders in proportion to the amounts paid on their respective shares before the winding up began (without the necessity of a call up).

84. Distribution of property in kind

- 84.1 Subject to any special rights or restrictions attached to shares, on a winding up, the liquidator may, with the sanction of a special resolution of shareholders:
 - 84.1.1 distribute among the shareholders the whole or any part of the property (in its actual state) of the Company; or
 - 84.1.2 decide how to distribute the property as between the shareholders or different classes of shareholders.
- 84.2 The liquidator may settle any problem about a distribution under this clause in any way. This may include:
 - 84.2.1 rounding up or down amounts to the nearest whole number;
 - 84.2.2 ignoring fractions;
 - 84.2.3 valuing assets for distribution;
 - 84.2.4 paying cash to any shareholder on the footing of the valuation of the assets;
 - 84.2.5 vesting assets in a trustee on trust for the shareholders entitled; or
 - 84.2.6 capitalising profits and distributing capital as if the liquidator were the Directors.
- 84.3 A shareholder need not accept a security carrying a liability.

85. Restricted shares

Restricted shares, under a Restriction Agreement current at the start of the winding up, must rank behind all other shares in the repayment of capital on a winding up.

86. Commissions

- 86.1 The Company must not pay to a Director, the Directors or a liquidator a commission or fee for sale of assets on a winding up, unless approved by the shareholders.
- 86.2 The Company must notify the shareholders of the amount of the proposed commission or fee in the notice of the shareholders' meeting.

Part 12 – Records

87. Register

The Company must keep a register of shareholders in accordance with the Corporations Act.

88. Branch registers

88.1 The Company may keep a branch register of shareholders in any place.

88.2 The Directors may regulate the transfer of shares among the main register of shareholders and branch registers of shareholders.

89. Inspection

The Company must allow inspection of any register of shareholders only as required by the Corporations Act.

90. Evidence of register

Unless proved incorrect, the register of shareholders is sufficient evidence of the matters shown in the register.

91. Minute book

91.1 The Company must keep minute books in which it records within one month:

91.1.1 proceedings and resolutions of meetings of the members;

91.1.2 proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);

91.1.3 resolutions passed by members without a meeting; and

91.1.4 resolutions passed by Directors without a meeting.

91.2 The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

91.2.1 the chair of the meeting; or

91.2.2 the chair of the next meeting.

91.3 The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

92. Evidence of minutes

A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

93. Financial records

93.1 The Company must keep the financial records required by the Corporations Act.

93.2 The financial records must be audited as required by the Corporations Act.

94. Inspection

Unless authorised by the Directors or the Company in general meeting or the Corporations Act, a shareholder is not entitled to inspect the Company's books.

Part 13 - Notices and interpretation

95. In writing

Notice must be in writing and in English, and may be given by an authorised representative of the sender.

96. Notice to shareholders

96.1 The Company may give notice to a shareholder:

96.1.1 personally;

96.1.2 by sending it by post to the address of the shareholder in the register of shareholders or the alternative address (if any) nominated by the shareholder; or

96.1.3 by sending it to the fax number or electronic address (if any) nominated by the shareholder.

96.2 The Company may give notice to a person entitled to a share because of a Transmission Event in the same ways.

96.3 Notice to joint shareholders must be given to the joint shareholder named first in the register of shareholders.

96.4 Notice to a person, entitled to a share because of a Transmission Event, is taken to be notice to the shareholder.

96.5 A notice to a shareholder is sufficient, even if the shareholder (whether or not a joint shareholder) is dead, mentally incapacitated, an infant, bankrupt or an externally-administered body corporate, and the Company has notice of that event.

96.6 A person, entitled to a share because of a transfer, Transmission Event or otherwise, is bound by every notice given in respect of the share.

97. Notice to Directors

The Company may give notice to a Director or alternate Director:

- 97.1 personally;
- 97.2 by sending it by post to the Director's or alternate Director's usual residential or business address or any other address nominated by them;
- 97.3 if a notice calling a meeting - by sending it to the fax or electronic address (if any) nominated by the Director or alternate, only if all the Directors have consented to the use of that technology; or
- 97.4 if any other kind of notice - by sending it to the fax or electronic address (if any) nominated by the Director or alternate.

98. Notice to the Company

- 98.1 A person may give notice to the Company:
- 98.2 by leaving it at the Company's registered office;
- 98.3 by sending it by post to the Company's registered office; or
- 98.4 by sending it to the fax or electronic address (if any) of the Company's registered office.

99. Addresses outside Australia

A notice sent by post to or from a place outside Australia must be sent by air mail.

100. Time of service

- 100.1 A notice sent by post within Australia is taken to be given one day after posting.
- 100.2 A notice sent by post to or from a place outside Australia is taken to be given two days after posting.
- 100.3 A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number).

101. Listing Rules

If the Company is listed on ASX:

- 101.1 notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- 101.2 nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- 101.3 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);

- 101.4 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;
- 101.5 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
- 101.6 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.

102. Operating rules of CS facility

The Company must comply with the operating rules of the CS facility if the Company is bound by those rules.

103. Interpretation

In this constitution, unless the context otherwise requires:

- 103.1 subject to the next clause, a word or phrase has the same meaning as it has in the Corporations Act;
- 103.2 singular includes plural and plural includes singular;
- 103.3 words of one gender include any other gender;
- 103.4 reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- 103.5 reference to a person includes a corporation, a firm and any other entity;
- 103.6 headings do not affect interpretation; and
- 103.7 the Company must not exercise any power in contravention of the Corporations Act or the Listing Rules if the Company is listed or the operating rules of the CS facility, if applicable.

104. Definitions

In this constitution:

ASX means Australian Stock Exchange Limited and any successor body;

ASIC means the Australian Securities and Investments Commission;

ASTC means the ASX Settlement and Transfer Corporation Pty Limited;

Business Day means:

- (a) while the Company is listed on ASX, Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day; or

- (b) while the Company is not listed on ASX, any day except a Saturday or Sunday or other public holiday in the State of New South Wales Australia;

Company means the company named in clause 1 (as that name may be changed from time to time);

Corporations Act means the Corporations Act 2001 as amended or replaced from time to time;

CS Facility means the prescribed Australian clearing and settlement facility;

Directors means the directors of the Company and may include an alternate director;

Dividend means a dividend paid or to be paid by the Company and includes, without limitation, interim dividend and bonus;

Listing Rules means the listing rules of ASX and any other rules of ASX which are applicable while the Company is listed on ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

Restriction Agreement means a restriction agreement within the meaning of the Listing Rules;

Spouse of a person means:

- (a) that person's husband, wife, widow or widower (whether or not remarried); or
- (b) anyone else who, although not legally married to that person, in the Directors' opinion, lives or lived with that person on a genuine domestic basis as the husband or wife of that person; and

Transmission Event means:

- (a) if the shareholder is an individual - death, bankruptcy, or becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health; or
- (b) if the shareholder is a body corporate - the deregistration or winding up of the shareholder or the succession by another body corporate to the assets and liabilities of the shareholder.

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Exhibit 4.1

FORM OF DEED OF ACCESS TO DOCUMENTS AND INDEMNITY

DEED dated _____ between:

1. **Pharmaxis Ltd** (ABN 75 082 811 630) of 2/10 Rodborough Road, Frenchs Forest, NSW, 2086 Australia (the *Company*); and
2. _____ of _____

IT IS AGREED as follows:

1. Definitions and interpretation

1.1 Definitions

In this Deed, the following words have the following meanings unless otherwise required by the context or subject matter:

Board means the board of directors of the Company.

Deliberations includes meetings of, and communications or discussions between, members of the Board, and committees on which members of the Board sit, and any decisions, resolutions or directives made at those meetings or discussions.

Document means any of the following:

- (a) a document as defined in section 9 of the Corporations Law:
 - (i) delivered to members of the Board for use in Deliberations;
 - (ii) used in Deliberations or referred to in Deliberations; or
 - (iii) which is reasonably material to Deliberations;
- (b) any document containing advice or opinion from a lawyer which is addressed to, or given for the benefit of, the Company and any document recording such advice or opinion.

related body corporate has the meaning given in the Corporations Law.

you means _____ and *your* has a corresponding meaning.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
 - (b) A reference to any *legislation* includes any modification or re-enactment of it and any legislative provision substituted for it.
-

2. Indemnity

2.1 Indemnity

The Company agree jointly and severally to indemnify you to the extent permitted by law and, without limiting their powers, from and against liabilities:

- (a) other than to the Company or a related body corporate, incurred by you as a director of the Company provided that the liability does not arise out of conduct involving a lack of good faith; and
- (b) for costs and expenses (including, without limitation, legal costs on a full indemnity basis) incurred by you:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in your favour or in which you are acquitted; or
 - (ii) in connection with any application in relation to any proceedings referred to in the preceding paragraph, in which the court grants relief to you under the Corporations Law,

where such liability is or was incurred as a result of facts or circumstances relating to you serving or having served as an director of the Company.

2.2 Reimbursement

Any demand made by you under this clause must contain reasonable details of the amounts to be paid by the Company.

2.3 Repayment

You must repay to the Company any amount paid by the Company under this Deed if, and only to the extent that:

- (a) a court of competent jurisdiction determines that you are not entitled to be indemnified by the Company for such liabilities; or
- (b) you receive payment under a contract of insurance procured by the Company in respect of those liabilities or if the insurer pays, discharges and satisfies those liabilities directly.

3. Indemnity after you cease to be an Officer of the Company

The indemnity given by the Company under this Deed will continue for 7 years from the date that you cease to be an Officer of the Company.

4. The Company to maintain insurance

4.1 Maintain Insurance

- (a) The Company agrees to maintain a contract of insurance from an established and reputable insurer, which insures the Company against all liabilities incurred by you as an director, provided that the liability does not arise out of conduct involving
-

a wilful breach of duty to the Company or a contravention of sections 232(5) or (6) of the Corporations Law.

- (b) Unless the Company agrees otherwise, the insurance contract referred to in paragraph 4.1(a) will contain a provision waiving all rights of subrogation or action against the Company.

4.2 Same coverage

The Company will maintain a contract of insurance which insures the Company against liabilities incurred by you as a director for the period after you cease to be a director which is in the same terms and with the same insurer as that which relates to the then current officers and directors of the Company.

4.3 Not render void

The Company will use its best endeavours to ensure that it does not do anything which will render void any insurance policy maintained under this clause 4.

5. Disclosure in directors' report

You agree that, subject to any exception provided for in the Corporations Law or granted or approved by the Australian Securities & Investments Commission and only to the extent required by the Corporations Law, full particulars of the Company's indemnities and insurance premiums that are required under this Deed will be included each year in the directors' report.

6. Notification of claims

6.1 Notification of claim by you

You must notify the Company in writing as soon as possible after becoming aware of any claim, proceeding or circumstances which give rise or could give rise to a liability of the Company to you or which may result in a claim against the Company, including, without limitation, if any claim is threatened or made against you which may result in a claim being made against the Company (*Claim*) and you must not settle or compromise the Claim or make any admission or payment in relation to the Claim without the prior written consent of the Company, except to the extent required by law.

6.2 Notification of claim by the Company

The Company must notify you in writing as soon as possible after becoming aware of any claim, proceeding or circumstances which give rise or could give rise to a liability of you to the Company or which may result in a claim against you, including, without limitation, if any claim is threatened or made against the Company which may result in the claim being made against you.

7. Maintenance of documents

The Company must keep for the period from the date of this deed until the date which is 7 years after the date you cease to be an Officer of the Company, one complete set of all Documents which relate to Deliberations occurring during the period during which you are an Officer of the Company.

8. Access to documents

8.1 Company to allow access

The Company must, subject to the provisions of this clause 8:

- (a) during the period during which you are an Officer of the Company; and
- (b) for a period of 7 years following the date you cease to be an Officer of the Company;

allow you to have access to, and to make copies of, Documents to which you would have had access during the time you were an Officer of the Company.

8.2 Request for access

If you wish to have access to Documents as referred to in clause 8.1 above, you must deliver to the company secretary of the Company a written request for access which specifies the Documents you wish to access. The request must include the reasons why you wish to have access to the Documents.

8.3 Responsibility of company secretary

The Company will ensure that the company secretary of the Company will:

- (a) ensure that, following receipt of a written request for access to Documents, access is given within 30 days of receipt of the request, or such other period as you and the company secretary agree; and
 - (b) report to the board all requests for access received by the company secretary under this Deed.
-

9. Preservation of confidentiality and legal professional privilege

9.1 Confidentiality

From the time you cease to be an Officer, you must keep confidential all confidential information contained in a Document which you have access to and you must not divulge or release that information to any person other than in the course of seeking legal advice or as authorised in writing by the Company or as required by compulsion of law or an order of a Court.

9.2 Legal professional privilege

If a Document which you have access to or which you possess is the subject of legal professional privilege to the benefit of both the Company and you, neither you nor the Company may do anything or omit to do anything which will cause that privilege to be lost.

9.3 No limitation

Clauses 9.1 and 9.2 will not be taken to derogate from or to limit any duty owed by you to the Company.

10. Governing law

This Deed is governed by, and is to be interpreted in accordance with, the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

11. Notices

Any notice given under this Deed must be in writing. If addressed to the Company, it must be addressed to the company secretary.

12. Severance

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Deed, nor affect the validity or enforceability of that provision in any other jurisdiction.

EXECUTED as a DEED
by Pharmaxis Pty Ltd
(ABN 75 082 811 630):

)
)
)
)

Signature

Signature

Print name

Print name

Office held

Office held

EXECUTED as a DEED
by
in the presence of:

)
)
)

Witness

Signature

Print name

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Exhibit 4.2



Pharmaxis Ltd
ABN 75082811630
ACN 082811630
Unit 2, 10 Rodborough Road
Frenchs Forest NSW
Australia 2086
Phone +61 2 9451 5961
Fax +61 2 9451 3622

[Date]

[Name and Address Details]

Dear [],

On behalf of Pharmaxis Ltd, I have pleasure in offering you a contract of employment in accordance with the particulars contained in this letter.

1 Nature of Position

The position is as [] and is with Pharmaxis Ltd ("the Company"). Your employment will be based at the Company's offices in Sydney. You may have to travel to other places from time to time to carry out your duties. You will report to the Chief Executive Officer and your duties and responsibilities will be as required from time to time by the Chief Executive Officer.

You must observe all rules, regulations, directions and policies of the Company, use your best efforts in furtherance of the business of the Company and perform your duties faithfully and to the best of your ability.

2 Duration of Contract

This is a full time position effective from [date], or sooner if mutually agreed. You will be required to work a minimum of 5 days per week. Hours of duty per day will be based broadly upon the Company's normal working hours. You may also be required to work extended hours or additional days as reasonably required by the Company if you are able to do so.

Subject to the earlier termination of your employment, the term of your employment will be to [date] ("End Date"), after which date it is agreed and understood that your employment with the Company terminates automatically unless this contract is extended in writing or a further written contract of employment is entered into. The Company will discuss its intentions no later than three months before the expiry of this contract. Notwithstanding any representation to the contrary, the Company is not under any obligation express or implied, to renew your contract or offer you any employment after the expiry of the contract term unless the contract is formally extended in writing before the End Date.

3 Remuneration

Your remuneration will comprise of the following:-

- A base salary of [\$amount] per annum with effect from [date] payable in 12 equal calendar monthly instalments on the usual payment date for employees and deposited into a bank account nominated by you by electronic funds transfer or an alternative method selected by the Company.

- Superannuation in line with statutory requirements will be paid in accordance with the Company's policies to either the superannuation plan appointed by the Company or an appropriate superannuation fund nominated by you. Currently this amount comprises 9% of your base salary.
- In addition, you may at the discretion of the Remuneration Committee of the Company be awarded a performance related bonus of no greater than [\$amount] per annum (proportionately reduced in your first year depending on your actual start date) which may be awarded subject to you meeting an agreed set of key performance indicators. The Remuneration Committee of the Company will determine the amount of bonus on or around 30 June each year and the Company will endeavour to pay any bonus by 1 September of the relevant year.
- The costs of professional society memberships, where appropriate, will be met by Pharmaxis.

4 Employee Option Scheme

The Company operates an Employee Option Scheme in which you will be invited to participate. The number of options you will be granted will be determined by the Remuneration Committee of the Company.

5 Leave

Conditions of employment for holidays and leave are as provided under applicable law and awards and are at present:

- 5.1 **Pharmaxis Ltd Holidays** - Pharmaxis Ltd closes for the Christmas/New Year period, the actual days being determined by the Board of Directors each year. These non public holidays are to be taken from your annual leave entitlement. The Company will allow all gazetted public holidays in NSW.
- 5.2 **Annual Leave** - You are entitled to a proportionate number of working days annual leave based on the rate of four weeks' per annum for a full-time employee. Annual leave will normally be taken in full each year. No leave loading will be payable.
- 5.3 **Sick Leave** – Sick leave is credited at a proportionate number of working days based on the rate of 15 days per annum for a full-time employee on appointment and service anniversaries, unused credits being cumulative. A medical certificate may be required. Unused sick leave is not paid out on termination of your employment.
- 5.4 **Long Service Leave and Recognition of Prior Service** - Leave entitlement is in accordance with New South Wales legislation.
- 5.5 **Other Leave** - Leave may be granted with pay as follows; bereavement leave, compassionate leave, leave to appear in court or serve as a juror, leave to train with the Armed Forces Reserve, leave to attend courses of study, maternity leave, paternity leave, etc. Leave without pay may be granted at the discretion of the Company.

6 Confidentiality

- 6.1 During and after your employment, you must not use or disclose to any person any information about the business; affairs; strategies; processes; secrets; intellectual property; technology or know-how (including information marked "confidential" or "secret" or which you are informed is confidential or secret); dealings; finances; and organization of the Company, which you obtain in the course of your employment and which is not available to the public without the prior written consent of the Company.

- 6.2 During and after your employment, you must not use any information which you obtain in the course of your employment, in any way which might cause loss to the Company.
- 6.3 In relation to information regarding the business; affairs; strategies; processes; secrets; intellectual property; technology or know-how; dealings; finance; and organization of the Company you must:
 - 6.3.1 only use the information exclusively as required in the performance of your employment with the Company for the benefit or advantage of the Company and for no other purpose;
 - 6.3.2 comply with any security measures established by the Company from time to time to safeguard the information from unauthorised access or use;
 - 6.3.3 keep the information under your possession or control;
 - 6.3.4 not make any unauthorised copies of the whole or any part of the information;
 - 6.3.5 immediately notify the Company of any suspected or actual unauthorised use, copying or disclosure of the information, of which you become aware; and
 - 6.3.6 during and after your employment, provide assistance reasonably requested by the Company in relation to any proceedings it may take against any person for unauthorised use, copying or disclosure of the information.
- 6.4 Your obligations of confidentiality under this clause do not extend to information that:
 - 6.4.1 was rightfully known to or in your possession or control, prior to your first involvement with the Company and which was not then subject to an obligation of confidentiality on your part;
 - 6.4.2 is public knowledge (otherwise than as a result of breach by you of an obligation of confidentiality or a breach of confidence by any other person); or
 - 6.4.3 is required by law to be disclosed.

7 Intellectual Property

- 7.1 You must promptly, fully and effectively disclose to the Company or its nominee either in writing, orally or both (as required by the Company) full details of:
 - 7.1.1 each and every invention (whether patentable or not), process, know-how, formula design (whether registerable or not), trademark or service mark and all other intellectual or industrial property rights of all kinds; and
 - 7.1.2 any copyright material, trade secret or other confidential information, generated by you at any time during your employment (whether or not during business hours), relating to or connected with any of the matters which have been, are or may become subject of Company's business affairs or business and whether or not capable of statutory protection.
- 7.2 In exchange for the benefits conferred on you by your employment:

- 7.2.1 you agree that by virtue of this provision, to the extent permitted by law, all intellectual property referred to in clause 7.1 is the property of the Company or its nominee;
 - 7.2.2 as any intellectual property is developed, created or invented, you irrevocably and absolutely assign to the Company your entire right title and interest both present and future throughout the world to and in the intellectual property referred to in clause 7.1 free from all mortgages, charges and other third party interests;
 - 7.2.3 you consent to all acts or omissions by the Company in relation to your moral rights in all copyright works referred to in clause 7.1; and
 - 7.2.4 you consent to the infringement of your moral rights in all copyright works referred to in clause 7.1 by the Company, its licensees, assignees and successors in title and any person authorised by the Company at the absolute discretion of the Company and without reference to you.
- 7.3 You must:
- 7.3.1 at the request and expense of the Company; and
 - 7.3.2 without additional compensation from the Company,
- sign all such documents (including assignment deeds) and do all such things as may be necessary to vest, confirm and perfect and record ownership by the Company or its nominee throughout the world of the right, title and interest to and in the intellectual property referred to in clause 7.1 and to enable the Company or its nominee to acquire and preserve such rights and to have the full enjoyment of such intellectual property.
- 7.4 You must keep complete written records of everything you invent or develop. These records belong to the Company and must be at all times retained in your custody and control at the Company's premises and must be handed to the Company on demand.

8 Termination and expiration of your Employment

- 8.1 Either party may terminate your employment by giving three months notice written notice to the other party. The Company may pay you for the notice period in lieu of notice, or require you to work some of the notice period and pay you in lieu for the balance of the period.
- 8.2 The Company may also terminate your employment:
 - 8.2.1 at any time if you are mentally or physically unfit to perform your responsibilities and discharge your duties under this contract for a total of 2 months in any 12 month period, by giving one month's notice to you (or making payment in lieu of notice);
 - 8.2.2 on the grounds of redundancy, pursuant to a determination of redundancy made by the Company. In such circumstances, the redundancy provisions of any applicable industrial award or agreement shall apply and the redundancy payment to be made shall be calculated in accordance with such applicable provisions, notwithstanding any other provision of this contract. If no such industrial award is applicable, the redundancy payment will be 2 months remuneration.

- 8.3 The Company may also terminate your employment without notice for “cause”, including without limitation if:
- 8.3.1 you commit any serious or persistent breach of this contract;
 - 8.3.2 you fail to comply with any reasonable directions of the Company;
 - 8.3.3 you are guilty of any serious misconduct or willful neglect in performing your duties;
 - 8.3.4 you engage in fraudulent conduct or are found guilty of an indictable offence;
 - 8.3.5 you are found to have used alcohol or drugs intemperately;
 - 8.3.6 you are in breach of any Company policy; or
 - 8.3.7 you recklessly or intentionally injure the Company’s business or affairs.
- 8.4 You acknowledge that the periods of notice or lack of periods of notice set out above are reasonable.
- 8.5 On the expiry or termination of the contract, you will be paid an amount in lieu of any accrued but unused annual leave and long service leave entitlements.
- 8.6 When your employment ends, you must deliver to the Company all property belonging to, or leased by, the Company or an associated company in your control, including stationery, cheque books, books, documents, records, disks, access cards, keys, mobile telephone, computer hardware, credit cards and motor vehicle any computer login codes and all confidential information.

9 Restrictive Covenants

- 9.1 You must not during your employment; and for a period of twelve months after termination of your employment, directly or indirectly, on your own account or on behalf of any person or entity, anywhere in which the Company or its associates carries on business:
- 9.1.1 participate, promote, carry on, assist or otherwise be concerned or interested financially or otherwise, in any capacity (including as principal, agent, partner, employee, shareholder, unitholder, director, trustee, beneficiary, financier, consultant or adviser) in any business or activity which is the same as, or substantially similar to the business of the Company or its associates, unless the Company otherwise agrees in writing;
 - 9.1.2 solicit, canvass, induce or encourage any employee or agent of the Company or its associates to leave the employment or agency of the Company or such associates;
 - 9.1.3 solicit, canvass, approach any customer or prospective customer of the Company or its associates with a view to soliciting the business of that customer; or
 - 9.1.4 interfere or seek to interfere with the relationship between the Company or its associates (on the one hand) and the customers, prospective customers, suppliers and employees of the Company or its associates (on the other hand).

- 9.2 You acknowledge the prohibitions and restrictions contained in this clause 9 are reasonable in the circumstances and necessary to protect the Company and its associate's businesses.
- 9.3 For the purpose of this clause 9, an "associate" is any corporation, venture, partnership or other business entity or vehicle over which the Company has direct or indirect control or which has direct or indirect control over the Company. A "prospective customer" means any person, firm or company who has been engaged in discussion with the Company with a view to purchasing goods or services from the Company during the period of six months immediately prior to the termination date.
- 9.4 Each of the obligations contained in the above provisions of this clause constitutes an entirely separate and independent restriction notwithstanding that they may be contained in the same sub-clause, paragraph, sentence or phrase. This clause must be read down to the extent necessary to be valid.
- 9.5 The covenants set out in this clause are considered by both you and the Company to be reasonable and necessary for the protection of the Company's legitimate interests in all the circumstances and in particular by reason of your access to highly confidential information relating to the Company's business.

10 **Outside Interests**

- 10.1 Without limiting clause 9, during your employment with the Company, you must not directly or indirectly:
- 10.1.1 engage in any outside activity (including employment, profession, trade, business, membership of House of Parliament or other public office or appointment), whether paid or unpaid; or
 - 10.1.2 have an interest in any business or company (other than companies listed on the Australian Stock Exchange),
- which could, in the Company's opinion, conflict with your duties, without written approval of the board of directors of the Company.
- 10.2 If the Company requests, you must disclose to the Company all your outside activities and interests in businesses and companies.

11 **Policy with Respect to Smoking**

Smoking is not permitted in any building occupied by the Company.

12 **Accident Reporting**

Staff members injured whilst at work or in travelling to or from work are required promptly to report the injury to the supervisor. Appropriate documentation as prescribed by WorkCover should be submitted if necessary.

13 **Miscellaneous Conditions**

- 13.1 This contract may be altered only by an agreement in writing signed by you and an officer of the Company authorised for this purpose.

13.2 This offer lapses if you do not sign and return the documentation to me by 30 June 2003. No liability or responsibility shall be accepted by the Company for any variation in the terms of the appointment as herein stated or for any undertaking or representation given or made concerning the appointment unless the same is in writing and signed by the Chief Executive Officer or her/his delegate. Prospective appointees are responsible for obtaining such written confirmation of any special conditions or undertakings relating to appointment.

14 Law

The interpretation of the agreement constituted by your acceptance of this offer is governed by the laws of the State of New South Wales. A provision of this contract must be read down to the extent necessary to be valid in a particular jurisdiction. If it cannot be read down it must be severed.

Importantly, I welcome you to the Company and I would be pleased if you accept this offer of employment with Pharmaxis Ltd.

Acceptance of this offer of a contract of employment, on the terms and conditions set out in this letter of offer will be signified by your signing both copies of this letter and returning one copy to me by 30 June 2003.

Yours sincerely,

Alan D Robertson
Chief Executive Officer
Pharmaxis Ltd

Accepted

[name]

</TEXT>

</DOCUMENT>

<DOCUMENT>

<TYPE> EX-4.3

<DESCRIPTION> Exhibit 4.3

<FILENAME> a2162308zex-4_3.htm

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Exhibit 4.3

**LEASE
New South Wales
Real Property Act 1900**

8154137H

STAMP DUTY Office of State Revenue use only

A) **TORRENS TITLE** Property leased if appropriate, specify the part of premises

Unit 2, 8-10 Rodborough Road, Frenchs Forest BEING part of the Land in Folio Identifier 2/737438

(B) LODGED BY	LTO BOX	Name, Address or DX and Telephone	CODE
	743	Allen Arthur Robinson DX 105 Sydney Ph: 9230 4000 XUMS 8033603	L

C) **LESSOR** **TRUST COMPANY OF AUSTRALIA LIMITED A.C.N. 004 027 749** of 80-84 New South Head Road, Edgecliff

The lessor leases to the lessee the property referred to above.

D) Encumbrances (if applicable): 1. Mfg 6787970 2. 3.

E) **LESSEE** **AORTECH BIOMATERIALS PTY LIMITED A.B.N. 079 265 286** of 126 Greville Street, Chatswood

F)

G) 1. **TERM : Five (5) Years**

2. **COMMENCING DATE:** 22 June 2001

3. **TERMINATING DATE:** 21 June 2006

4. With an **OPTION TO RENEW** for a period of 5 years set out in Clause 19

5. [deleted]

6. Together with and reserving the **RIGHTS** set out in **ANNEXURE "A"**

7. Incorporates the provisions set out in **ANNEXURE "A"** hereto.

8. [deleted]

9. I certify that this lease (including any annexure) comprises 46 pages numbered in sequence with this form.

Full name and position

Signature.

All handwriting must be in block capitals
set of notes on this form (97-07L-2)
available from the Land Titles Office

LTO use:
Total pages:
Checked by: **[ILLEGIBLE]**

ANNEXURE "A" REFERRED TO IN THE LEASE BETWEEN TRUST COMPANY OF AUSTRALIA LIMITED (LESSOR) AND AORTECH BIOMATERIALS PTY LIMITED (LESSEE)

DATED 22nd DAY OF June 2001

1. EXCLUSION OF STATUTORY PROVISIONS

The Lessee shall take the Premises subject to such of the covenants conditions and restrictions implied by Sections 84 and 85 of the Conveyancing Act 1919 as are not expressly negatived or modified.

2. DEFINITIONS

2.1 In this Lease and any Rules and Regulations (unless the contrary intention appears):

"Lessor" means the Lessor referred to on the front page of this Lease and its successors and assigns (and where an individual the Lessor's legal personal representatives).

"Lessee" means the Lessee referred to on the front page of this Lease and the successors and permitted assigns of the Lessee (and where an individual the Lessee's legal personal representatives) and where the context permits, the employees, invitees, licensees, contractors, subtenants and agents of the Lessee.

"Land" means the land so described in the Reference Schedule.

"Premises" or **"premises"** means the premises described in Reference Schedule and the Lessor's Property including the pipes and connections to all services and supplies from the point where they enter the Premises.

Where the Premises comprise the whole of a building or part, the boundaries of the Premises are:

- (a) the outside surface of perimeter walls (under any paint or wall covering) and the outside surface of any windows and access doors and shutters in them;
- (b) the lower surface of the ceiling (above any false or suspended ceiling);
- (c) the upper surface of the floor (under any floor covering);
- (d) the central line of partitions separating the Premises from other adjoining premises; and
- (e) the external surface of partitions and doors separating the Premises from the Common Area.

"Building" means the building or buildings and other improvements erected or to be erected on the Land from time to time together with any extensions modifications or alterations.

[ILLEGIBLE]

“Common Area” means those parts of the Land or Building designated by the Lessor from time to time to be used for common use by the Lessee and other occupants, their employees, customers, contractors, agents and the public.

“Lessor’s Property” means all plant, equipment, fixtures, fittings, furniture, furnishings and other property of the Lessor provided in the premises from time to time.

“the term” means the period from and including the commencement date of this lease up to and including its termination date.

Interpretation

2.2 In this lease unless the contrary intention appears:

- (a) a reference in this lease to another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of this lease;
- (c) the singular includes the plural and vice versa;
- (d) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the persons, executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to “month” is to “calendar month”; and
- (i) a reference to “writing” includes any mode of representing and reproducing words in tangible and permanently visible form and includes telex and facsimile transmission.

2.3 Headings are inserted for convenience and do not affect interpretation.

2.4 A provision of this lease which is void, voidable by any party unenforceable or illegal must be read down to the extent required to give the provision legal effect.

2.5 This lease constitutes the entire agreement between the parties and supersedes all previous negotiations and agreements in relation to the transaction.

3. RENT AND REVIEW OF RENT

3.1 During the term of this lease and any holding over, the Lessee must pay the rent specified in the Reference Schedule (as varied pursuant to Schedule 1) free of set-off, deduction or counter claim:

- (a) to the Lessor at the Lessor's address specified in this lease or as the Lessor directs (including by Bank Order); and
- (b) by equal monthly instalments in advance on the first day of each month from the commencement of this lease.

3.2 If the date of commencement of this lease is not the first day of a month, the Lessee must pay proportional instalments for the first and last months of the term.

3.3 The rent may be reviewed by the Lessor in accordance with Schedule 1.

4. OUTGOINGS AND SERVICES

4.1 The Lessee must pay Outgoings in accordance with Schedule 2 or reimburse the Lessor for any Outgoings the Lessor may pay.

4.2 The Lessee must pay charges when due for all services provided by the Lessor and by Authorities to the Premises including gas, electricity, water, air conditioning, garbage and trade waste removal.

4.3 If the Lessor provides a cleaning service for the Premises, the Lessee must pay the monthly cleaning charge with the rent.

4.4 Unless otherwise agreed between the parties, the Lessee is not liable to pay charges for:

- (a) the connection of gas, electricity, water and sewerage services to the Premises; or
- (b) the installation of separate water and electricity meters for the Premises.

5. DAMAGE TO PREMISES

If the Premises or the Building any part shall at any time be damaged or destroyed so as to render the Premises or any part wholly or substantially unfit for the occupation and use of the Lessee or, (having regard to the nature and location of the Premises and the normal means of access) wholly or substantially inaccessible, then and so often as the same shall happen:

- 5.1 except where such damage or destruction has been caused or contributed to or arises from any act or omission of the Lessee or the Lessee's employees and agents or any policy or policies of insurance effected by the Lessor in respect of loss or damage to the Building shall have been vitiated or payment of the policy moneys refused in consequence of some act or omission of the Lessee:
- (a) a proportionate part of the rent and the Lessee's proportion of the Lessor's Outgoings (if payable) according to the nature and extent of the damage sustained shall abate and all or any remedies for recovery of such proportionate part of the rent and Lessee's proportion of Lessor's Outgoings falling due after such damage shall be suspended until the Premises have been restored or made fit for the occupation and use of the Lessee (or accessible to the Lessee, as the case may be);
 - (b) this Lease may be determined by written notice by either the Lessor or the Lessee without liability attaching to either party by reason of such determination **PROVIDED THAT** the Lessee shall not be entitled to so determine this Lease if the Lessor within a period of 6 months after the occurrence of the destruction or damage shall have commenced to reinstate the Premises and make them fit for occupation and use of the Lessee (or accessible to the Lessee, as the case may be);
 - (c) if the Lessor commences to reinstate the Premises (or to make the Premises accessible as the case may be) and **THEN** does not, within a reasonable time (having regard to the extent of the damage or destruction and the time expected to commence and carry out the necessary works), reinstate the Premises, or make them fit for the occupation and use of the Lessee, (or render them accessible as the case may be), the Lessee may serve on the Lessor notice of intention to terminate this Lease, and, unless the Lessor shall upon receipt of that notice proceed with reasonable expedition and diligence to reinstate the Premises, or make them fit for such occupation and use, (or render them accessible as the case may be), the Lessee may terminate this Lease by giving not less than one (1) month's notice in writing to the Lessor, and at the expiration of the last mentioned notice, this Lease shall be at an end;
- 5.2 if in the Lessor's reasonable opinion such damage to the Building or the Premises is such that it is impractical or undesirable to reinstate the Premises, or make them fit for the occupation and use of the Lessee (or render them accessible as the case may be), the Lessor may terminate this Lease by giving one (1) month's notice in writing to the Lessee and at the expiration of that notice this Lease shall be at an end;
- 5.3 no liability shall attach to the Lessor or the Lessee by reason of termination of this Lease pursuant to this clause but, any such termination shall be without prejudice to the rights of either party in respect of any antecedent breach or non observance of this Lease;
- 5.4 any dispute arising under this clause shall be determined by a loss assessor being a member of the Insurance Council of Australia Limited (or succeeding body) appointed by the President for the time being of the said Council. The person so appointed shall be an assessor having

substantial experience in assessing buildings of a similar type within the appropriate area in which the Building is located or other comparable area and shall in making his determination act as an expert and not as an arbitrator and his determination shall be final and binding on both parties. The cost of any such determination shall be borne by either or both of the parties (and if by both of the parties in the proportion between them) as the person making the determination shall decide; and

5.5 nothing contained in this clause shall impose upon the Lessor any obligation to reinstate the Building or the Premises.

6. USE AND SIGNAGE

6.1 The Lessee must use the Premises only for the use stated in the Reference Schedule.

6.2 The Lessee must not:

- (a) carry on any auction sale upon the Premises;
- (b) use or permit the Premises to be used as a shop or sleeping place;
- (c) carry on any noxious or offensive act trade business occupation or calling other than any act or thing reasonably necessary for, and incidental to, the use of the Premises permitted by this lease; or
- (d) use the Premises in any noxious or offensive manner or do or permit to be done anything which in the reasonable opinion of the Lessor may be or become a nuisance disturbance or cause of damage to the Lessor or other occupiers of the Land or adjoining premises other than any act or thing reasonably necessary for, and incidental to, the use of the Premises permitted by this lease.

6.3 The Lessee will not paint affix or place upon any part of the Premises any sign, name, notice or other device or advertisement without the prior written consent of the Lessor (which shall not be unreasonably withheld where such signs are in keeping with the standards in a Building relating to signage and the consent of any Authorities is obtained).

6.4 Deleted.

7. REPAIRS, MAINTENANCE AND COMPLIANCE WITH LAWS

7.1 The Lessee must:

- (a) keep and maintain the Premises (including any vehicular access doors) in the same condition and state of repair as they were at the commencement of this lease (or any earlier lease if this lease is granted pursuant to an option) except for fair wear and tear. The Lessor and the Lessee may agree on a condition report of the Premises as at the commencement of this lease;

- (b) repair or replace all plate glass damaged or broken by the Lessee;
- (c) repair or replace all defective heating, lighting and electrical equipment and plumbing installed in the Premises including light globes, tubes, switches and power points;
- (d) keep and maintain the waste pipes drains and conduits contained in the Premises in a clean clear and free flowing condition and at its own expense employ licensed tradesmen to clear any blockages which may occur within the demised premises; and
- (e) comply with all laws and all legal requirements concerning its use and occupation of the Premises.

7.2 (a) Despite clause 7.1 the Lessee need not:

- (i) make structural repairs to the Premises; or
- (ii) replace items of a capital nature,

unless they arise because of any act, omission or breach of this lease by the Lessee or its employees or agents or unless they are required because of the Lessee's use of the Premises.

- (b) The Lessee is not responsible for repairs required as a result of natural disasters, deliberate damage or accident, such as fire, flood, storm, earthquake, explosion, which are beyond the Lessee's responsibility or control, unless:
 - (i) the damage occurred as a result of or was substantially contributed to by the Lessee's act or omission; or
 - (ii) the Lessor is unable to recover from its insurer insurance money for the damage because of some act or omission, neglect, default or misconduct by the Lessee or by other persons for whose conduct the Lessee is responsible.

7.3 The Lessee must:

- (a) ensure that all air-conditioning plant, fire equipment and all other plant machinery installations and equipment in the Premises (collectively called "plant") are only used for their proper purpose and must maintain keep such plant in good repair and condition having regard to its condition at the commencement of this Lease (or at the commencement of any prior lease if this lease is granted pursuant to an option) or at the time of any replacement, except for fair wear and tear but the Lessee shall not be liable for any expenses of a capital nature unless they result from the Lessee's failure to so maintain the plant; and

- (b) enter into and keep current during this Lease a maintenance contract with such responsible specialist contractors as reasonably approved by the Lessor for the regular inspection, service, maintenance and repair (including the testing and inspection of such equipment pursuant to the requirements of all authorities) of all such plant and shall pay all fees and other charges payable to such contractors. In particular, the service maintenance contracts for the air-conditioning plant shall include provisions for inspection of such plant not less frequently than once every three months.

7.4 The Lessee will redecorate on each of the redecoration dates referred to in the Reference Schedule.

7.5 In this clause "redecoration" means painting or otherwise decorating (including workmanlike preparation) with two coats of good quality paint or other appropriate decorative material all painted surfaces within the Premises, as well as the painted surfaces on the walls immediately outside of the Premises including the use of two pack polyurethane on all metal surfaces (including any roller doors) and repriming where coated surfaces have been damaged or broken down.

7.6 If the Lessee fails to so redecorate, then the Lessor may do so and recover the costs from the Lessee, together with an amount equal to such rents and other amounts which the Lessor would have been entitled to receive from the Lessee had the period (within which such decorating is carried out by the Lessor) been added to the term of this Lease.

7.7 If this lease is terminated before its expiry date (for any reason whatsoever), then in addition to clause 7.4 the Lessee must at the sole election of the Lessor (effective as at such termination) either:

- (a) carry out the redecoration; or
- (b) pay to the Lessor an amount (agreed between the parties or failing agreement as determined by a quantity surveyor nominated by the Lessor) which represents the reasonable cost to the Lessor of such redecoration.

7.8 The Lessee must:

- (a) keep the Premises clean and tidy and free of pests and vermin and regularly remove all rubbish; and
- (b) comply with any Lessor's directions about refuse removal and recycling.

7.9 The Lessor will notify the Lessee (if possible) of any interruption or any service provided under this Lease and reinstate the service as soon as practicable after such interruption.

8. ALTERATIONS TO THE PREMISES

- 8.1 The Lessee must not make any alterations or additions to the Premises without the Lessor's written consent (which consent must not be unreasonably withheld).
- 8.2 If the Lessor gives approval, it may impose conditions including specifying in writing:
- (a) which parts of the Premises may not be reinstated and which parts must be; and
 - (b) which items of the Lessee's property installed as part of the works may not be removed,
- when the Lease terminates.
- 8.3 The Lessee must ensure that any works it does, are done:
- (a) in a proper and workmanlike manner and at its sole risk;
 - (b) in accordance with any plans, specifications and schedule of finishes required and approved by the Lessor (who may not unreasonably withhold its approval);
 - (c) in accordance with the laws and the requirements of authorities; and
 - (d) in accordance with the Lessor's reasonable requirements and directions.
- 8.4 If such alterations or additions require consequential changes to the sprinkler system, fire control installations or other services in the Building or the Premises then the Lessee must ensure such changes comply with all requirements of the relevant authorities.
- 8.5 After completion of such works the Lessee must provide the Lessor with a suitable copy of the as built drawings duly approved where necessary by all relevant authorities.
- 8.6 Any alterations or additions made by the Lessee under this clause shall be made at the cost of the Lessee who will be responsible for their maintenance and repair. Upon the termination or expiry of this Lease but subject to clause 8.2, the Lessee will upon request by the Lessor remove the same and make good any damage to the Premises occasioned by such removal and reinstate the Premises to the same condition existing at the commencement of the lease (or the earlier lease if this lease is granted pursuant to an option to renew).
- 8.7 Any such alterations or additions and reinstatement shall be carried out by suitably qualified contractors approved by the Lessor (which approval shall not be unreasonably withheld) and the Lessee hereby indemnifies the Lessor from and against all injury or damage suffered or incurred by the Lessor relating to say such alterations, additions and reinstatement.
- 8.8 Despite clause 8.1, the Lessee may, without the Lessor's consent, install in the Premises any cables, wiring, and similar items which are required in the reasonable opinion of the Lessee

to operate its business from the Premises.

9. INSURANCES

9.1 The Lessee must maintain in respect of the Premises the following policies of insurance for:

- (a) public liability for at least the amount set out in the Reference Schedule (or for such greater amount as the Lessor reasonably requires from time to time consistent with general good industry practice) including where reasonable to do so a cross liability and waiver of subrogation clause and bearing endorsement to cover "Lessee's liability extension"; "lease liability extension"; and the liability of the Lessee to the Lessor under Clause 10 of this lease;
- (b) loss or damage to Lessee's fixtures and fittings;
- (c) plate glass for its full replacements value; and
- (d) other insurances which are required by law or which, in the Lessor's reasonable opinion, a prudent Lessee would take out including those in connection with any tenant's works on the Premises.

9.2 The Lessee must:

- (a) ensure all policies are placed with a reputable and solvent insurer reasonably approved by the Lessor and contain such conditions endorsements and exclusions as are reasonably acceptable to or reasonably required by the Lessor;
- (b) not make any alterations to the policies unless first approved in writing by the Lessor;
- (c) take such policies out in the name of the Lessee, the Lessor and any other interested person named by the Lessor;
- (d) notify the Lessor immediately if any such policy is cancelled or an event occurs which may allow a claim or affect rights under any policy; and
- (e) produce to the Lessor duplicate or certified copies of the policies and all renewal certificates and endorsement slips or an appropriate Certificate of Currency upon request by the Lessor.

9.3 The Lessor shall be entitled to conduct or settle any claims which relate to the premises under such insurance policies.

9.4 The Lessee must not do anything or bring or keep anything whereby:

- (a) any insurances effected by the Lessor or by the Lessee referred to in this Lease or any other insurance may be vitiated or rendered void or voidable; or
 - (b) the rate of premium on such insurances shall be liable to be increased, unless the Lessee pays all additional premiums and expenses of such insurance as well as any additional premium and expenses caused by the use to which the Premises are put by the Lessee.
- 9.5
- (a) It shall be a condition of each insurance effected by the Lessee (except for workers' compensation), or the insurer should provide a written undertaking to the Lessor, that the insurance shall not be cancelled by the insurer or its terms or conditions or the cover provided under the insurance shall not be materially altered, except after the insurer shall have given to the Lessor not less than fourteen (14) days prior written notice of its intention relating to any of those matters.
 - (b) Each of the insurance policies effected by the Lessee (except for workers' compensation) shall contain a waiver of the insurer's rights of subrogation against the Lessor and the Lessee arising out of any claim under the policy.

10. INDEMNITIES & RELEASE

- 10.1 The Lessee agrees to use and occupy the Premises during the term of this lease at the Lessee's risk as regards loss or damage to the Lessee and the Lessee's Property.
- 10.2 The Lessee releases the Lessor from liability or loss arising from and costs incurred by any of the following:
- (a) damage, loss injury or death;
 - (b) Deleted;
 - (c) the unavailability, interruption or malfunction of a service connected to the Premises;
 - (d) the operation of a statute, regulation or notice issued by any Authority;
 - (e) a strike, accident, riot, industrial action or civil disturbance;
 - (f) a fire, bomb threat or other emergency drill or the Lessee vacating the Premises because of any such event.
- 10.3 The Lessee indemnifies the Lessor from and against any liability, loss, damage, expense costs or claim suffered or incurred by the Lessor whether by act, omission or neglect of the Lessee or the Lessee's contractors, sub-tenants, licensees, agents, employees or invitees, including to a third party, during or after the term of this lease, in respect of or arising from:

- (a) loss, damage or injury to property or person caused or contributed to by the act, omission, neglect or default of the Lessee;
- (b) the misuse whether by act or omission by the Lessee of any services or facilities in the Building or in the Premises;
- (c) the overflow, leakage or escape of water, gas, electricity, fire, or other materials or substances in or from the Premises, caused or contributed to by the Lessee;
- (d) loss, damage or injury to property or person, caused or contributed to by the Lessee arising out of its use of the Premises;
- (e) loss, damage or injury to property or persons, caused or contributed to by the defective installation of plant, fixtures and equipment in the Premises by the Lessee;
- (f) the Lessee's failure to notify the Lessor regarding any defect in the facilities or services in the Premises;
- (g) failure by the Lessee to comply with any laws relating to occupational health and safety; and
- (h) an accident on or about the Premises not caused or contributed to by the Lessor.

10.4 The releases and indemnities under this clause include any penalties, fines insurance claim excesses, legal and other costs incurred by the Lessor but do not apply to the extent that the loss, damage or injury was caused by the wilful act omission or neglect of the Lessor, its employees or agents.

10.5 The indemnities by the Lessee continue after this lease expires or is terminated in respect of events occurring during the term and the Lessor may enforce any indemnity before incurring any expenses.

11. ASSIGNMENT AND SUBLETTING

11.1 The Lessee covenants and agrees that it will not assign, transfer, sub-let or in any manner part with the possession of the Premises or any part or assign the benefit of its estate or interest in this lease or the Premises without the prior written consent of the Lessor which shall only be given if:

- (a) it reasonably satisfies the Lessor that the proposed new tenant or sub-tenant is respectable and financially sound and capable of conducting the business permitted by this lease or such other business approved by the Council and by the Lessor in its absolute discretion;

- (b) in the case of a transfer, the proposed new tenant signs an agreement relating to the transfer in a form reasonably required by the Lessor whereby the new tenant agrees to observe the terms of this lease as if it was the original tenant;
 - (c) in the case of a sublease, the proposed sub-tenant signs an agreement in a form reasonably required by the Lessor whereby the subtenant agrees that it will not cause or contribute to a breach of this lease by the Lessee and pays a market rental or acknowledges that the rental paid is not a market rental;
 - (d) the Lessee has provided a Bank Guarantee or Security Bond (or if no Bank Guarantee or Security Bond is required whilst the assignor is the Lessee), then the proposed new tenant must provide a substitute equivalent Bank Guarantee or security bond after which the existing Bank Guarantee or security bond will be released (to the extent it has not been claimed upon).
 - (e) there is no Bank Guarantee or security bond required by the Lessee pursuant to this lease and the proposed new Lessee is a company, then either (at the election of the Lessor) the directors or principal shareholders of that company shall, execute and complete a Deed of Guarantee and Indemnity in a form approved by the Lessor in respect of the performance of the proposed new Lessee's obligations under this lease or the proposed new Lessee provides a bank guarantee equivalent to 6 months rental including outgoing contributions; and
 - (f) any default by the Lessee has been remedied by the Lessee or waived by the Lessor;
 - (g) an appropriate form of transfer or sublease approved by the Lessor, is duly completed, executed, stamped and registered without cost to the Lessor;
 - (h) the Lessee pays the Lessor's reasonable costs in respect of any such consent, including all fees and charges payable in respect of any enquiries made by the Lessor as to the proposed new tenant or sub-tenant; and
 - (i) the Lessee establishes to the reasonable satisfaction of the Lessor that the Local Council and all other relevant authorities have given any necessary consent to the use of the Premises by the proposed new tenant of sub-tenant.
- 11.2 If there is a proposed change in the shareholding of the Lessee or its holding company from that existing as at the commencement date of this lease so that a different person or group of persons will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings, then that proposed change in control is treated as a proposed transfer of this lease and the person or group of persons acquiring control is treated as the proposed new Lessee and clause 11.1 applies.
- 11.3 The Lessee may only create or allow to come into existence:
- (a) any security over the Lessee's interest in this lease; or

(b) Deleted

with the Lessor's approval (which may not be unreasonably withheld).

11.4 Nothing in this clause prohibits the Lessee permitting its parent company or any related company (within the meaning of the corporations law) sharing an office within the premises with the Lessee, provided the Sub-Lease or Licence is in a form reasonably acceptable to the Lessor.

12. ADDITIONAL COVENANTS AND ACKNOWLEDGEMENTS BY THE LESSEE

12.1 The Lessee must:

(a) upon the expiration or sooner determination of the said term:

- (i) yield up the Premises in a clean and tidy condition and in the same condition as they existed at the commencement of the term (or the earlier term if this lease is granted pursuant to any option) except for fair wear and tear;
- (ii) remove at the expense of the Lessee all Lessee's fillings and fixtures comprising the Lessee's fitout and as well as the fit out referred to in Clause 27 (except anything the Lessor has stated in writing as a condition of any approval to Lessee's works, need not be removed) as well as lettering and distinctive marks or signs put up by the Lessee or by the Lessor for the Lessee on the Premises or elsewhere and rectify any damage by reason of such removal;
- (iii) unless the Lessor otherwise agrees or directs in writing, remove at the expense of the Lessee all Lessee's fittings and fixtures comprising the Lessee's fitout and as well as the fit out referred to in Clause 27;
- (iv) ensure that any bolts securing storage facilities that are fixed into the floor or walls are cut off or that the top of such bolts are flush with the floor or wall level; and
- (v) return to the Lessor all keys, access cards and similar devices for the Land and the Premises held by the Lessee and any other person;

(b) comply promptly with and observe at its own expense all laws and the requirements of all Authorities with respect to the business conducted at the Premises by the Lessee as well as with all such laws and requirements with respect to the Premises except what would have issued or be required irrespective of such use by the Lessee;

(c) immediately notify the Lessor if the Premises are damaged or any accident to or defect in any of the services connected to the Premises occurs or the Lessee receives any notice from any Authority;

- (d) pay upon demand;
 - (i) all stamp duty and all the Lessor's reasonable and proper legal costs and disbursements of and incidental to the preparation completion stamping and registration of this Lease and of any consent required to it and of any surrender or other termination (otherwise than by effluxion of time);
 - (ii) in case of default by the Lessee, to the Lessor all proper legal and other costs charges and expenses which the Lessor may incur in consequence of or in connection with such default including remedying the breach; and
 - (iii) all costs, charges and expenses in connection with works the Lessee carries out, including those incurred by the Lessor in considering, approving and supervising the works and those of modifying or varying the Building because of the works;
- (e) pay interest to the Lessor on any amount payable under this lease by the Lessee but unpaid for 14 days (or 7 days in the case of rent and any contribution to the Lessor's outgoings). The rate of interest will be equal to 2% above the highest rate for the time being charged by the Lessor's Bankers on commercial overdrafts for amounts exceeding \$100,000.00 computed from the last of the days specified in this lease that moneys are due until such payment is received by the Lessor and will be compounded monthly on the monthly date specified for payment of rent and will be recoverable in the same way as arrears of rent;
- (f) indemnify the Lessor from and against all claims which may be made upon the Lessor for injury or disease arising from smoking or passive smoking by any person on the Premises. If required by the Lessor the Lessee's insurance must be extended to include cover for such claims and include the Lessor as an insured party; and
- (g) Deleted.
- (h) participate in any fire, bomb threat or other emergency drill of which the Lessor gives notice including evacuating the Premises if informed of any such act or suspected events.

12.2 The Lessee must not:

- (a) Overload the structure of or services to the Premises;
- (b) bring onto, store or use in the Premises any inflammable, dangerous or explosive substances such as acetylene, industrial alcohol, burning fluids, and chemicals, (including for heating or lighting the Premises) unless the sale or use of such substances constitutes proper conduct of the Lessee's use permitted by this lease and the particular substances are stored and used only whilst taking all necessary safety precautions and in compliance with all fire and safety regulations relating to such substances (including the reasonable requirements of the Lessor's insurer);

- (c) use or permit to be used or stored at the Premises any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities permitted by the relevant statutory authorities and in accordance with any licenses, permits or authorisations required by law and in accordance with the conditions imposed by such authorities or under their permission (including the reasonable requirements of the Lessor's insurer);
- (d) use upon the Premises any forklift truck or pallet trolleys unless the same have been equipped with rubber or pneumatic tyres (for the purpose of avoiding damage to floors by steel or hard nylon wheels);
- (e) place or keep any machinery, safe or heavy articles or goods in the Premises of such weight and in such place or places unless first approved by the Lessor in writing after consultation with its engineers; or
- (f) make any use of the Premises whether for the Lessee's permitted business or otherwise (including but without prejudice to the generality of the foregoing the installation or use of any machinery or the employment of any persons) whereby any public or statutory authority may give or issue or be entitled to give or issue any notice requiring structural alterations or repairs to be made or carried out to the Premises, unless the Lessee shall at its own cost and expense, comply with the requirements of such notice.

12.3 The Lessee acknowledges that:

- (a) it occupies the Premises at its own risk and must not knowingly use the Premises in contradiction of any law;
- (b) subject to clause 13.2(f), it may not terminate this lease seek compensation of damages or stop or reduce payments under it because a service provided to the Premises is not available or is interrupted or fails or the Lessor's Property breaks down or a structural repair has not been carried out or the Common Area is not clean;
- (c) subject to clause 13.2(f), the Lessor is exempted from any liability to the Lessee for financial loss or inconvenience, including for damages, abatement of rent or for repudiation and the tenant is not entitled to terminate this lease because:
 - (i) any of the services supplying the Premises is out of order and or is not functioning properly or at all; or
 - (ii) any such services are temporarily stopped or interrupted pending inspection, repair, maintenance or replacement.
- (d) the Lessee's property is at all times at the Lessee's risk;

- (e) the Lessor may enforce its rights against the Lessee whether or not the Lessor enforces its rights against other tenants or occupiers of the Building or Land;
- (f) the Lessor does not expressly or impliedly warrant that the Premises are now or will remain suitable or adequate for all or any of the purposes of the Lessee and, subject to the law, all warranties (if any) as to the suitability and adequateness of the Premises are hereby expressly negated; and
- (g) the Lessee and the Lessee's employees and agents may use the Common Area for the purposes for which it is intended, subject to this lease and the Rules and Regulations.

12.4 If the Lessee shall fail to remove the Lessee's property comprising fixtures and chattels or any property of its customers employees permitted sub-tenants or licensees from the Premises at the expiry or sooner termination of this Lease, the following provisions apply:

- (a) if the Lessor terminates this lease by re-entry, the Lessee may give the Lessor a notice within 7 days after termination that the Lessee wants to remove its property which the Lessee may or must remove from the Premises;
- (b) within 7 days after the Lessee gives its notice under subclause (a), the Lessor must give the Lessee a notice, stating when and how the Lessee's property is to be removed from the Premises and by whom and may impose a condition, being the provision of a bank guarantee of a reasonable amount, to secure the Lessor against damage to the Premises and the Land by such removal;
- (c) the Lessor may treat the Lessee's property as if the Lessee had abandoned its interest in it and it had become the property of the Lessor and deal with it in any way it sees fit at the Lessee's expense if the Lessee does not:
 - (i) give the notice under subclause (a) on time; or
 - (ii) remove its property in accordance with this clause or a notice given under it; or
 - (iii) remove its property at the expiration of the term of this lease; and
- (d) the Lessee indemnifies the Lessor in respect of all claims demands losses damages proceedings costs charges and expenses which the Lessor may suffer or incur at the suit of any person (other than the Lessee) claiming an interest in the Lessee's property by reason of the Lessor acting in any manner permitted by this clause.

12.5 If the Lessee fails to comply with clauses 12.1 and 12.4, the Lessee indemnifies the Lessor in respect of the cost of complying with clauses 12.1 and 12.4 including making good any damage to the Premises or the Building and until such time as the removal and making good required by clauses 12.1 and 12.4 has been completed by the Lessee or by the Lessor upon the Lessee's default so as to permit reletting of the Premises, then the Lessee must pay or allow to the Lessor by way of liquidated damages in relation to any such default, a sum equivalent to the rent payable by the Lessee immediately prior to the expiration or determination of the term of this lease for the period until the Premises are made fit for reletting.

13. LESSOR'S COVENANTS

13.1 Subject to the Lessor's rights, while the Lessee complies with its obligations under this lease, it may occupy the Premises during the term without interference by the Lessor.

13.2 During the term the Lessor must:

- (a) insure the Building with a responsible and reputable insurance company for its reinstatement and replacement value;
- (b) pay all rates and taxes which are not payable directly to the relevant Authority by the Lessee or any other tenant;
- (c) keep the Premises structurally sound and maintain the Premises in good structural repair and condition having regard to its condition at the commencement of the term (or the prior term if this lease is granted pursuant to an option), and allowing for fair wear and tear;
- (d) keep the Common Area clean and tidy;
- (e) procure the consent of any mortgagee of the Land to this lease; and
- (f) use all reasonable endeavours to ensure the services available to the premises at the commencement of this Lease remain available at all times and to re-instate or repair services (which are the responsibility of the Lessor) as soon as practicable after receipt of notification from the Lessee subject to any delays beyond the Lessor's control.

14. LESSOR'S RIGHTS

14.1 Subject to clause 14.2, the Lessor (or any person having an estate or interest in the Premises superior to or concurrent with the Lessor) may with or without its agents or contractors enter the Premises to:

- (a) view the state of repair of the Premises;

- (b) remedy any breach of this lease if the Lessee does not remedy the breach after receiving 21 days notice of the breach;
- (c) fulfil its obligations under this lease; or
- (d) carry out any repairs, alterations or additions, or other work which the Lessor considers necessary or desirable or as required by any Authority or following any damage to the Premises.

14.2 The Lessor must:

- (a) give reasonable prior notice of the Lessor's intention to enter the Premises (except in the case of emergency); and
- (b) use all reasonable endeavours to ensure any works carried out pursuant to clause 14.1 do not unduly interfere with the use of the Premises by the Lessee having regard to the nature of such works.

14.3 The Lessor reserves the right of uninterrupted passage of any services through pipes, ducts and wires in the Premises.

14.4 The Lessor may from time to time improve vary extend or reduce the Common Area or the Land or in any manner alter or deal with any part of the Building (other than the Premises) including changing the direction or flow of pedestrian or vehicular traffic and the Lessee will make no claim for compensation against the Lessor if the Lessor maintains reasonable access to the Premises and to the Common Area for the parking of any motor vehicles permitted to the Lessee and causes as little inconvenience to the Lessee as is practicable in the circumstances.

- 14.5 (a) The Lessor may subdivide the Land (including under the Strata Titles or Community Title Legislation) and, if necessary, carry out construction or demolition works on the Land or temporarily interrupt a service for that purpose if:
- (i) after the subdivision the Premises are substantially the same; and
 - (ii) this would not have a substantial adverse effect on the Lessee's Business.
- (b) The Lessee will execute any approval reasonably required as a result of such subdivision.

14.6 The Lessor may create easements or other rights over the Land, the Building or the Premises unless this would have a substantial adverse effect on the Lessee's business or rights under this lease.

- 14.7 The Lessor has the right to use the exterior walls and roof of the Building as well as the right to uninterrupted passage of all pipes and cables passing through the Premises and the running of all substances and services through them provided such pipes and cables do not unreasonably interfere with the Lessee's use and enjoyment of the Premises.
- 14.8 After giving reasonable notice the Lessor may enter the Premises to show prospective Purchasers through the Premises and display from the Premises a sign indicating that the Premises or the Building is for sale provided such sign does not obstruct any signs of the Lessee.
- 14.9 Subject to Clause 14.2(a), within 6 calendar months immediately preceding the expiration of the terms (unless the Lessee has exercised any option to renew this lease), the Lessor may at all reasonable times inspect the Premises with prospective tenants or occupiers and the Lessee will allow the Lessor to exhibit a notice indicating that the Premises are offered for leasing provided such sign does not obstruct any signs of the Lessee.
- 14.10 (a) If the Lessor deals with its interest in the Land so that another person becomes lessor, the Lessor is released from its obligations under this lease arising after it ceases to be lessor.
- (b) If requested by the Lessor, the Lessee must at the Lessor's cost sign the documents that the other person reasonably requires to give a direct contractual relationship with the Lessee.
- (c) Any obligation owed by the Lessee to the Lessor which is due for performance before the Lessor ceases to be the Lessor (including any rental or outgoing adjustment) remains owing to the Lessor as at such time and is recoverable by the Lessor in its own name.
- 14.11 After giving the Lessee reasonable notice, the Lessor may do anything which the Lessee should have done under this lease but which it has not done or which the Lessor considers it has not done properly.
- 14.12 The Lessor may appoint agents or others to exercise any of its rights or perform any of its duties under this lease but communications from the Lessor override those from the agents or others if they are inconsistent.
- 15. DEFAULT BY THE LESSEE**
- 15.1 Each of the following constitutes a default by the Lessee under this lease:
- (a) If the rent hereby reserved or any part thereof or any contribution to the Lessor's Outgoings shall be unpaid and in arrears for 7 days after the same shall have become due whether any formal or other demand shall have been made for such moneys; or

- (b) if any other moneys payable by the Lessee to the Lessor shall not have been paid within 14 days of the due date for such monies; or
- (c) if the Lessee shall not commence effecting the repairs required by any notice given by the Lessor to the Lessee within a reasonable time after the giving of such notice; or
- (d) if the Lessee shall fail to observe perform or fulfil any of the other terms covenants conditions and restrictions contained on the part of the Lessee whether positive or negative after having been given 30 days written notice by the Lessor specifying the failure; or
- (e) if the Lessee or any Guarantor (being a company) enters into liquidation (otherwise than for the purpose of reconstruction or amalgamation reasonably approved by the Lessor in writing) or if a receiver or official manager or provisional liquidator or administrator is appointed or enters into a scheme of arrangement or composition with or assignment for the benefit of all or any clause of its creditors; or
- (f) if the interest of the Lessee under this Lease is attached or taken in execution under any legal process; or
- (g) if the Lessee or any Guarantor (being an individual) shall be declared bankrupt or insolvent according to law,

then the Lessee shall be deemed to have made default.

15.2 If the Lessee shall have made such default, the Lessor may (after first giving prior notice where required by law) at its option:

- (a) re-enter into and take possession of the Premises or any part in the name of the whole (by force if necessary) and eject the Lessee and all other persons therefrom and repossess and enjoy the same as of its first and former estate upon which event this lease shall be absolutely terminated; or
- (b) by notice in writing to the Lessee terminate this Lease (and from the date of giving such notice this Lease shall be absolutely terminated); or
- (c) by notice in writing to the Lessee elect to convert the said term into a tenancy from week to week in which event this Lease shall be determined as from the giving of such notice and thereafter the Lessee shall hold the Premises from the Lessor as Lessee from week to week at a weekly rental equal to one (1) week's proportion of the rent payable at such time commencing from the date of service of such notice (such rental being payable weekly in advance) but otherwise on the terms and conditions of this Lease so far as they can be applied to a weekly tenancy.

- 15.3 The Lessee agrees that the following are essential terms of this Lease:
- (a) the covenant to pay rent throughout the term of the Lease on the due date for payment of each monthly installment of rent; and
 - (b) the covenant to pay the Lessee's proportion of the Lessor's Outgoings; and
 - (c) the covenant dealing with assignment, transfer and subletting; and
 - (d) the covenant relating to repair and maintenance.
- 15.4 If the Lessee makes or is deemed to have made a default in the circumstances contained in this clause and if, as a consequence of such a default, the Lessor:
- (a) determines the Lease by re-entry; or
 - (b) determines the Lease by notice; or
 - (c) converts the term into a tenancy from week to week and if that tenancy is subsequently determined either by the Lessor or the Lessee before the expiration of the whole of the term; or
 - (d) accepts the surrender of this Lease;
- THEN the Lessor in addition to the remedies referred to in paragraphs (a), (b), (c) and (d) of this subclause and in addition to any other rights and remedies the Lessor may have or may have exercised, will be entitled to recover from the Lessee damages for all loss suffered because this Lease will not have run the whole of its term, such damages to include, but not to be limited to, the costs of recovery of possession, the costs of reinstating the Premises, the costs of re-letting and any loss occasioned arising out of any lapse of time before re-letting or any re-letting at a rent and upon terms not as advantageous to the Lessor as the terms of this Lease.
- 15.5 In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease, the Lessee covenants to compensate the Lessor for loss or damage suffered by reason of the repudiation or breach during the entire term of this Lease. The Lessor's entitlement to recover damages shall not be affected or limited if the Lessee shall abandon or vacate the Premises or if the Lessor shall elect to re-enter or terminate the Lease or accept the Lessee's repudiation.
- 15.6 If the Lessee shall fail to pay any moneys payable by it to any person other than the Lessor or if the Lessee shall fail to perform any affirmative covenant on the part of the Lessee, the Lessor may at its option as the agent of the Lessee make any such payment or do all such acts and things and incur such expenses as may be necessary to perform such covenants and the full amount of any payments made or expenses incurred shall constitute a

liquidated debt due and owing by the Lessee to the Lessor.

- 15.7 No consent or waiver (express or implied) by the Lessor to or of any breach of any covenant condition or duty of the Lessee shall be construed as a consent or waiver to or of any other breach of the same or any other covenant condition or duty.
- 15.8 Acceptance by the Lessor of arrears of rent or other money or of any breach of this Lease does not constitute a waiver of the Lessor's rights.
- 15.9 In the event of the Lessee vacating the Premises with or without the Lessor's consent, the Lessor shall be obliged to take reasonable steps to mitigate its damages and to endeavour to re-lease the Premises at a reasonable rent and on reasonable terms.
- 15.10 The expiry or termination of this lease does not affect the right of either party for a breach of this lease by the other party before the expiry or termination.

16. RULES AND REGULATIONS

- 16.1 The Lessee must observe and comply with the Rules and Regulations contained in Schedule 3 (as from time to time varied, added to, deleted or amended).
- 16.2 The Lessor shall have the right at any time and from time to time to delete vary amend or add to the said Rules and Regulations in respect of the management, safety and control of the Land, Building, and the Common Area or in the conduct of occupants. The Lessee must observe and comply with such deletions variations amendments or additions following notice in writing from the Lessor.
- 16.3 Despite the foregoing, no deletion, variation, amendment or additions to such Rules and Regulations shall be inconsistent with the rights of the Lessee in this Lease.
- 16.4 The Lessee acknowledges and agrees that the failure of the Lessee to keep any such Rules and Regulations as may from time to time be in force shall constitute a breach of the terms of this Lease.
- 16.5 The Lessor is not liable to the Lessee for any alleged loss or damage in respect of the failure to enforce the Rules or Regulations or any of them.

17. CAR PARKING

- 17.1 For no additional consideration, the Lessor also grants an exclusive licence to the Lessee its employees and agents to park the number of motor vehicles referred to in the Reference Schedule in the location as directed from time to time by the Lessor.
- 17.2 The Lessee, shall park in the allotted spaces only and at its risk and the Lessor shall not in any way be liable or responsible for any loss damage or injury which may be sustained by the Lessee or any of its servants or agents arising out of its exercise of its rights conferred

by this clause except to the extent caused by the Lessor's negligence or default.

- 17.3 The Lessee indemnifies the Lessor against liability or loss incurred or suffered by the Lessor in connection with any damage, loss, injury or death caused or contributed to by the act neglect or default of the Lessee or its employees or agents arising out of its exercise of its rights conferred by this clause.
- 17.4 The Lessee must give the Lessor prompt notice in writing of any accident to or defect or want of repair in any services or equipment in the car parking area and of any circumstances likely to cause any damage or risk.
- 17.5 The rights and benefits of the Lessee contained in this clause:
- (i) are not severable from the other rights and benefits of the Lessee contained in this Lease and accordingly shall not be capable of being separately assigned or otherwise dealt with; and
 - (ii) shall rest in contract only and shall not create or confer upon the Lessee any tenancy or any estate or interest in or over the car spaces.
- 17.6 The Lessee must make good any damage sustained to any bitumen, concrete or other paved surface of such car parking area through neglect, default or misconduct on the part of the Lessee.
- 17.7 The Lessee must keep the car spaces tidy and only use them for car parking.

18. BANK GUARANTEE

- 18.1 The Lessee must on or before the date of its execution of this Lease deliver to the Lessor a guarantee by a Bank trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay on demand whether by one or more requests, without any expiry date, drawn in favour of the Lessor, in a form reasonably acceptable to the Lessor and for an amount equivalent to the number of months referred to in the Reference Schedule in respect of rental including the Lessee's proportion of the Lessor's Outgoings payable from time to time during this lease.
- 18.2 The Lessor shall be entitled to immediately demand payment from the Bank following any breach by the Lessee of its obligations under this Lease (whether registered or not) and shall be entitled to apply such amount as may be received towards the satisfaction of any amounts that may be payable to the Lessor as a result of any such breach.
- 18.3 Any application by the Lessor of the Bank Guarantee pursuant to this clause shall not be deemed to waive the Lessee's breach.
- 18.4 The Lessee must vary the amount of the said Guarantee within 14 days of each rent review so that the said amount at all times represents the amount referred to in clause 18.1.

- 18.5 If moneys are paid under the Bank Guarantee, the Lessee must ensure that a replacement Guarantee is issued so that the amount of the Guarantee held by the Lessor represents the amount contemplated by this clause.
- 18.6 If during the term of this lease the Lessor shall transfer its ownership in the Premises and shall give written notice to the Lessee requiring amendment or replacement of the Bank Guarantee to reflect the new Lessor, then the Lessee shall at the Lessor's cost comply with such notice within 21 days of service. In the event of the failure of the Lessee to comply with this subclause, the Lessor shall be at liberty to handover the Bank Guarantee to any such assignee or transferee and thereupon the Lessor shall be discharged from all liability to the Lessee or any other person in respect of the said Bank Guarantee.
- 18.7 If the Lessee does not provide the Bank Guarantee required by this clause the Lessor shall be entitled to terminate this lease.

19. OPTION TO RENEW

If the Lessee:

- (a) requires a renewed lease of the Premises for any further term specified in the Reference Schedule from the expiration of the term of this Lease; and
- (b) gives to the Lessor written notice not less than nine (9) calendar months prior to the expiration of the term of this lease,

THEN, if the Lessee is not at the expiration of this term or at the date of giving of the said notice, any breach of this Lease, the Lessor must grant and the Lessee must accept (but at expense of the Lessee) a renewed lease of the Premises for the said further term on the same conditions as this Lease (including all existing Bank Guarantees, Security Deposits and other guarantees) except that:-

- (c) this clause shall not be included in the renewed lease;
- (d) the rent payable at the commencement of the renewed lease until the first rent review shall be the current market rent calculated and determined in accordance with Schedule 1A as if the first day of the term of the renewed lease was a "review date" and the terms and conditions of the renewed lease shall be taken into account in substitution of the terms and conditions of this Lease in such determination but in no event shall the rent payable at the commencement of the option term be less than the rent payable during the year immediately preceding the commencement of the option term; and
- (e) the rental payable during the renewed lease shall be subject to review in accordance with the provisions Schedule 1A and/or 1B and upon each rent review date(s) so specified in the Reference Schedule; and
- (f) such alterations to the terms and conditions which necessarily arise in the event that the premises have been converted to an allotment under the Strata Titles Legislation during the initial term of this lease PROVIDED THAT any alteration to outgoings arising as a result

of such conversion must not be greater than those outgoings which would have been payable if no conversion had occurred.

20. ENVIRONMENTAL PROTECTION

- 20.1 The Lessee agrees to comply with all Environmental Protection Legislation during the term of this lease to the extent that the Lessee causes any requirement of such legislation to be applied to the Land and will not bring onto or allow to remain on the Land any substance or material, the presence of which is, or with the passage of time may, constitute or create an environmental contamination risk or hazard.
- 20.2 The Lessee indemnifies the Lessor from and against all costs, damages, penalties, fines, losses or claims which the Lessor may sustain as a result of any breach of clause 20.1 by the Lessee including the cost incurred by the Lessor in cleaning up and reinstating the Land, disposing of any such materials and complying with all legal requirements in the removal, storage, transportation and disposal of the material.

21. MEASUREMENT OF LETTABLE AREA

- 21.1 If it should become necessary because of changes or alterations to the Premises or the Building or because of the creation of further building on the Land, to recalculate the lettable area of the Premises or the Building, the Lessor shall be entitled to redetermine any such area in accordance with the "Property Council of Australia Method of Measurement 1997 Revision", published or used by the Property Council of Australia (or any subsequent revised method) based on the gross lettable area for industrial premises.
- 21.2 If any such measurement is altered during this Lease, then recalculations of the lettable area shall be undertaken including for rent review and the calculation of the Lessee's percentage of contributions to the Lessor's Outgoings.
- 21.3 A certificate by a surveyor or architect produced by the Lessor indicating that person's or firm's calculations in accordance with clause 21.1 or 21.2 is prima facie evidence of those recalculations.

22. GENERAL

- 22.1 If the Lessee continues to occupy the Premises after the expiry of this lease with the Lessor's approval, it does so under a monthly tenancy:
- (a) which either party may terminate on 1 month's notice ending on any day;
 - (b) at a rent which is one twelfth of the then annual rent; and
 - (c) on the same terms and conditions as this Lease except those changes the Lessor requires as a condition of giving its approval to the holding over.

- 22.2 A Notice or other document given pursuant to this lease must be:
- (a) in writing signed by the party giving it or by its director, manager, secretary or agent; and
 - (b) delivered at or posed by prepaid post to the address of the party as referred to in this Lease (as varied by any notice) or sent by facsimile transmission to that party or served in accordance with Section 170 of the Conveyancing Act.
- 22.3 A notice or other document is taken to be served:
- (a) if hand delivered, on the date of delivery;
 - (b) if posted, on the second day after posting; and
 - (c) if sent by facsimile, on the next business day after it is sent unless the sender is aware that transmission is impaired.
- 22.4 A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.
- 22.5 If the Lessor:
- (a) accepts rent or other money under this lease (before or after termination); or
 - (b) does not exercise or delays exercising any right under this Lease; or
 - (c) gives any concession to the Lessee; or
 - (d) attempts to mitigate its loss,
- it is not a waiver of any breach or of the Lessor's rights under this lease. An attempt by the Lessor to mitigate its loss is not a surrender of this lease.
- 22.6 Expiry or termination of this Lease does not affect any rights in connection with a breach of this Lease before then or affect the Lessee's obligations to make payments under this Lease for periods before then.
- 22.7 The Lessee acknowledges that this Lease contains the whole of the terms and conditions agreed between the parties and the Lessee acknowledges that it has relied only on its own enquiries in connection with this Lease and does not rely on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf except as contained in this Lease.
- 22.8 When an obligation contained in this Lease prohibits the Lessee from doing anything, it also prohibits the Lessee from authorising or allowing it to be done by any other person.

- 22.9 (a) The Lessee may not, subject to subclause (b), lodge a caveat on the title to the land, if the only purpose of the caveat is to ensure that it is enforceable against the Lessor's successors in title.
- (b) The Lessee may lodge a caveat noting the Lessee's interest under this lease if this lease is not registered.
- (c) If the Lessee lodges a caveat permitted by this clause, it must do everything necessary to permit registration of any dealing if its rights under this lease are not diminished.
- (d) The Lessee must withdraw that caveat on the earlier of registration and expiry or termination of this lease.
- 22.10 If the premises are not separately metered for air conditioning services or electricity, then if these services are made available by the Landlord outside normal business hours, the Tenant must pay to the Landlord its reasonable share of the cost of such services (on a pro rata basis where necessary) within 7 days of request accompanied by reasonable details.
- 22.11 In the event of a person other than the Lessor becoming entitled to receive the rent and other moneys payable by the Lessee either by operation of law or otherwise, the Lessee agrees that such person shall have the benefit of all covenants and agreements on the part of the Lessee in this Lease and the Lessee at the cost of the Lessor will enter into such covenant with such other person in that regard as the Lessor may reasonably require.
- 23. LIMITATION OF LIABILITY**
- 23.1 The Lessor (referred to this clause as "the Custodian") enters into this Agreement as custodian and agent of Macquarie Goodman Funds Management Limited A.C.N. 067 796 641, the Responsible Entity of the Trust and in no other capacity.
- 23.2 The parties other than the Custodian acknowledge that the Obligations are incurred by the Custodian solely in its capacity as custodian of the assets of the Trust and as agent of the Responsible Entity and that the Custodian will cease to have any obligation under this Agreement if the Custodian ceases for any reason to be Custodian of the assets of the Trust.
- 23.3 The Custodian will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified by the Responsible Entity or except out of the Assets against which it is entitled to be indemnified in respect of any liability incurred by it. The obligation of the Responsible Entity to indemnify the Custodian and the right of the Custodian to be indemnified out of the Assets are limited.

- 23.4 The parties other than the Custodian may enforce their rights against the Custodian arising from non-performance of the Obligations only to the extent of the Custodian indemnity as provided above in paragraph 23.3.
- 23.5 If any party other than the Custodian does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
- (a) bringing proceedings against the Custodian in its personal capacity ; or
 - (b) applying to have the Custodian wound up or proving in the winding up of the Custodian.
- 23.6 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Custodian under its Custody Agreement with Responsible Entity, the parties other than the Custodian waive their rights and release the Custodian from any personal liability whatsoever, in respect of any loss or damage:
- (a) which they may suffer as a result of any:
 - (i) breach by the Custodian of any of its Obligation; or
 - (ii) non performance by the Custodian of the Obligations; and
 - (b) which cannot be paid or satisfied from the indemnity set out above in paragraph 23.3 in respect of any liability incurred by it.
- 23.7 The parties other than the Custodian acknowledge that the whole of this Agreement is subject to this clause and subject to paragraph 23.6 the Custodian shall in no circumstances be required to satisfy any liability arising under, or for non performance or breach of any Obligations under or in respect of, this Agreement or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this Agreement requires satisfaction out of the assets of the Trust under the Custodian's control and in its possession as and when they are available to the Custodian to be applied in exoneration for such liability.
- 23.8 The parties acknowledge that the Responsible Entity of the Trust is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this Agreement. The parties agree that no act or omission of the Custodian (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Custodian for the purposes of clause 23.6 to the extent to which the act of omission was caused to or contributed to by any failure of the Responsible Entity or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Responsible Entity or any other person.
- 23.9 No attorney, agent or other person appointed in accordance with this Agreement has authority to act on behalf of the Custodian in a way which exposes the Custodian to any

personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Custodian for the purposes of clause 23.6.

23.10 In this clause the “**Obligations**” means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Custodian under or in respect of this Agreement. “**Assets**” includes all assets, property and rights real and personal of any value whatsoever of the Trust, and “**Responsible Entity**” means Macquarie Goodman Funds Management Limited or any replacement responsible entity of the Trust from time to time. “**Trust**” means the Macquarie Goodman Industrial Trust, “**Custody Agreement**” means the agreement made between Macquarie Goodman Funds Management Limited (previously known as Goodman Hardie Management Australia Limited) and Trust Company of Australia Limited dated 17 January 2000. “**Constitution**” means the Trust Deed dated 13 December 1989 as amended by the supplemental deed made between Macquarie Goodman Funds Management Limited and Trust Company of Australia Limited dated 14 January 2000 as amended by the Deed Poll by Macquarie Goodman Funds Management Limited dated 21 April 2000.

24. RESPONSIBLE ENTITY’S LIMITATION OF LIABILITY

24.1 The Responsible Entity incurs Obligations under this agreement as responsible entity of the Trust and in no other capacity. An Obligation can be enforced against the Responsible Entity only to the extent to which it is satisfied out of property of the Trust out of which the Responsible Entity is actually indemnified for the Obligation. This limitation of the Responsible Entity’s liability applies despite any other provision of this agreement and extends to all Obligations.

24.2 The Parties other than the Responsible Entity may not sue the Responsible Entity in any capacity other than as Responsible Entity of the Trust, including seek the appointment of a Receiver (except in relation to property of the Trust), a liquidator, and administrator or any similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity (except in relation to property of the Trust).

24.3 The provisions of this clause do not apply to an Obligation to the extent that it is not satisfied because under the Trust Deed establishing the Trust or by operation of law there is a reduction in the extent of the Responsible Entity’s indemnification out of the assets of the Trust, as a result of the Responsible Entity’s fraud, negligence or breach of trust. The Responsible Entity is not to be regarded as being negligent or in breach of trust to the extent to which any failure by the Responsible Entity to satisfy its obligations under this agreement has been caused or contributed to by a failure by any person to fulfill its obligations in relation to the Trust or any other act or omission of another person.

24.4 No attorney, agent, receiver, or receiver and manager appointed in accordance with this agreement has authority to act on behalf of the Responsible Entity in any way which exposes the Responsible Entity to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Responsible Entity for

the purpose of paragraph 3 of this clause.

24.5 The Responsible Entity is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Responsible Entity's liability is limited in the same manner as set out in paragraphs 1 to 3 of this clause.

24.6 For the purposes of this clause:

"Obligations" means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Responsible Entity under or in respect of this Lease or any deed, agreement or other instrument collateral with this Lease or given or entered into under this Lease and includes, without limitation, all liabilities of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease. "Trust" means the Macquarie Goodman Industrial Trust.

25. DISPUTE RESOLUTION

- (a) A party must not commence legal proceedings (other than for injunctive relief) unless it has complied with this clause.
- (b) If there is a dispute between the parties, either party may give a notice to the other:
 - (i) succinctly setting out the details of the dispute;
 - (ii) stating that it is a dispute notice given under this clause.
- (c) Within 10 business days after the delivery of the dispute notice, the recipient must deliver to the other party a notice in response:
 - (i) stating that it is a notice given under this clause; and
 - (ii) succinctly setting out any information it believes is directly relevant to the dispute.
- (d) The parties must meet within 10 business days after the date of delivery of the dispute notice to attempt to resolve the dispute and must use its best endeavours and act in good faith.
- (e)
 - (i) If the parties cannot solve the dispute within 20 business days of the date on which the dispute notice is delivered, the parties must each escalate the dispute to their respective chief executive officer.
 - (ii) Each party must provide its chief executive officer with a copy of:
 - (A) the dispute notice;

- (B) the notice in response; and
- (C) a succinct account of any subsequent meetings or correspondence between the parties.
- (f) If the chief executive officer cannot solve the dispute within 30 business days of the date on which the dispute notice is delivered, then either party is not restricted in pursuing its rights under this lease.
- (g) The parties must each continue to perform their respective obligations under this lease pending resolution of the dispute.

26. GOODS & SERVICES TAX

- (a) In this clause:

GST Act means the Act entitled A New Tax System (Goods and Services Tax) Act, 1999 as amended from time to time.

GST, and Taxable Supply have the meanings given to those terms in the GST Act.

Lessor's Outgoings, Building Outgoings, Complex Outgoings and Statutory Outgoings (collectively, in this clause **Outgoings**) excludes any GST forming part of the relevant expenses when incurred by the Lessor for which the Lessor can claim an Input Tax Credit because the expense was consideration for a Taxable Supply to the Lessor.

Relevant Agreement means this Lease and any Deed, Agreement or other instrument in any way related to or connected with it or the letting of the Premises by the Lessor to the Lessee under this Lease.

- (b) All payments to be made by the Lessee under any Relevant Agreement (including but not limited to Rent and contributions to Outgoings) are calculated without regard to GST. If any such payment is for a Taxable Supply by the Lessor, the Lessee will pay to the Lessor concurrently with that payment an additional amount equal to the GST imposed on the Taxable Supply in question.
- (c) Where the Lessor has become subject to any penalties or interest as a result of late payment of GST because of the failure of the Lessee to comply with the terms of this clause, then the Lessee shall pay to the Lessor an additional amount on demand equal to the amount of those penalties and interest.
- (d) The Lessor must as soon as practicable give to the Lessee tax invoices which set out the GST payable on any taxable supply

27. ADDITIONAL REINSTATEMENT AND MAKE GOOD OBLIGATIONS

- (a) The parties acknowledge and agree that on or about the time that this Lease was entered into, the Lessee acquired from Dynsol Laboratory Pty Limited ("the previous tenant") the fit out improvements and alterations carried out by the previous tenant to the premises as referred to in the Plan comprising an exhibit to this Lease.
- (b) In addition to the obligations of the Lessee at the expiration or earlier termination of this Lease as to make good and reinstatement of the premises, the Lessee also agrees with the Lessor to remove the previous fit out acquired from the previous tenant to the intent that the Lessee must restore and reinstate the premises to an open plan which will include, but not be limited to, the removal of all laboratory and other plant, equipment, fixtures, fittings, partitioning, panelling, air conditioning plant and equipment and floor coverings.
- (c) In the event that the Lessee fails to comply with this clause, then the provisions of Clause 12.5 (mutatis mutandis) shall apply.

SCHEDULE 1

A. Rent Review - Current Market Rent

- (a) The annual rent payable pursuant to this Lease (and any renewal) may be reviewed by the Lessor on each of the relevant rent review dates referred to in the Reference Schedule and shall be such amount as the Lessor considers is the current market rent of the Premises as at each such review date (having regard to all matters then relevant to the determination of such rent) and notified to the Lessee in writing.
- (b) Within a period of 28 days after receipt of the said notice from the Lessor, the Lessee may by notice in writing to the Lessor dispute that the amount set out in the said notice is the current market rent of the Premises at such review date.
- (c) Unless such notice of dispute is served on the Lessor within 28 days of service of the said notice by the Lessor (in which regard time shall be of the essence), the amount stated in the said notice by the Lessor shall become the rent reserved by this lease as and from the relevant review date.
- (d) In the event of the Lessee serving a notice of dispute in accordance with subclause (b) of this Clause and in the event that the parties cannot agree on the current market rent within a further 21 days after service of the said notice of dispute, then and in such event the current market rent shall be determined by two qualified valuers of the Australian Property Institute (Inc) N.S.W. Division (or its succeeding body) one appointed by the Lessor and one appointed by the Lessee.
- (e) The said appointments shall be made within a further period of 21 days after the parties shall have failed to agree on the current market rent (with one party appointing both valuers if the other fails to appoint a valuer within the said period) and the said valuers shall jointly determine the current market rent.
- (f) The two valuers shall deliver their determination in writing within 35 days of their appointment or such extended time as the parties shall agree upon.
- (g) If the two valuers cannot agree upon a determination within the time prescribed but the difference in their respective determinations is 5% or less of the total valuations, then the current market rent shall be one half of the total of the two determinations.
- (h) If the said difference exceeds 5% of the total valuations or if either or both valuers are unable to make a determination in the time prescribed, they may mutually appoint a third valuer so qualified to determine the current market rent within the range of the disagreement and within 28 days of being so called upon to act and subject as aforesaid such decision shall be final on both the Lessor and Lessee.
- (i) If the valuers do not mutually appoint a third valuer within 14 days of expiry of the period granted to them to deliver their valuation or if a third valuer shall be unwilling or unable to

act, then either party may request the President for the time being the Australian Property Institute (Inc) N.S.W. Division (or its succeeding body) to nominate the third valuer.

- (j) The amount determined pursuant to this clause as being the current market rent of the Premises shall be payable by the Lessee as from the relevant review date until the next review date but if such a determination has not been made before the relevant review date, the Lessee shall pay to the Lessor on account of the rent, amounts equal to the monthly rental payable for the last complete month immediately preceding the relevant review date until such a determination has been made after which the Lessee shall within 14 days of demand pay to the Lessor the difference between the monthly instalments so determined and the amount paid from the relevant review date to the date of actual payment of any such adjustment.
- (k) Despite anything to the contrary, no determination of the annual rent pursuant to this Clause shall operate to reduce the rent payable below the annual rent payable by the Lessee in the 12 months immediately prior to the relevant review date to the intent that the rent from and including the relevant review date will be the higher of:
- (i) the annual rent immediately before the relevant review date; and
 - (ii) the amount determined pursuant to this Schedule 1A.
- (l) The expression "current market rent" means the best annual rent that can be reasonably obtained for the Premises and shall be determined having regard to the following criteria:
- (i) that the Premises are available for leasing by a willing but not anxious Lessor to a willing but not anxious Lessee for a term equal to the term of this lease and any option for renewal;
 - (ii) the terms and conditions contained in this Lease including obligations as to outgoings as well as the period until the next rent review takes place;
 - (iii) that the Lessor's and Lessee's lease covenants and obligations shall have been fully performed at the relevant review date;
 - (iv) having regard to the rental values of comparable Premises;
 - (v) without taking into account the goodwill of the Lease or any improvements or fixtures erected or installed at the Lessee's expense (unless the Lessor has consented to them remaining in the Premises on termination);
 - (vi) without taking into account any reduction in rent on account of any concession otherwise required to secure a Lessee or any period of rent abatement;
 - (vii) any use to which the Premises may lawfully be put; and

- (viii) in the event that the Premises or the Building are destroyed assume that the Premises or the Building have been reinstated in accordance with this Lease.
- (m) all valuers as at the date of nomination must be full members of the said Institute and must have practiced as valuers of comparable premises for not less than the past consecutive 5 years in the metropolitan area of Sydney and who are registered to practice as Valuers of the kind of Premises whose rent review is required under this Lease. All valuers shall act as experts and not as arbitrators and subject to above the determination made pursuant to this Clause shall be final and binding on the parties.
- (n) The fees of the valuers and other costs of their determinations shall be borne:-
 - (i) as to the fees of the valuer appointed by the Lessee, by the Lessee;
 - (ii) as to the fees of the valuer appointed by the Lessor, by the Lessor;
 - (iii) (iii)if both valuers are appointed by one party the fees of one shall be borne by that party and the fees of the other shall be borne by the other party as to which the firstnamed party may choose; and
 - (iv) as to the fees of the third valuer, equally by the Lessor and the Lessee.
- (o) Each party may deliver to the valuers written valuations and submissions prior to their determination but may not make oral submissions. At the time of delivering such valuations or submissions that party shall deliver copies to the other party who may deliver to the valuers and to the other party written comments on the other parties' written valuations and submissions.
- (p) The valuers shall take into consideration any written submissions so made but shall not be fettered by them and shall determine the current market rent in accordance with their own judgment and opinion which they have formed having regard to the criteria specified in this clause and shall provide written reasons for their determinations;
- (q) In the event that the Lessor fails for any reason to exercise its rights in accordance with subparagraph (a) to have the annual rent reviewed, then such right shall be exercised at any time prior to the next review date or the expiration of the term of the lease (whichever first occurs) and the current market rent shall be payable as and from the previous review date and any arrears payable by the Lessee in respect of the period from the review date to the actual reassessment date shall be paid within 21 days after determination of the reviewed annual rent. No succeeding review date or right of reassessment of annual rent shall be postponed by reason of the review of the annual rent pursuant to this subclause.
- (r) The Lessor and the Lessee each agree to act reasonably and to co-operate in implementing and conducting any rent review under this clause.

B. Rent Review - Percentage Increase

The annual rent payable pursuant to this Lease may be reviewed by the Lessor on each of the review dates referred to in the Reference Schedule and shall be the annual rent payable during the year immediately preceding the relevant review date increased by 3%.

SCHEDULE 2

Outgoings

- (a) In addition to the annual rent, the Lessee must in respect of each year or part of a year during the term pay to or reimburse the Lessor as additional rent and without any deduction whatsoever the Lessee's proportion of the Lessor's Outgoings relative to such year or part ("the Lessee's proportion") in accordance with this clause;
- (b) Subject to this subclause, the Lessee's proportion shall be the percentage referred to in the Reference Schedule. Despite the foregoing:
 - (i) if any one or more of the Lessor's Outgoings are now or at any time separately assessed or wholly attributable to the Premises (whether by the Premises becoming a separate allotment or otherwise) then the Lessee's proportion will be increased to 100% of such outgoing(s) in lieu of the percentage referred to in the Reference Schedule but only in respect of the expenses which are separately assessed or payable in respect of the Premises; and
 - (ii) the Lessor may determine (acting reasonably and honestly), that in calculating the Lessee's proportion, some items of the Lessor's outgoings will be shared only between some occupants or groups of occupants, because the other occupants and the premises leased by them derive no benefit from the particular outgoing, in which case the Lessor shall fairly apportion the Lessee's proportion on an area basis; and
 - (iii) the Lessor may at any time from the service of a notice on the Lessee, alter the Lessee's Proportion so that it is the same proportion that the lettable area of the Premises bears to the lettable area of the Building (expressed as a percentage).
- (c) Irrespective of the period for which they are levied, assessed or charged, the Lessor's Outgoings shall be deemed to accrue from day to day and shall be apportioned in respect of time accordingly.
- (d) "Lessor's Outgoings" means all outgoings, costs, expenses and charges (now or during the term) properly assessed or assessable, charged or chargeable, paid or payable (including costs incurred by the Lessor in undertaking activities which the Lessee has failed to do under this lease) or otherwise incurred upon or in respect of owning, managing, supervising, maintaining and keeping secure the Building, the Land, and the Common Area and in particular but without limiting the general nature of these words, includes:
 - (i) all rates, taxes, charges and assessments, duties, impositions at any time or from time to time levied or charged or payable to any government, local government, semi government or other authority and any amount in the nature of an indirect tax including without limitation a goods and services tax or a value added tax imposed on the cost of the goods or services supplied or incurred by the Lessor in the control, management, maintenance and ownership of the Land and/or the Building (but

excluding Capital Gains Tax and Income Tax);

- (ii) all charges for, and costs in relation to, the supply of water, sewerage and removal of all waste and other garbage;
 - (iii) all other rates, taxes and assessments whether statutory or otherwise paid or payable by the Lessor (and in the case of land tax, at the rate assessed against the Lessor);
 - (iv) all premiums and associated and incidental costs payable by the Lessor in respect of insurances which the Lessor reasonably considers is appropriate to insure against in respect of the building and the Lessor's Property (including full replacement and reinstatement, Public Risk, Workers' Compensation, loss of rent and outgoings and removal of debris);
 - (v) the cost of all services provided by the Lessor or by any Authority including electricity, gas, water, oil, telephone, sewerage and garbage services;
 - (vi) management, control caretaking and security costs of the Building whether performed at the land or elsewhere (including, salaries, leave entitlements, superannuation and other employment overheads paid by the Lessor) equitably apportioned where any such person is engaged in respect of the land on less than a full time basis;
 - (vii) all costs for or in connection with cleaning, maintenance and upkeep including painting, repairs maintenance and landscaping;
 - (viii) all costs associated with maintaining and servicing the Lessor's Property including all air conditioning plant, sprinkler and fire protection equipment and other plant and services including the cost of water treatment and legionella tests (except to the extent they are maintained and serviced by the Lessee pursuant to this lease or any other occupant);
 - (ix) landscaping and the cost of items usually supplied in washrooms and toilets;
 - (x) existing or future levies, charges and contributions imposed under strata, community or similar legislation including administrative and sinking funds and special and ordinary levies (except levies for structural repairs of the Building unless caused by the Lessee);
 - (xi) all parking space levies payable to any authority in respect of any car parking spaces; and
 - (xii) any other expenses properly and reasonably incurred in the supervision, maintenance and/or keeping secure the Building and/or the Land.
- (e) The following are excluded from constituting Lessor's Outgoings and the Lessee is not required to contribute to:

- (i) any liability or expenditure paid by the Lessee under some other provision of this Lease;
 - (ii) any liability or expenditure payable by or recoverable from some other lessee or lessees of the Building or from any other person; or
 - (iii) any liability or expenditure recoverable by the Lessor through insurance.
- (f) Before the date set out in the Reference Schedule in each year of the term or such other date selected by the Lessor and notified to the Lessee and from time to time, the Lessor will furnish to the Lessee a statement giving reasonable details of the Lessor's Outgoings and indicating the amount of the Lessee's proportion.
- (g) Except in the case of manifest error notified by either party to the other within twenty-one (21) days of the service of such statement on the Lessee, such statement shall be conclusive evidence of the matters stated.
- (h) Subject to subclause (1), within 14 days after service of such statement on the Lessee, the Lessee must pay to the Lessor the Lessee's proportion.
- (i) The liability of the Lessee shall not be determined or otherwise prejudiced by the prior expiry of the term of or other determination of this Lease.
- (j) Despite the above, where any rate or tax assessment in respect of the Lessor's Outgoings has not issued for any rating or taxing period, the Lessor may notify the Lessee of the reasonable estimate of the Lessee's proportion of such rate or tax for the period from the date of commencement of the rating or taxing period to the said date of expiration or sooner determination of the Lease, and the Lessee will pay such estimated proportion within 14 days of request.
- Upon issue of the relevant assessment any necessary adjustment between the estimated and actual amount of the Lessee's proportion shall be made and any refund to or further payment by the Lessee shall be allowed or made by or to the Lessor accordingly;
- (k) Upon receipt of any assessment(s) in respect of part of the Lessor's Outgoings, the Lessor may calculate the Lessee's Proportion in respect of such Outgoings and forward a request to the Lessee in writing for payment accompanied by a statement as to the amount of the Lessee's proportion together with reasonable details and the Lessee must pay the amount within 14 days of being so requested.
- (l) Despite anything to the contrary, from time to time the Lessor may notify the Lessee of the Lessor's reasonable estimate of the Lessee's proportion for any period not exceeding one (1) year in advance of the estimate and the Lessee must pay to the Lessor during such period such estimated proportion by equal monthly instalments in advance on the days fixed for payment of rent.

- (m) When the Lessor's Outgoings at the end of the then current year have been calculated, any necessary adjustment between the estimated and actual amount of the Lessee's proportion shall be made and any further payment owing by the Lessee shall be made within 14 days of request and any overpayment by the Lessee will be credited towards future outgoings payable by the Lessee or refunded to where the lease has expired;
- (n) In addition to the outgoings payable by the Lessee pursuant to this Schedule, the Lessee will also pay all management fees and commission (based on the rental and outgoings payable) to cover the Lessor's reasonable costs of managing the Premises (including fees paid by the Lessor to any managing agents).
- (o) The Lessor must upon request and upon reasonable notice, permit the Lessee or its authorised representatives to examine all records relating to the Outgoings so as to enable the Lessee to verify any statement of the Outgoings.
- (p)
 - (i) If there is any dispute between the parties relating to the meaning or operation of this Schedule or the inclusion or exclusion of any item in the calculations, or the proportion attributed to the Premises, the dispute shall be determined in accordance with this clause.
 - (ii) The dispute shall be determined by a Chartered Accountant agreed on by the parties or, failing agreement, nominated by the President for the time being of the New South Wales Division of the Institute of Chartered Accountants in Australia (or if it ceases to exist an organisation with similar objects) (called "nominee") at the request of either party.
 - (iii) The nominee shall act as an expert and not as an arbitrator and his decision shall be final and binding on the parties.
 - (iv) Each party may make written submissions to the nominee within 28 days after the nominee has agreed to act.
 - (v) The parties shall equally share the nominee's costs.
 - (vi) The nominee shall provide the parties with written reasons for the determination.

SCHEDULE 3

Rules and Regulations

1. The Lessee must not in any way obstruct or prevent other occupants from using the Common Area.
2. The Lessee must not in any way cover or obstruct any light skylights windows or other means of illumination of the Premises or of the Building generally.
3. The Lessee must not throw any article or substance whatsoever from or out of the Premises or the Common Area.
4. The Lessee must keep clean and free of rubbish such parts of the Common Area or any public footpath as immediately adjoin the Premises.
5. The Lessee must use its best endeavours to protect and keep safe the Premises and its contents from theft or robbery and shall keep all doors windows and other openings closed and securely fastened when the Premises are not in use.
6. The Lessee must not permit the keys for locks on doors and other openings to or in the Premises to come into possession or control of any person other than the Lessee.
7. No rubbish or waste must at any time be burned upon the Premises or the Common Area.
8. All blinds shades awnings windows ventilators and other similar fittings and fixtures installed by the Lessee with the consent of the Lessor in or upon the Premises and visible from outside the Premises must conform to the reasonable requirements and standards of the Lessor as to design quality and appearance.
9. The water closets conveniences and other water apparatus used either exclusively by the Lessee or in common with other Lessees must not be used for any purposes other than those for which they were constructed and no sweepings rubbish rags ashes or other unsuitable substances shall be thrown therein. Any damage resulting to such water closets conveniences and apparatus from misuse by the Lessee shall be made good by the Lessee.
10. Only such parts of the Common Area as are designated for visitor parking or pick up and delivery of goods may be used for such purposes.
11. The Lessee and the Lessee's employees and agents may park any vehicle owned or operated by them in the parking area (if any) allotted or set aside to them during business hours and no such vehicle may be parked in or obstruct any other area of the Common Area.
12. The Lessee and the Lessee's employees and agents must not obstruct grease oil repair clean or wash motor vehicles within the Common Area.

13. The Lessee must make good any damage caused to the car parking area used by the Lessee through its neglect default or misconduct.
14. The Premises must not be or remain open for business at or during any time or times prohibited by law for that class of Premises or for the business carried on by the Lessee.
15. The Lessee and its employees and agents must at all times abide by any speed limit set for the driving of motor vehicles upon the Land.
16. The Lessee must not use the Common Area for any business or commercial purpose or the display or advertisement of any goods or services or generally for any purpose other than for which the Common Area was intended.
17. No part of the Common Area or any car parking area allocated or set aside for the Lessee may be used for storage of pallets, containers or any other goods whatsoever. Any such items must only be stored within the confines of the Premises if so permitted by this lease and by the appropriate authorities.
18. No television or radio mast or antenna shall be affixed to any part of the Premises and no musical instrument, gramophone, radio, amplifier, television, audio visual or other sound or picture producing equipment shall be used or operated in the Premises without the Lessor's consent unless such equipment is not audible or visible from outside the Premises.
19. No animal, fish, reptiles or birds shall be kept in or about the Premises.
20. All rubbish and waste products are to be placed in the proper receptacles and regularly removed by the Lessee.
21. The Lessee must observe the recommended maximum load weights throughout the Premises and the Building.
22. On the date the Lessee must vacate the Premises, the Lessee must give the Lessor all keys, access cards and similar devices for the Premises and the Building.
23. the Lessee shall cause all exterior doors and windows in the premises to be securely locked and fastened at all times when the premises are not occupied and authorises the Lessor or any agent or employee of the Lessor to enter the premises whenever necessary for the purpose of locking any such door or window left unlocked or unfastened.

REFERENCE SCHEDULE

1. Land (Clause 2)

The property known as 8-10 Rodborough Road, Frenchs Forest and being the whole of the land in Folio Identifier 2/737438.

2. Demised Premises (Clause 2)

Unit 2, 10 Rodborough Road, Frenchs Forest having an area of approximately 1,413.60 square meters as identified on the plan exhibited to the parties and signed by them at the time of entering into this Lease.

3. Rental (Clause 3)

\$233,244.00 payable at the rate of \$19,437.00 paid monthly in advance.

- 4A Rent Review Dates (Clause 3 and Schedule 1A) - Current Market Rent

during initial term:
Not applicable

if option to renew is exercised:
At the commencement of the option term and the fifth year of the option term.

- 4B Rent Review Dates (Clause 3 and Schedule 1B) - 3%

during initial term:
On each and every anniversary of the commencement date.

if option to renew is exercised:
On each and every anniversary of the commencement date, except at the commencement of the fifth year.

5. Description of Lessee's Use of Premises (Clause 6.1)

Commercial offices, and/or warehousing and facility for research and development, and/or manufacture and supply of biomedical and medical devices.

6. Redecoration Dates (Clause 7.4)
during initial term:
Within three (3) months prior to the expiration of lease

if option to renew is exercised:
Within three (3) months prior to expiration of option term.
7. Public Liability Insurance (Clause 9.1)

\$20,000,000
8. Car Parking (Clause 17):

30 motor vehicles
9. Bank Guarantee (Clause 18):

6 months
10. Option Term (Clause 19)

1 option term for a period of 5 years.
11. Lessee's Proportion of Lessor's Outgoings (Schedule 2)

16.59 %
12. Date for Calculation of Lessee's Proportion of Lessor's Outgoings (Schedule 2)

30th June in each year of the term.

DATED the 22 day of June 2001

EXECUTED on behalf of **TRUST
COMPANY OF AUSTRALIA LIMITED**
pursuant to Power of Attorney Registered
No. 670 Book 4279 in the presence of:

/s/ Evie Rozali
Witness

EVIE ROZALI
Print name

[ILLEGIBLE]
[ILLEGIBLE]

Executed By AORTECH)
BIOMATERIALS PTY LIMITED)
in the presence of)

/s/ Michael
Signature

MICHAEL
Print name

DIRECTOR
Office held

/s/ Simon Hindson
Attorney

SIMON HINDSON
Print name

/s/ Gai Strouthos
Signature

GAI STROUTHOS
Print name

COMPANY SECRETARY
Office held

Form: 077L
Licence: 01-08-072
Licencee: Midware Systems
Piper Algerman

**TRANSFER OF
LEASE**

Leave this space clear. Affix additional pages
To the left-hand corner.

New South Wales
Real Property Act 1900

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY Office of State Revenue use only

(A) LEASE 8154137

(B) TORRENS TITLE Folio Identifier 2/737438

(C) LODGED BY Delivery Name, Address or DX and Telephone Code
Box

PIPER ALDERIAN, Solicitors
DX 10215 SYDNEY STOCK EXCHANGE TEL: (03) 9253 9999

Reference (optional): PRA548/2 TL

(D) TRANSFEROR AORTECH BIOMATERIALS PTY LIMITED ACN 079 265 286

(E) The transferor acknowledge receipt of the consideration of \$1.00
and transfers to the transferee all the transferor's estate and interest in the lessee
specified above

(F) Encumbrances (if applicable):

(G) TRANSFEREE PHARMAXIS PTY LIMITED ACN 082 811 630

(H) TENANCY:

DATE 15 October 2002

(I) Certificate correct for the purposes of the Real Property
Act 1900 and executed on behalf of the corporation named
below by the authorised person(s) whose signature(s)
appear(s) below pursuant to the authority specified.
Corporation: AORTECH BIOMATERIALS PTY
LIMITED ACN 079 265 286
Authority: Section 127 of the Corporations Act 2001

Signature of authorised person: /s/ Gai Strouthos

Signature of authorised person: /s/ Ian Griffiths

Name of authorised person: GAI STROUTHOS
Office held: COMPANY
SECRETARY

Name of authorised person: IAN GRIFFITHS
Office held: BUSINESS UNIT
MANAGER

Certified correct for the purposes of the Real Property Act
1900 and executed on behalf of the corporation named
below by the authorised person(s) whose signature(s)
appear(s) below pursuant to the authority specified.
Corporation: PHARMAXIS PTY LIMITED ACN 082 811
630
Authority: Section 127 of the Corporations Act 2001

Signature of authorised person: /s/ Alan D. Robertson

Signature of authorised person: /s/ Denis Hanley

Name of authorised person: A. D. ROBERTSON
Office held: DIRECTOR

Name of authorised person: DENIS HANLEY
Office held: DIRECTOR

DEED OF ASSIGNMENT

THIS DEED OF ASSIGNMENT is made the 15th day of October 2002

BETWEEN

AORTECH BIOMATERIALS PTY LIMITED, A.C.N. 079 265 286 of Unit 2, 8–10 Rodborough Road, Frenchs Forest, New South Wales (the “Assignor”)

AND

PHARMAXIS PTY LIMITED, A.C.N. 082 811 630 of 60 Marcus Clarke Street, Canberra, Australian Capital Territory (the “Assignee”)

AND

TRUST COMPANY OF AUSTRALIA LIMITED, A.C.N. 004 027 749 of 80 - 84 New South Head Road, Edgecliff, New South Wales (the “Lessor”)

SINCE:

- A. The Assignor is entitled to a leasehold interest in the Premises subject to the terms and conditions set out in the Lease for a term of five years, which expires on 21 June 2006.
- B. The Assignor has agreed to assign the Lease to the Assignee for whole of the balance of the term of the Lease subject to and upon the terms set out in this deed.
- C. This Deed is entered into to assign the Lease to the Assignee and to record the Lessor’s consent to such assignment.

The Parties Agree:

1. Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

“Effective Date” means 1 November 2002 or such other date as the parties may agree;

“Lease” means the lease entered into between the Assignor as lessee and the Lessor dated 22 June 2001 in respect of the Premises, being registered lease number 8154137;

“Lessee’s Covenants” means all or any of the covenants and agreements contained or implied in the Lease to be observed and performed by the lessee;

“Lessor’s Covenants” means all or any of the covenants and agreements contained or implied in the Lease to be observed and performed by the lessor;

“Premises” means the premises located at Unit 2, 10 Rodborough Road, Frenchs Forest, New South Wales;

“Sublease” means the sublease entered into between the Assignor as the sublessor and the Sublessee in relation to level 3 of the Premises.

“Sublessee” means Sunshine Heart Company Pty Limited ACN 090 552 300 of level 3, Unit 2, 8 - 10 Rodborough Road, Frenchs Forest, NSW.

1.2 Construction

In this Deed, unless the context otherwise requires:

- (a) a reference to a party to this Deed includes a reference to that party’s agents, successors and permitted assigns;
- (b) words in the singular number include the plural number and vice versa;
- (c) words importing a gender include all other genders;
- (d) a reference to currency or the symbol “\$” is a reference to Australian currency or Australian dollars, unless otherwise expressly provided; and
- (e) a reference to a person includes corporations.

2. Assignment

In consideration of the covenants by the Assignee contained in or implied by this Deed, the Assignor, with the consent of the Lessor, as evidenced by Lessor’s execution of this Deed, hereby assigns the rights, interests and obligations of the Assignor in the Lease to the Assignee with effect from and including the Effective Date for the unexpired residue of the term of the Lease with the right to exercise any right of renewal for the further term contained in the Lease upon the terms and conditions hereinafter set out.

3. Assignor’s Covenants and Indemnity

- 3.1. The Assignor hereby represents and warrants to the Assignee as at the Effective Date that, other than as disclosed to the Assignee in writing:-
 - 3.1.1 The Assignor has capacity and is entitled to enter into this Deed and to assign its rights, interests and obligations under the Lease to the Assignee in accordance with this Deed;
 - 3.1.2 The Lease is valid and subsisting and that there has not been any failure to pay rent or to observe and perform the Lessee’s Covenants;

- 3.1.3 There are no actions, claims, proceedings or investigations pending or threatened against the Assignor in relation to the Lease or by, against or before any other person which may have a material effect upon the Lease.
- 3.2 The Assignor shall deliver to the Assignee on or before the Effective Date:
 - 3.2.1 a duly executed Transfer of the Lease in a registrable form; and
 - 3.2.2 a notice addressed to the Sublessee directing the Sublessee to pay any rent and other amounts due under the Sublease to the Assignee in lieu of the Assignor.
- 3.4 The Assignor hereby indemnifies and agrees to keep the Assignee indemnified against all actions, claims, proceedings or investigations resulting from any failure to pay rent or to observe or perform the Lessee's Covenants under the Lease in respect of the period before and excluding the Effective Date.
- 4. Assignee's Covenants and Indemnity**
- 4.1 The Assignee acknowledges that all rights, interests and obligations of the Assignor to the Assignee under the Lease will cease on the Effective Date.
- 4.2 The Assignee hereby represents and warrants to the Assignor and as a separate covenant with the Lessor as from the Effective Date that:-
 - 4.2.1 It has capacity and corporate power to enter into and perform its obligations under this Deed;
 - 4.2.2 It has capacity and all resources necessary to perform the Lessee's Covenants under the Lease including without limitation the obligation to pay rent;
 - 4.2.3 It will observe and perform all Lessee's Covenants diligently and efficiently in all respects as if the Assignee were the lessee named in the Lease with effect from and including the Effective Date;
 - 4.2.4 It will pay all costs and expenses of and incidental to the instructions for the preparation, execution, stamping and approval by the Lessor of this Deed and all duty payable under the Duties Act, 1997 in respect of this Deed.
- 4.3 The Assignee acknowledges that the Lease is subject to the Sublease and that the assignment of the Lease is not conditional upon the Sublease or the continuation thereof.
- 4.4 The Assignee acknowledges that the Assignee has not entered into this Deed as a result of any representation, oral or written by the Assignor or anyone on the Assignor's behalf other than as set forth in this Deed and that the Assignee has made all such investigations and inquiries as the Assignee deems appropriate.
- 4.5 The Assignee hereby indemnifies and agrees to keep the Assignor indemnified

against all actions, claims, proceedings or investigations resulting from any failure to pay rent or to observe or perform the Lessee's Covenants under the Lease in respect of the period after the Effective Date.

5. Lessor's Covenants

5.1 The Lessor hereby acknowledges and consents to the assignment and transfer of the Lease and covenants, terms, conditions and provisions of this Deed.

5.2 To the best of its knowledge, information and belief after making due enquiries, the Lessor represents and agrees that:

5.2.1 the Assignor has complied with all of the Lessee's Covenants under the Lease in respect of the period up to the Effective Date;

5.2.2 there has not been any failure to pay rent or any other monies payable under the Lease to the Lessor in respect of the period up to the Effective Date;

5.2.3 It will observe and perform all Lessor's Covenants in all respects.

6. Bank Guarantee

6.1 Subject to clause 6.2, the Lessor shall return to the Assignor on the Effective Date the Bank guarantee provided by the Assignor to the Lessor in accordance with clause 18 of the Lease.

6.2 The Assignee shall provide to the Lessor on or before the Effective Date a Bank guarantee in accordance with clause 18 of the Lease for the sum of \$169,462.13

7. Release of Assignor

7.1 The Lessor acknowledges and agrees that the Assignor is released from its obligations pursuant to the Lease with effect from and including the Effective Date.

8. Limitation of Liability

8.1 The Parties agree and declare that the provisions of clause 23 (Custodian's Limitation of Liability) and clause 24 (Responsible Entity's Limitation of Liability) apply in respect of this Deed as if fully set forth in this Deed.

9. Licence

9.1 In confirmation of the provisions of clause 17 of the Lease, the Lessor hereby grants to the Assignee and its employees and agents an exclusive license to park the number of motor vehicles referred to in the Reference Schedule of the Lease (currently 30) in the location as directed from time to time by the Lessor and in this respect the terms of clause 17 of the Lease apply to the Assignee mutatis mutandis.

10. General

10.1 Counterparts

This Deed may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one instrument.

10.2 Costs of Preparation of this Deed

The Assignee will pay the Lessor's costs, fees and expenses in relation to this deed.

10.3 Stamp Duty

The Assignee will pay all stamp duty on this Deed, if any.

10.4 Further Assurances and Execution of Further Documents

Each party shall execute such further documents and assurances and take such further action as may be required to effect the intent of this Deed in accordance with any applicable law within the Commonwealth of Australia, its States and Territories. This obligation will survive Completion.

10.5 Waiver

No failure, delay, relaxation or indulgence on the part of any party exercising any power or right conferred upon such party pursuant to the terms of this Deed shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any other future exercise thereof, or the exercise of any other power or right under this Deed.

10.6 Variations

Any modification, alteration, change or variation of any term or condition of this Deed shall only be made in writing executed by all parties.

10.7 Severability

The provisions of this Deed shall be deemed to be severable and any invalidity of any provision of this Deed shall not affect the validity of the remaining provisions of the Deed.

10.8 Assignment

A party shall not assign its rights, powers or remedies under this Deed without the prior written consent of the other parties.

10.9 Notices

10.9.1 A notice is sufficiently given for the purposes of this Deed if:

- (a) the notice is signed by the party giving the notice or on behalf of that party by a properly authorized person;
- (b) it is delivered or posted by registered post to the address of the receiving party shown above or, if the receiving party has given written notice of a change of address, to the new address so notified; or
- (c) It is successfully sent by facsimile transmission to the receiving party's facsimile machine.

10.9.2 A notice that is posted is deemed to be received by the party concerned on the date that notice would in the ordinary course of post have reached the relevant address.

10.9.3 A notice that is sent by facsimile transmission is deemed to have been received at the time it was so transmitted unless that time is outside normal business hours at the receiving place, in which case it is deemed to have been received at the next commencement of business hours.

10.10 Non-Merger

The provisions of this Deed shall not merge on or by virtue of Completion.

10.11 Right to Recover Monies

The right of any party to recover any monies owed to it by any other shall not be extinguished by the completion or termination of this Deed.

10.12 Entire Agreement

This Deed supersedes all prior agreements and understandings between the parties in connection with its subject matter and constitutes the complete understanding of the parties and no waiver or modification of any clauses or subclauses is valid unless in writing and signed on behalf of the parties.

10.13 Governing Law

The law applicable to this Deed is the law in force in New South Wales.

10.14 Time

Unless provided for in any other manner, the time for a party to comply with an obligation is of the essence.

Executed as a Deed

Signed sealed and delivered)
on behalf of AORTECH BIOMATERIALS PTY)
LIMITED ABN 079 265 286)
by:)

/s/ Ian Griffiths
(Signature of Director/Secretary)

/s/ Gai Strouthos
(Signature of Director/Secretary)

IAN GRIFFITHS
(Name of Director/Secretary)

GAI STROUTHOS
(Name of Director/Secretary)

Signed sealed and delivered)
on behalf of PHARMAXIS PTY LIMITED)
ACN 082 811 630)
by:)

/s/ Alan D. Robertson
(Signature of Director/Secretary)

/s/ Denis Hanley
(Signature of Director/Secretary)

A. D. ROBERTSON
(Name of Director/Secretary)

DENIS HANLEY
(Name of Director/Secretary)

EXECUTED on behalf of **TRUST COMPANY**)
OF AUSTRALIA LIMITED pursuant to Power)
of Attorney Registered No. 670 Book 4270 in)
the presence of:)

/s/ Evie Rozali
Signature of Witness

/s/ Simon Hindson
Signature of Attorney

EVIE ROZALI
Print name

SIMON HINDSON
Print name

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Exhibit 4.4

DATE

1999

ANUTECH PTY LTD

and

PRAXIS PHARMACEUTICALS AUSTRALIA PTY LTD

EXCLUSIVE LICENCE AGREEMENT



AMP Tower
1 Hobart Place
CANBERRA CITY ACT 2600
Tel: (02) 6218 6500
Fax: (02) 6218 6525
Ref: G. Marques

BRISBANE • CANBERRA • MELBOURNE • SYDNEY

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-

THIS AGREEMENT is made on the 14 day of October 1999

BETWEEN

ANUTECH PTY LTD A.C.N. 008 548 650 of Anutech Court, Corner Barry Drive and Daley Roads, Australian Capital Territory, Australia 2601

(“Anutech”)

AND

PRAXIS PHARMACEUTICALS AUSTRALIA PTY LTD A.C.N. 082 811 630 having its registered office at Duesbarys, 60 Marcus Clarke Street, Canberra City A.C.T. 2601

(“Praxis”)

WHEREAS

- A. Anutech is the commercial subsidiary of the Australian National University (“ANU”) and regularly provides services to its clients by engaging the services of the ANU and does so within the field of this Agreement.
- B. ANU is the proprietor of certain patents and is the owner of certain other related intellectual property and has agreed to grant to Praxis a licence of such patents and intellectual property on the terms and conditions set out herein.
- C. Praxis wishes to obtain an exclusive licence within the Licensed Field of such patents and intellectual property, and to then undertake the research, development and Exploitation of products based upon such patents.

IT IS AGREED

1. INTERPRETATION

1.1 Definitions

In this agreement, unless the context otherwise requires, the following words shall have the following meanings:-

“ANU Intellectual Property” means the Licensed Patents, any Intellectual Property relating to the Licensed Patents or actual or potential Products or Processes which is owned by ANU and provided by ANU to Praxis during the Term, and includes any Intellectual Property developed under the Research Funding Agreement.

“Business Day” means a day on which the trading banks are open for general banking business in Canberra, Australia.

“Commencement Date” means the date of execution of this Agreement.

“Confidential Information” means any information whether written, oral, electronic or in any other form which is disclosed by a party or its representatives, is claimed as confidential to itself and which relates to the ANU Intellectual Property, Improvements, this agreement and business of the parties. It includes all copies and notes generated from the disclosure

and each party shall keep and maintain confidential any further information which may come to the other parties knowledge as a result of this Agreement.

“Dollars” or **“\$”** means Australian dollars.

“Exploit” means in respect of a:

- a) Product-to make, have made, hire, sell or otherwise dispose of the Product, to offer to make, sell, hire or otherwise dispose of the Product, to use or import it or keep it for the purpose of doing any of those things;
- b) Process-use the method or process or do any act in respect of a product resulting from such use which falls within paragraph(a).

“Final Judgment” means a judgment or decree which becomes not further appealable or reviewable through the exhaustion of all permissible applications for appeal, rehearing or review by any superior court or tribunal or through the expiration of time permitted for such applications.

“GST” means a tax on goods and services as defined by Commonwealth legislation.

“Improvements” means any new Intellectual Property or any improvement, innovation, invention or development relating to the function, design, formulation, features, or process of manufacture of any Product.

“Indemnified Parties” means ANU and Anutech and any of their directors, officers, employees, staff, students and agents.

“Intellectual Property” means any copyright, design (whether registered or unregistered), trademark (whether registered or unregistered), circuit layout, knowhow, confidential information (whether such information is in writing or recorded in any other form) and other proprietary or personal rights arising from intellectual activity in the industrial or scientific fields.

“Licence” means the right and licence granted by Anutech to Praxis pursuant to this agreement.

“Licensed Field” means the use of phosphosugars as ethical therapeutics and expressly excludes:

- a) the use of phosphosugars as nutraceuticals, complementary medicines or cosmetics for the treatment of any applicable condition;
- b) topical application for wound care; and
- c) the use of fructose-1, 6-diphosphate, administered non-topically, for the treatment or prophylaxis of ischaemic disorders in humans, which includes transplantation and immunosuppression.

“Licensed Patents” means the patents and patent applications listed in **Schedule 1** and includes:

- a) any continuations, continuations in part, divisions, registrations, confirmations, reissues, renewals or extensions of term of any of those patents;
- b) any corresponding patent or patent application as defined in the Patents Act 1990 (Cth) or any substantially similar form of protection for inventions granted by any other country, the essence of which is a right in the holder of such form of protection to an exclusive right to work the relevant invention, taken out or applied

for in any country in the Territory which is fairly based upon or derived from any of those patents;

- c) any re-issue, renewal or extension of such a patent or patent application (whether in whole or in part) and any patent of addition thereto.
- d) any patent or patent application which is dominated by or dominates those patents.

“**Marketing**” means the promotion, advertising, distribution and sale of Products and includes a product launch campaign.

“**Net Revenue**” means all amounts received by, at the direction of or on behalf of Praxis or any Sub-Licensee (or any Related Corporation of either of them) in connection with the ANU Intellectual Property or Products or Process less:

- a) transport and insurance related charges actually allowed and taken;
- b) trade, quantity or cash discounts or rebates actually allowed and taken;
- c) credits or allowances given or made on account of price adjustments, recalls or destruction requested or made by an appropriate government agency; and
- d) any Tax, excise or other government charge upon or measured by the sale, transportation, delivery or use of the Product which is actually incurred by the seller;

but does not include any amount in respect of which a royalty has been fully paid by Praxis to Anutech under clause 3 and which shall be calculated without any deduction for amounts referable to any research or development undertaken by Praxis or any Sub-Licensee (or any Related Corporation of either of them) of ANU, including for example pre-clinical research and clinical studies and where applicable in accordance with clause 5 (GST).

“**Party**” means Anutech or Praxis and their respective successors and permitted assigns and “**parties**” means both of them.

“**Products**” means any matter, article or thing which incorporates or arises from the whole or partial use of ANU Intellectual Property.

“**Process**” means any process or method of manufacture in relation to the operation, means or working or manufacture of a Product.

“**Quarter**” means each period of three months commencing on the first of each January, April, July and October during the Term.

“**Registration**” in respect of a country means the gaining of all permissions from all Regulatory Authorities in that country necessary to permit the commencement of Marketing in that country and includes any approval in respect of packaging or labelling.

“**Regulatory Authority**” in respect of a country means any and all bodies and organisations regulating the importation, distribution, marketing or sale of the Product in any part of that country.

“**Related Corporation**” has the same meaning as is given to the expression “related body corporate” in the Corporations Act 1989 of the Commonwealth of Australia.

“**Research Funding Agreement**” means the agreement between Anutech and Praxis, dated on or about the date of this Agreement which provides for the Funding by Praxis of certain research to be undertaken by Anutech.

“**Royalty Period**” means each Quarter Year during the Term provided that where the Term commences or ends on a day other than first day of a Quarter Year the first and Last reports will be for only so much of the Royalty Period as occurs during the Term.

“**Sub-Licensee**” means any person who:

- a) becomes entitled to exercise any of the rights granted to Praxis under this agreement, whether directly or indirectly or;
- b) receives Product from Praxis or any Sub-Licensee for a purpose which includes or could reasonably be regarded as including or with the intention of re-sale.

“**Tax**” means any Tax withholding tax, charge, rate, duty or impost imposed by any authority, but does not include any income or capital gains tax or GST.

“**Term**” means the period during which this agreement is in force pursuant to clause 14.

“**Territory**” means the whole of the world.

“**Year**” means each period of twelve months commencing on the first day of each January during the Term.

1.2 Construction

In this agreement unless the context otherwise requires:

- a) words importing the singular include the plural and vice versa and words importing any gender include the other genders;
- b) references to persons include corporations and bodies politic;
- c) references to a person include the successors and permitted assigns of that person;
- d) a reference to a statute, ordinance, code or other law include regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- e) references to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include telex and facsimile transmissions;
- g) an obligation of two or more parties shall bind them jointly and severally and an obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally;
- h) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- i) references to a body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or the person or body by which its functions have become exercisable;

- j) reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and reference to a group of things or persons is a reference to any one or more of them;
- k) references to this agreement include its schedules;
- l) headings shall be ignored in construing this agreement; and
- m) if any day appointed or specified by this agreement for the payment of any money or the doing of any act or thing falls on a day that is not a Business day, the day so appointed or specified shall be deemed to be the next day which is a Business Day;
- n) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision; and
- o) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government, governmental, administrative, judicial or semi-governmental agency or body.

1.3 Precedence

The documents comprising this agreement shall be read in the following order of precedence:

- a) the clauses in the body of this agreement; then
- b) the paragraphs in the body of the schedules.

Where any conflict occurs between the provisions contained in two or more of the documents forming this agreement, the documents lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without (to the extent possible) otherwise diminishing the enforceability of the remaining provisions of that document.

2. GRANT OF LICENCE

2.1 Grant of licence

Anutech hereby grants to Praxis with effect on and from the Commencement Date an exclusive license, to:-

- a) Explain (within the Licensed Field) the Products and Processes in the Territory utilising the ANU Intellectual Property; and
- b) use the ANU Intellectual Property within the Licensed Field for the purposes of further research and development and to Exploit the results of such further research and development.

2.2 Anutech's Rights

Anutech and Praxis agree and acknowledge that during the Term, except as set out in or permitted by this agreement Anutech shall not:-

- a) Exploit the Products within the Licensed Field in the Territory utilising the ANU Intellectual Property;

- b) use the ANU Intellectual Property except for the purpose of its own internal research.

3. ROYALTIES

- a) In consideration for the grant of the License Praxis will pay to Anutech a royalty of 2% of Net Revenue.
- b) The obligation in clause 3(a) survives the termination of the License and this Agreement.

4. REPORTS

4.1 Reporting requirements

Praxis shall within 30 days of the end of each Royalty Period provide to Anutech a written report setting out:

- a) the total quantity of Products sold or provided by it and by its Sub-Licensees;
- b) the Net Revenue;
- c) the calculation of the royalty payable, including details of the currency conversion rates used, any taxes or other amounts withheld and any adjustments on account of returns.

4.2 Interest

Praxis must pay Anutech interest on all amounts due under this Agreement but unpaid, calculated at the rate applicable to overdrafts charged by the Commonwealth Bank of Australia at the date of payment from the due date until the date of payment, calculated daily from the due date. The payment of such interest shall not preclude Anutech from exercising any other rights it may have because any payment is overdue.

4.3 Foreign Currencies

Praxis shall calculate royalties in local currencies and convert the same to dollars at the ruling rate of exchange as on the last day of the Royalty Period.

4.4 Payment Mechanics

The royalty payable to Anutech shall be paid to a bank account nominated by Anutech in Canberra, Australia (or at such other location in Australia as Anutech may stipulate from time to time) within sixty days of the end of each Royalty Period.

4.5 Praxis to keep accounts and records

Praxis shall keep for a period of 7 (seven) years after the end of the Royalty Period to which they relate, true and particular accounts and records of all sales of Products sufficient to verify Praxis calculation of Net Revenue and Products sold, the calculation of royalty based thereon and conversion of such amounts into the relevant currency.

4.6 Inspection of accounts

Anutech and its duly authorised representatives shall have the right to inspect and audit from time to time the accounts and records referred to in clause 4.5 and such other matters as are directly relevant to the calculation of the amount of any payment due by Praxis to Anutech

under this agreement and shall be entitled to take copies of such records, on the following conditions:-

- a) inspection shall be limited to 2 times in any one Year;
- b) inspections shall take place during normal business hours and upon reasonable prior notice to Praxis;
- c) employees of Anutech or its duly authorised representatives who inspect such accounts and records must be suitably qualified personnel reasonably acceptable to Praxis and shall:
 - i) whilst inspecting such records and accounts, abide by all of Praxis' standard rules and regulations;
 - ii) Anutech shall indemnify and hold Praxis harmless from all liability resulting from any negligence or any other activities on the part of Anutech's employees or duly authorised representatives inspecting such records and accounts.

4.7 Settlement of Discrepancies

Anutech shall advise Praxis of the result of any audit conducted by it pursuant to clause 4.6. If any discrepancy is found by Anutech then the amount thereof shall be paid by the party that owes such amount within 7 days of demand therefor by the party due such amount.

4.8 Cost of Audit

Anutech shall bear the cost of any such examination unless an underpayment of 5% or more in the amount of any royalty payment is detected in which event Praxis will bear the expense of the examination.

5. GST

The royalty does not include any amount on account of Tax. If any Tax is payable by Anutech in relation to this Contract, Anutech will increase the royalty on account of the Tax. Anutech will adjust the royalty having regard to Part VB of the Trade Practices Act: 1974(Cth).

6. EXPLOITATION OF LICENSED PATENTS

6.1 Praxis' objectives

Praxis shall use reasonable endeavours at the expense of Praxis to

- a) Exploit Product, Process, and ANU Intellectual Property;
- b) undertake either itself or through third parties further research and development based on the ANU Intellectual Property; and
- c) as and when required, undertake itself or through Related Corporations, or enter into appropriate third party licensing or marketing arrangements, to optimize the returns from sales of Products, and to achieve Marketing of Products at the earliest practicable and economically prudent date

and Praxis must:

- d) at its cost obtain and maintain all Registrations necessary to allow it to Exploit the ANU Intellectual Property and to manufacture and sell Products;

- e) ensure that each Product sold:
 - i) is of merchantable quality;
 - ii) is fit for the purpose for which it is acquired;
 - iii) satisfies any conditions and warranties implied by the law of that country in which it is sold; and
 - iv) complies with all laws and standards regulating manufacture, assembly, labelling, packaging, storage and sale in the country in which it is sold.

6.2 Praxis' specific obligations

Further to its general obligations in clause 6.1 Praxis agrees to:-

- a) on a 6 monthly basis provide to Anutech a written plan detailing the steps proposed to be taken by Praxis in at least the next 12 months to achieve the objectives set out in clause 6.1, such plan to include the budgeted expenditure for the next 12 months on such activities in reasonable detail;
- b) within 5 years of the Commencement Date, commence the sale of Products either directly or through one or more Sub-Licensees; and
- c) provide to Anutech a quarterly report as against prior plans and budgets detailing all activities carried out by or on behalf of Praxis pursuant to clause 6.1.

7. SUB-LICENSING

7.1 Right to Sub-License

Anutech grants to Praxis the right to sublicense ANU Intellectual Property within the Licensed Field, subject to the prior written approval of Anutech which shall not be unreasonably withheld.

7.2 Sub-Licence terms

Subject to clause 7.1, Praxis shall have the right to grant sub-licences of the rights granted to it to third parties provided that Praxis ensures that the Sub-Licensee complies with the following:-

- a) the third party being granted the sub-licence has the commercial capacity to promote and Exploit the relevant product with due obligence and probity and has at least sufficient skills and resources to comply with the obligations placed upon Praxis in relation to that Product in the relevant country or countries;
- b) the sub-licence is wholly consistent with the terms of this Licence and in particular:
 - i) such sub-licence does not purport to extend or continue in any circumstances where this Licence may be terminated; and
 - ii) the Sub-Licensee acknowledges that ANU owns the ANU Intellectual Property;
- c) the sub-licence prohibits the Sub-Licensee from taking any action or allowing any action to be taken which detracts from the ownership of the ANU Intellectual Property by ANU or conflicts with the provisions contained in this Licence in relation to prosecuting or defending the Licensed Patents or defending any allegation of infringement of the ANU Intellectual Property other than the Licensed Patents;

- d) the sub-licence is in the English language, executed by the sub- licensee and giving its place of business;
- e) the sub-licence requires the sub- licensee to maintain all books, records and accounts necessary to enable verification of Net Revenue and royalties and other amounts required to be paid by Praxis to Anutech and to allow Anutech to inspect those books, records and accounts on terms similar to those contained in clause 4.6; and
- f) the sub-licence limits the duration of the sub- licence in respect of the ANU Intellectual Property for the term of this Agreement and further provides for the sub- licence to terminate automatically upon the termination of this Agreement.

7.3 Research Licences

Praxis shall be entitled to grant licences to third parties to the ANU Intellectual Property for research purposes only on such terms and conditions as it sees fit provided that Praxis protects its rights to any commercially viable technology which may arise from such research.

8. CONFIDENTIAL INFORMATION

8.1 Obligation of the parties

Subject to **clauses 8.2(b)** and **8.5**, each party covenants with the other as follows:

- a) to keep all Confidential Information strictly secret and confidential (including from all its employees, servants and agents), exercising at least the same degree of care as it uses to maintain its own confidential information;
- b) to provide proper and secure storage for Confidential Information within its possession or control;
- c) to us Confidential Information only for the purposes of this agreement and not for any other activity or purpose whatsoever without the prior written approval of the other party; and
- d) to not copy or reduce to writing or any other medium any part of Confidential Information except as may be reasonably necessary for the purposes of this agreement.

8.2 Exceptions to obligations

- a) The obligations of confidence set out in clause 8.1 shall not extend to Confidential Information which:-
 - i) at the time of disclosure to a party is in the public domain;
 - ii) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party or one of that party's disclosees;
 - iii) a party can show was in its possession at the time of disclosure and was not acquired directly or indirectly from the other party; or
 - iv) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this agreement or under an obligation of confidence; or
 - v) is required by compulsion of law to be disclosed,

provided that:

- vi) the onus shall be on the party alleging the same to prove that one of the above exceptions has application; and
 - vii) in any case of uncertainty as to whether the obligations in clause 8.1 have application to any information, such information shall be treated as subject to the obligations until advised otherwise by the party to whom the obligations are owed.
- b) Prior to either party making any disclosure of information which is prima facie Confidential Information in circumstances where the party that intends to disclose the information is of the view that one of the exceptions in clause 8.2(a) has application it shall notify the other party of the facts and circumstances by virtue of which it believes that it is entitled to disclose the information, and shall not disclose such information until either 14 days has elapsed or the other party has indicated its consent to the disclosure of such information.

8.3 Rights in Confidential Information

Each party acknowledges and agrees that each other party has made a substantial investment in that party's Confidential Information and has a legitimate right to protect itself against wrongful disclosure or use of such Confidential Information.

8.4 Term of obligation

The obligations in this **clause 8** shall survive the expiry or termination of this agreement for whatever reason and continue indefinitely, subject always to the exceptions included in **clause 8.2**.

8.5 Permitted disclosures

Each party ("**the first party**") shall be permitted to disclose Confidential Information belonging to another party or supplied to it by another party ("**the other party**") to such of the first party's employees as require access to such information for the purposes of this agreement, provided that:

- a) only such Confidential Information as needs to be disclosed to a person for the purposes of this agreement will be disclosed to that person; and
- b) the first party shall:
 - i) have obtained from each such person undertakings in favour of the other party substantially in the form of the relevant obligations and undertakings in this **clause 8** (but not this **clause 8.5**);
 - ii) be responsible for the performance of its employees' undertakings referred to in **clause 8.5(b)(i)**; and
 - iii) take whatever steps are reasonably necessary, including the institution of legal proceedings, to ensure that each of its employees is bound by and observes the terms of the undertakings referred to in **clause 8.5(b)(i)**.

8.6 Further Disclosure

Praxis shall be permitted to disclose Confidential Information to actual and prospective Sub-Licensees to the extent that it deems reasonably necessary for the purpose of carrying out of obligations under this agreement, in particular the research, development, Exploitation of Marketing or Products, processes or the ANU Intellectual Property, provided that:-

- a) only such information as Praxis reasonably considers is necessary for the relevant activity is disclosed; and
- b) the recipient of such information agrees to treat such information as confidential and an appropriate agreement to protect the Confidential Information is executed.

9. USE OF NAME

Any proposed use of a party's name by the other in any published material (including prospectus information) must be approved by the other party in writing prior to release of that published material.

10. IMPROVEMENTS BY PRAXIS

Any Improvement invented, discovered or acquired by Praxis during the Term shall be the property of Praxis and Praxis grants to ANU a royalty free non-exclusive licence to use any such Improvement for the duration of the Intellectual Property protection relating to such Improvement but solely for the purpose of further on going internal research and not for any commercial purpose.

11. ADDITIONS TO LICENSED PATENTS

Anutech agrees to advise Praxis promptly of the filing of any patent application or of the issue of any patent which are legally or beneficially owned by Anutech or ANU and which:-

- a) are dominated by or dominate any patent or patent applications otherwise included in Licensed Patents; or
- b) relate to any Product or describe and claim any improvements in or to any Product or methods or processes of making or using the same.

whereupon, Praxis shall have an option to have such patent included within Licensed Patents, such option to be exercised by notice in writing to Anutech within 3 months of notification to Praxis. If Praxis does exercise its option then such patents or patent applications will be included in Licensed Patents without increase in the earned royalty rate specified in clause 3. If Praxis does not notify Anutech that it wishes to exercise the option within the period of 3 months then Praxis shall be deemed to have waived all rights and future rights to such patents or patent applications. Anutech will then have a perpetual unencumbered right to negotiate agreements relating to such patents or patent applications with third parties.

12. LIABILITY

12.1 Responsibility for Products

Praxis shall ensure at all times during the Term that the Products are manufactured, used and sold strictly in accordance with all relevant applicable requirements and standards of relevant jurisdictions and Praxis will be responsible for conducting its own independent examination and verification of the accuracy and suitability of the ANU Intellectual Property and for ensuring the Products are suitable for the purposes for which they are provided.

12.2 Anutech and ANU not Liable

Except as otherwise specifically provided in this agreement, the Indemnified Parties shall not be liable (in contract or tort or otherwise) to compensate Praxis for any loss howsoever arising

suffered by Praxis arising directly or indirectly from the use of the ANU Intellectual Property or from the sale of Products.

13. INDEMNITIES AND INSURANCE

13.1 Indemnity by Praxis

- a) Praxis agrees to indemnify the Indemnified Parties against and hold the Indemnified Parties harmless from any and all loss, liability, damage, claim, cost and expense (including without limitation, reasonable attorney's fees) arising from or in connection with:
 - i) a breach by Praxis of any of its warranties or obligations under this agreement;
 - ii) the Exploitation of the Products by Praxis;
 - iii) the storage, use, sale, shipping and Marketing of the Products by Praxis;
 - iv) any representations, express, implied or statutory made by Praxis as to the efficacy or safety or use to be made by any purchaser of the Products including, without limitation, representations made by reference to the labelling of packaging or the Products;

provided that Praxis shall not be required to indemnify the Indemnified Parties with respect to any loss, liability, damage, claim, cost or expense to the extent it results from the Indemnified Parties' negligence or breach of any of its warranties or obligations under this agreement.

- b) it shall be a term of any sub-licence granted by Praxis to any Sub-Licensee that the Sub-Licensee agrees to the same extent and in the same terms as the indemnities contained in **clause 13.1** to indemnify the Indemnified Parties and that the Sub-Licensee specifically agrees that it will not challenge the standing of the Indemnified Parties in the event of the Indemnified Parties seeking to rely upon such indemnification.

13.2 Indemnity by Anutech

Anutech agrees to indemnify Praxis against and hold Praxis harmless from any and all loss, liability, damage, claim, cost and expense (including without limitation, reasonable attorney's fees) arising from or in connection with a breach by the Indemnified parties of any of its warranties or obligations under this agreement provided that Anutech shall not be required to indemnify Praxis with respect to any loss, liability, damage, claim, cost or expense to the extent it results from Praxis negligence or breach of any of Praxis' warranties or obligations under this agreement.

13.3 Notification regarding indemnity

Any person seeking indemnity pursuant to **clause 13.1 or 13.2** shall promptly notify the relevant party of any claims or suits for which the first person may assert indemnification from that party and shall permit that party and its insurer at the person's expense to assume or participate in the defence of any such claims or suits and the person shall co-operate with the relevant party or its insurers in such defence when reasonably requested to do so.

13.4 Insurance

- a) Not less than 3 months prior to the commencement of Marketing of any Product, Praxis shall at its own cost forthwith take out and maintain during the balance of the Term one or more adequate policies of insurance for the purposes of product liability

protection in respect of activities in respect of the Products in the Territory for an amount not less \$10,000,000.

- b) Praxis shall provide Anutech with at least 30 days written notice prior to any cancellation of a policy referred to clause 13.4(a) and upon request shall furnish Anutech with a certificate of its insurer confirming the status of a policy taken out by Praxis.
- c) Praxis shall procure that all of its Sub-Licenses shall maintain adequate product liability and third party liability insurance in respect of their activities pursuant to their respective sub-licences.

14. TERM

Subject to **clause 15**, the term of this agreement the rights granted hereunder shall continue for the life of the Licensed Patents, unless otherwise earlier terminated clause 15 (Termination) or extended by the written agreement of the parties.

15. TERMINATION

15.1 Termination for breach

Subject to **clause 15.5**, if one party breaches any term, provision or obligation of this agreement or the Research Funding Agreement (the "**Defaulting Party**") and the Defaulting Party fails to:

- a) remedy such breach within 90 days after receipt of notice from the other party requiring remedy of the breach;
- b) if the breach cannot be remedied within the said 90 day period, commence action within the said 90 day period to remedy the breach and undertake in writing to the other party to complete remedy of the breach as soon as practicable thereafter; or
- c) if the breach is incapable of remedy, offer to pay to the other party reasonable pecuniary compensation to the other party in respect of the loss suffered by it as a result of the breach.

the other party shall have the right to terminate this agreement immediately upon the expiration of the said period of 90 days by written notice to the Defaulting Party.

15.2 Termination in default of payment

Subject to **clause 15.5** and notwithstanding anything contained in **clause 20**, this agreement may be forthwith terminated by a party by giving notice to the other party if that other party defaults in the payment of any money due by that other party to the first party under this agreement and such default continues for a period of 30 days after notice has been given to the other party demanding the payment of such money.

15.3 Termination for insolvency

Subject to **clause 15.5** and notwithstanding anything contained in **clause 15.1**, this agreement may be terminated by a party giving notice to the other party upon the happening of any of the following events in respect of that other party:

- a) the expiration of four weeks from the other party having a receiver, manager, receiver and manager or agent in possession validly appointed for the whole or any

substantial part of its assets or from a court order being validly made for the winding up of the other party other than for the purpose of reorganisation or reconstruction;

- b) immediately a resolution of the other party's shareholders is passed for the winding up of that party other than for the purpose of reorganisation or reconstruction;
- c) in the event that the other party files a petition in bankruptcy or similar proceedings or is adjudicated bankrupt or if a petition for bankruptcy or similar proceedings is filed against the other party and is not stayed or discharged within 45 days of such filing or if the party becomes insolvent or makes an assignment for the benefit of creditors or enters into any agreement, arrangement or composition pursuant to bankruptcy law or otherwise acknowledges insolvency or is adjudged bankrupt or if the other party discontinues business;
- d) any distress, execution, attachment or other process is made or levied against any asset of the other party for an amount in excess of \$100,000.00 and remains outstanding or unsatisfied for a period of 60 days; and
- e) the other party is in breach of an undertaking given pursuant to clause 15.1(b).

15.4 Reconstruction Exception

A winding up or liquidation for the purposes of reconstruction or amalgamation by the other party shall not be an event permitting or giving rise to termination if after that reconstruction or amalgamation the resulting corporation becomes bound by the terms of this Agreement by way of assignment or novation.

15.5 Termination to be without prejudice

Any termination of this agreement shall be without prejudice to the rights which a party has against the other in respect of anything done or omitted to be done hereunder prior to such termination or in respect of any sums or other claims outstanding at the time of termination.

15.6 Praxis chooses not to Exploit the ANU Intellectual Property

The parties agree to the following:

- a) if Praxis reports to Anutech, or Anutech reasonably considers, that Praxis has not Exploited the ANU Intellectual Property in accordance with this Agreement, either generally or in some particular respect, Praxis and Anutech will meet and conduct discussions in good faith with a view to agreeing a mechanism for making the ANU Intellectual Property available to Anutech for further development and Exploitation, either by Anutech on its own or with or through other parties;
- b) without limiting the ways that Praxis and Anutech might agree that the ANU Intellectual Property are to be made available to Anutech, examples include an assignment and a licence (whether exclusive or non-exclusive);
- c) where it is agreed between Praxis and Anutech that the ANU Intellectual Property are to be made available to Anutech under this arrangement, Praxis and Anutech will seek to agree a method for compensating Praxis to the extent that Praxis activities pursuant in this agreement produced or funded the production of the ANU Intellectual Property and are likely to contribute to any anticipated Exploration;
- d) without limiting the ways that Praxis and Anutech might agree that Praxis is to be compensated, the compensation ought to take account of the parties' respective contributions, receipts and risks which have been or are to be made or taken before, during and after the date of proposed transition; and

- e) non agreement in relation to the Exploitation of the ANU Intellectual Property or the method of compensating the Licensee shall not in any way affect the Licensee's right to the improvements.

16. OBLIGATIONS AND RIGHTS ON TERMINATION

16.1 Obligations of Praxis

Immediately upon termination or expiration of this agreement, Praxis shall:

- a) pay all outstanding balances due under this agreement up to the date of termination;
- b) remove all signs, advertising displays, labels and the like identifying Praxis as a licensee of the ANU Intellectual Property; and
- c) at Anutech's option and request to terminate or assign to Anutech any sub-licence granted by Praxis hereunder.

16.2 Obligations of Anutech

Immediately upon termination or expiration of this agreement, Anutech shall:

- a) as soon as conveniently possible reconcile all accounts relating to Praxis; and
- b) accept all outstanding balances within existing terms of settlement.

17. WARRANTIES

17.1 General Warranties

Each party represents and warrants to the other that:

- a) it has all necessary powers and authorisations necessary to enter into this agreement and observe its obligations hereunder and allow this agreement to be enforced against it;
- b) this agreement does not contravene any law, regulation or official directive or any obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers to be exceeded;
- c) there does not presently exist any event which would either now or with the effluxion of time entitle the other party to terminate this agreement pursuant to **clause 15.3**;
- d) it is not a party to any pending or threatened action or proceeding affecting it or any of its assets before a court, governmental agency, commission or arbitrator where an adverse outcome could reasonably be expected to adversely impact upon the performance of its obligations under this agreement; and
- e) it has no immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

17.2 Specific warranties in respect of ANU Intellectual Property

Anutech warrants and covenants that in respect of ANU Intellectual Property either:

- a) ANU is the sole legal and beneficial owner; or

- b) ANU has such rights to the ANU Intellectual Property, as will enable ANUTECH to perform its obligations under this Agreement.

Anutech makes no warranty as to whether the US Patent 5520936 (and corresponding international patents or applications) in the name of British Technology Group Limited infringes the ANU Intellectual Property. Anutech makes no representations or warranties as to the accuracy or completeness of ANU Intellectual Property.

17.3 Due diligence

Praxis warrants that it has undertaken a due diligence examination of the ANU Intellectual Property and warrants that it satisfied itself as to ANU's rights to and the validity of the ANU Intellectual Property, in particular the patents and patent applications set out in Schedule 1.

18. PROTECTION OF LICENSED PATENTS

18.1 Maintenance of the Licensed Patents

With respect to the existing Licensed Patents and patent applications:

- a) Anutech will prosecute and maintain the patents and patent applications with the relevant patent offices and Praxis will provide all reasonable assistance requested by Anutech at Praxis expense;
- b) Praxis shall reimburse Anutech for one third of any costs incurred in filing, maintaining and renewing the Licensed Patents and patent applications whether incurred before and after the date of this Agreement; and
- c) Praxis may recommend the countries in which patent applications are to be filed in the name of the ANU.

18.2 Infringements

- a) A party shall promptly report to the other in writing particulars of any action or activity of which the first party becomes aware which might reasonably amount to infringement of or challenge to any of the ANU Intellectual Property.
- b) In the event of any patent, the subject of this Agreement, being infringed Praxis may at its own cost and in its own name litigate such infringement and may settle or compromise such litigation in such a manner as Praxis shall determine provided that Praxis shall consult with Anutech in good faith in relation to those proceedings.

18.3 Enforcement

- a) In the event that litigation is taken or threatened by a third party against any rights associated with any patents the subject of this Agreement, the parties shall consult in good faith and use their best endeavours mutually to determine the manner in which these proceedings are to be defended or resisted and to act accordingly provided always that the parties shall first seek the opinion of counsel experienced in such matters.
- b) In any litigation, Anutech shall cooperate with Praxis in making available all relevant records, papers, information and the like which may be relevant and in its possession.

18.4 Licensee's Proceedings

Upon the commencement of proceedings by Praxis and during the pendency thereof:

- a) Praxis shall continue to make royalty reports to Anutech pursuant to clause 4.1 but shall accrue and shall not be obliged to pay royalties on sale of Products in any and all countries in which the infringement or challenge is occurring (other than in respect to sales made prior to the date of first infringement which otherwise attracted a royalty obligation which has not previously been satisfied) until the successful termination of such proceedings or cessation of the infringement or challenge occurs Praxis must pay any royalties retained under this clause into a separate bank account on trust for Praxis and Anutech;
- b) Anutech shall furnish to Praxis, upon the request of Praxis, all evidence and information in its possession and control pertaining to any such proceedings and Anutech shall join therein on a non-controlling basis to the extent requested by Praxis. If the furnishing of evidence and information as aforesaid is likely to involve Anutech in any material expense Praxis will enter into negotiations in good faith with a view to reaching a reasonable agreement as to the extent to which Anutech should be reimbursed therefor;
- c) if Praxis receives a Final Judgment holding all applicable claims of Licensed Patents being infringed invalid, or holding adversely as to inventorship of such Licensed Patents or construing all applicable claims of such Licensed Patents so as not to apply to Products for which royalties have been accrued by Praxis, then all moneys withheld under clause 18.5(a) may be paid to Praxis for its own benefit absolutely otherwise Praxis shall pay the same to Anutech forthwith upon receipt of Final Judgment [ILLEGIBLE] any amounts Praxis is entitled to deduct under clause 18.5(e);
- d) upon any successful completion such proceedings or upon cessation of such infringement; or challenge, the amounts of any judgment or settlement of past infringement or challenge actually paid to Praxis shall be firstly applied to reimburse Praxis for its costs and expenses in prosecuting such proceedings and the balance, if any, shall subject to amount which may be due to Anutech be retained by Praxis; and
- e) if the amount of any such judgment or settlement is insufficient to cover Praxis' costs and expenses in prosecuting such proceedings, then the costs and expenses of Praxis, or the remainder thereof (as the case may be) will be reimbursed to Praxis out of payments withheld pursuant to clause 18.5(a) and, if necessary, out of any and all future royalty payments which would otherwise become payable by Praxis to Anutech in respect to sales of Products in any country referred to in clause 18.5(a).

19. INFRINGEMENT OF OTHERS RIGHTS

If a legal action is commenced against Praxis alleging that any Product manufactured sold exercised or used by Praxis or any of its Sub-Licensees or any method of manufacture of same or use thereof infringes claims of an unexpired patent, patent application or other intellectual property right owned by a third party, Praxis shall promptly notify Anutech of the commencement of legal action. Anutech, in its sole discretion, may choose to defend and/or assist in the defence of such litigation but shall not be obligated to do so. However, Anutech shall (at the expense of Praxis) assist Praxis' efforts to settle and/or defend such claims. If Anutech does not choose to defend such an action, Praxis shall bear all its own costs and expenses and shall be responsible for awards against it only to the extent that indemnification, warranties and other claims may not be available against Anutech. If any amounts are recovered by or awarded or paid to Praxis from or by a third party as a result of any such action or litigation, Praxis shall from such amounts reimburse Anutech for all costs and amounts paid by Anutech in connection with such action or litigation and shall after deducting the legal costs incurred by it in taking such legal or other action, pay to Anutech from any compensation recovered thereby, Anutech's part thereof determined in accordance with the respective interests of the parties in such compensation.

20. CONSTRUCTION OF PATENTS

If, in any proceedings in which the validity, infringement or priority of any claim of any patent or patent application included in Licensed Patents is in issue, a Final Judgment is obtained, the construction placed upon any such claim by such a final judgment shall be thereafter followed not only as to such claim but as to all claims to which such construction applies with respect to acts occurring thereafter.

21. WITHHOLDING TAXES

If Praxis is legally obliged to deduct or withhold any tax from any payment, in particular any royalty payment, to be made to Anutech hereunder, Praxis shall on request provide Anutech with receipts and any other evidence from relevant revenue authorities which may be required by Anutech for its own tax affairs and Praxis shall not be required to gross up any such amount.

22. ASSIGNMENT

A party shall not assign any rights hereunder to third parties, provided that Anutech shall not withhold its consent to an assignment by Praxis if:

- a) the assignment is to:
 - i) a Related Corporation of Praxis; or
 - ii) a person who is reasonably acceptable to Anutech having regard to the government policy to which it or ANU is subject; and
- b) the assignment binds assignee to perform, in favour of Anutech, each and everyone of the obligations of Praxis.

23. NOTICES

23.1 Form of Notice

Any notice, approval, consent or other communication (“**notice**”) from one party to another (“**Recipient**”) must be in writing and be signed by a person duly authorised by the person giving the notice.

23.2 Manner of Service

A notice must be served by:-

- a) leaving it at the Recipient’s address;
- b) sending by ordinary pre-paid post (airmail if being sent from or to a place outside of Australia) to the Recipient’s address; or
- c) sending it by facsimile to the facsimile number of the Recipient.

23.3 Address for Service

Until other details are specified by a Party as its address or facsimile number for service the following shall apply:-

ANUTECH

Address: Corner Barry Drive and Daley Roads

Australian Capital Territory, Australia 2601

Postal Address: GPO Box 4
Canberra ACT 2601

Facsimile: 6257 1433

Attention: Dr Chris Scott

Praxis

Address:

Postal Address:

Facsimile:

Attention:

23.4 Time of Service

A letter or facsimile shall be taken to be served:-

- a) in the case of a delivered letter, on the day of delivery, unless delivery is made on a non Business Day or after 4:30 p.m. on a Business Day, in which case it shall be taken to be served on the next Business Day;
- b) in the case of a posted letter, on the third (or seventh in the case of airmail) Business Day after posting; and
- c) in the case of a facsimile, on receipt by the party giving the notice of a transmission confirmation report, unless within one Business Day of receipt the Recipient has informed the party giving the notice that the transmission was incomplete or garbled, provided that in any case if transmission is completed after 4:30 p.m. (local time in the place of receipt) or is received on a non Business Day, the notice shall be taken to be served on the next Business Day.

24. FORCE MAJEURE

No party shall be responsible or liable to the any other party for, nor shall this agreement be terminated as a result of any failure to perform any of its obligations hereunder (with the exception of payment of monies, due and owing), if such failure results from circumstances beyond the control of such party, including, without limitation, requisition by any government authority or the effect of any statute, ordinance or governmental order or regulations, wars, strikes, lockouts, riots, epidemic disease, act of god, civil commotion, fire, earthquake, storm, failure of public utilities, common carriers or suppliers, or any other circumstances, whether or not similar to the above causes. The parties shall use reasonable efforts to avoid or remove any such causes and shall resume performance under this agreement as soon as feasible whenever such cause is removed provided however that the foregoing shall not be construed to require a party to settle any labour dispute or to commence, continue at settle any litigation.

25. RESOLUTION OF DISPUTES

- a) A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this agreement ("**Dispute**") unless it has complied with this clause.
- b) A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute ("**Notification**")

- c) On receipt of a Notification each party must refer the Dispute for resolution by its Chief Executive Officer or the CEO's nominee.
- d) If the parties are unable to resolve the Dispute in accordance with clause 25 the parties must use their best efforts during the following 7 days to agree on:
 - i) a process to resolve all or at least part of the Dispute without arbitration or court proceedings (eg. mediation, conciliation, executive appraisal or independent expert determination);
 - ii) the selection and payment of any person ("**Mediator**") to be engaged by the parties for, and the involvement of any dispute resolution organisation in, the process;
 - iii) any procedural rules;
 - iv) the timetable, including any exchange of relevant information and documents; and
 - v) the place where any meetings will be held.
- e) The role of any Mediator will be to assist in negotiating a resolution of the Dispute. A decision of any Mediator is not binding on a party unless that party has so agreed in writing.
- f) Each party must bear its own costs of resolving a Dispute under this clause and the parties to the Dispute must bear equally the costs of any Mediator engaged and independent premises used for the mediation.
- g) If the Dispute is not resolved within 30 days after Notification, a party that has complied with clause 25 may terminate the dispute resolution process by giving notice to the other party to the Dispute.
- h) If a party to a Dispute does not comply with any provision of clause 25 the other party to the Dispute will not be bound by that clause.

26. GENERAL

26.1 Governing Law

This agreement shall be construed in accordance with and governed by the laws of the Australian Capital Territory, Australia and its form, execution, validity, construction and effect shall be determined on accordance with the laws of the Australian Capital Territory and the parties hereby submit themselves to the jurisdiction of the courts in and of that Territory.

26.2 Entire Agreement

Except as set out herein, this agreement constitutes the entire agreement of the parties (and into which all prior negotiations, commitments, representations and undertakings with respect to the subject matter are merged) and there are no other oral undertakings, warranties or agreements between the parties relating to the subject matter of this agreement and this agreement is not based upon any representations as to profit or worth nor has any representation been made whether by this agreement or otherwise) to induce Anutech or Praxis to accept and execute this agreement.

26.3 Variations

Any modification, alteration, change or variation of any term or condition of this agreement shall be only made in writing, executed by all parties.

26.4 Severability

This Agreement is severable and is deemed to apply separately as to each country comprising the Territory. A material breach of this Agreement in respect of one or more countries in the Territory shall not affect the validity or enforceability of this Agreement as to the other countries comprising the Territory. If any provision shall be held invalid or unenforceable, in whole or to part in any jurisdiction, then such invalidity or unenforceability shall only affect such provision or part thereof in such jurisdiction, and shall not in any manner affect the provision in this Agreement in any other jurisdiction. To the extent legally permissible an arrangement which reflects the original intent of the parties shall be substituted for such invalid or unenforceable provision.

26.5 Relationship of Parties

Nothing contained in this agreement shall be construed so as to operate or to place any party hereto in the relationship of principal employee, agent, partner, joint venturer or legal representative of any other party and it is hereby expressly agreed and acknowledged that each of the parties hereto is an independent contracting party and does not have the authority or power for or on behalf of any other party hereto to enter into any contract, to incur debts, to accept money, to assume any obligations or to make any warranties or representations whatsoever.

26.6 Stamp Duty and Costs

Each of the parties hereto shall bear its own legal costs of and incidental to the preparation of this agreement or any agreement entered or document executed pursuant to or to give effect to this agreement. Praxis shall pay stamp duty (if any) payable on this agreement and on any agreement entered into or document executed pursuant to or to give effect to this agreement.

26.7 Additional Documents

Each party agrees that it will forthwith upon the request of the other party execute and deliver all such instruments and agreements and will take all such other actions as the other party may reasonably request from time to time in order to give effect to the provisions and purposes of this agreement.

26.8 Waiver

The failure of any of the parties to insist upon a strict performance of any of the terms and provisions herein shall not be deemed a waiver of any subsequent breach or default of any of the terms or provisions of this agreement.

26.9 Registration of Agreement

If this Agreement or any associated transaction is required by the law of any country to be either approved or registered in any country or with any governmental agency, Praxis shall be responsible for obtaining such approval or registration including without limiting the generality of the foregoing, causing the Agreement to be stamped, recorded and registered at its cost in each country within the Territory. Anutech agrees to co-operate in any such application or registration procedure. Praxis shall furnish proof of compliance with foregoing to Anutech when and if Anutech so requires.

26.10 Not obliged to act contrary to law

No party shall be obligated to carry out or perform any of the terms of this agreement where such carrying out or performance would constitute a violation of any treaty, law, code or regulation of any governmental authority whether local, national or supranational. In any event the other terms of this agreement shall nevertheless continue and the parties shall use all reasonable endeavours to re-negotiate and amend this agreement so that the performance of this agreement as so amended will not involve any such violation.

26.11 Status of Anutech

Anutech warrants and covenants that it enters into agreement as agent for and on behalf of ANU having full power and authority so to do, and with the express consent of ANU, to the intent that each and every of the warranties, covenants, terms and conditions of this agreement are given by Anutech in its own and bind Anutech in its own fight.

SCHEDULE 1 - LICENSED PATENTS

Phosphosugar based anti-inflammatory and/or immunosuppressive drugs

- International Application No. PCT/AU89/00350
- Inventors - William Cowden, Christopher Parish, David Willenborg
- Priority date - 18 August 1988
- International filing date - 18 August 1989
- ANUTECH reference 140

<u>Country</u>	<u>Application No.</u>	<u>Patent No.</u>	<u>Status</u>
Australia	41875/89	627500	granted
Europe	89909685.3	0429522	granted
Japan	509079/89		examination requested
USA	988001	5506210*	granted
USA-continuation			discontinued

* date of grant = 9 April 1996

Novel Phosphosugars and phosphosugar-containing compounds having anti-inflammatory activity

- Inventors - William Cowden, Christopher Parish, David Willenborg
- Priority date - 18 October 1996
- ANUTECH reference 278

<u>Country</u>	<u>Application No.</u>	<u>Patent No.</u>	<u>Status</u>
Australia	PO3098/96	INT	on 18 October 1997
Australia	41866/97		examination requested
USA	08/953305		examination requested

IN WITNESS: this Agreement shall be duly executed and shall commence from the Commencement Date:-

The COMMON SEAL of)
PRAXIS Pharmaceuticals Australia Pty) [SEAL]
Limited was hereunto affixed in accordance)
with its constitution in the presence of:)

/s/ Brett Charlton
Director/Secretary

/s/ W.B. Cowden
Director

BRETT CHARLTON
Name

W.B. COWDEN
Name

The COMMON SEAL of)
ANUTECH Pty Limited) [SEAL]
was hereunto affixed in accordance)
with its constitution in the presence of:)

/s/ I. Sarteschi
Director/Secretary
I. SARTESCHI
COMPANY SECRETARY
ANUTECH PTY LTD
Name

/s/ John D. Bell
Director

John D Bell
Managing Director
Name

ANUTECH Pty Ltd
ACN 008 548 650
Dr Geoff Page
Managing Director



Switchboard: (+612) 6249 3811
Email: geoff.page@anutech.com.au
Internet: <http://www.anutech.com.au>

Our Ref: L202

5 April 2002

Professor W. Cowden
Praxis Pharmaceuticals Australia Pty Ltd
C/o JCSMR
ANU
ACT 0200

Dear Professor Cowden

Reporting Requirements under the Exclusive License Agreement

Under Clause 6.2(a) and 6.2(c) of the Exclusive License Agreement between Anutech Pty Ltd and Praxis Pharmaceuticals Australia Pty Ltd Praxis is obligated to provide Anutech with 6 monthly and quarterly reports.

With respect to the reports outstanding for 1999-2001 Anutech will waive Praxis' obligation to provide those documents.

With respect to the ongoing reporting obligations Anutech:

- (a) proposes the amend the agreement as follows:
 - (i) replace clause 6.2(a) with the following: "provide a report to Anutech, every 12 months, detailing the activities undertaken by Praxis for the prior 12 month period pursuant to clause 6.1 and future plans to achieve the objectives set out in clause 6.1; and
 - (ii) replace clause 6.2(c) with the following: "provide a brief report to Anutech, every 6 months, describing progress against prior plans, outlined in the report pursuant to clause 6.2(a), of activities carried out by or on behalf of Praxis pursuant to clause 6.1
- (b) proposes that the reporting obligations adhere to the calendar year, thus the 6 month 2002 report will be due July 1 2002.

Please confirm your acceptance of these changes by returning a signed copy of this letter to me at your earliest convenience.

Yours Sincerely,
Anutech Pty Limited

/s/ Geoff Page
Dr Geoff Page
Managing Director

/s/ [ILLEGIBLE]

[ILLEGIBLE]

ANUTECH Pty Ltd
ACN 008 549 850

Dr Geoff Page
Managing Director



GPO Box 4 Canberra ACT 2601 AUSTRALIA
Corner of Barry Drive & North Road, Action ACT
Facsimile: (+612) 6257 1433
Switchboard: (+612) 6125 6101
Direct Line: (+612) 6125 2329
Email: geoff.page@anutech.com.au
Internet: http://www.anutech.com.au

16 September 2003

Dr Alan Robertson
Pharmaxis Pty Ltd
2/10 Rodborough Road
Frenchs Forest
NSW 2086

Dear Dr Robertson

Minor Changes to the Detail of the Exclusive Licence Agreement between Anutech Pty Ltd and Praxis Pharmaceuticals Australia Pty Ltd (now Pharmaxis Pharmaceuticals Australia Pty Ltd)

Dr. Brett Charlton, Medical Director Pharmaxis Pharmaceuticals Australia Pty Ltd, has advised that Pharmaxis Pharmaceuticals Australia Pty Ltd is moving to a listing on the ASX in the next two months and aiming to raise \$20m to constitute its preclinical and clinical development programs.

As reported in the summaries provided by Dr Charlton considerable progress has been made in the development of a new treatment for multiple sclerosis arising from the Intellectual Property licensed from the Australian National University.

Under the terms of the Exclusive Licence Agreement signed between Anutech Pty Ltd and Praxis Pharmaceuticals Australia Pty Ltd (now Pharmaxis Pharmaceuticals Australia Pty Ltd). Praxis Pharmaceuticals Australia Pty Ltd agreed to commence the sales of a product arising from the licensed Intellectual Property within 5 years of the commencement date of the licence, that is, the date of signing of the licence - 14 October 1999.

In recognition of the extent and complexity of the regulatory approval process for new ethical pharmaceutical treatments, Anutech Pty Ltd is pleased to agree to an extension in the milestone for first product sales to 2011 that is 12 years from the date of signing of the licence.

With best wishes

Yours Sincerely

/s/ Dr. Geoffrey Page

Dr. Geoffrey Page
Managing Director
Anutech Pty Ltd

**Amendment Deed
to the Exclusive License Agreement dated 14 October 1999**

This Amendment Deed is made on 19 October 2004 between ANU Enterprise Pty Ltd ACN 008 548 650 (formerly called Anutech Pty Ltd) ("Anutech") and Pharmaxis Ltd ACN 082 811 630 (formerly called Praxis Pharmaceuticals Australia Pty Ltd) (Pharmaxis")

Recitals

- A. On 14 October 1999 Anutech and Pharmaxis entered into an Exclusive License Agreement ("EL Agreement").
- B. On 5 April 2002 and 16 September 2003, Anutech and Pharmaxis further amended the EL Agreement.
- C. The parties wish to amend the EL Agreement as set out below.

1. Interpretation

- (a) "**EL Agreement**" means the agreement referred to in Recital A.
- (b) Expressions defined in the EL Agreement have the same meaning when used in this deed.
- (c) Clauses 1.2 and 26 of the EL Agreement apply to this deed as if set out in full herein.

2. Amendments

The EL Agreement is hereby amended as follows:

- 2.1 In Clause 1.1, in the definition of "ANU Intellectual Property", by replacing, "and includes any Intellectual Property developed under the Research Funding Agreement" with "and excludes any Intellectual Property developed under the Research Funding Agreement and under any Services Agreements."
 - 2.2 In Clause 1.1, in the definition of "Research Funding Agreement", by replacing "dated on or about the date of this Agreement" with "dated December 06, 2000".
 - 2.3 In Clause 1.1 in the definitions section of the EL Agreement inserting –"Services Agreements" means agreements entered into from time to time between Pharmaxis and Anutech for services provided by Anutech to Pharmaxis."
 - 2.4 In Clause 1.1, in the definition of "Licensed Field" by deleting Clause b and Clause c.
 - 2.5 In Clause 1.1 in the definition of "Licensed Patents" by deleting Clause d.
 - 2.6 In Clause 5, by deleting the last sentence of the Clause and renumbering the amended text of Clause 5 as clause a) and adding the following new clauses b) to h):
 - "b) Notwithstanding any other provision of this agreement, if one party (the supplier) makes a taxable supply to another party (the recipient) and the supplier is or becomes liable to pay GST on that taxable supply, the amount of consideration payable by the recipient for that taxable supply will be increased by the amount of GST payable.
 - c) Unless provided otherwise in this agreement, the recipient will pay the full amount of the consideration plus GST within 30 days of receiving a tax invoice in respect of that taxable supply.
 - d) If a party becomes aware of an adjustment event, that party agrees to notify the other party as soon as practicable after becoming so aware, and the parties agree to take whatever steps are necessary, including issuing 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 any part thereof) is paid as soon as is practicable but no later than 28 days after the supplier has satisfied itself that the adjustment event has occurred.

- e) Each party must provide the other parties with all documentation reasonably required by them to claim any input tax credits claimable for or in relation to any supply made under this agreement.
- f) Where a party reimburse another party for or in respect of any wholly or partly creditable acquisition or wholly or partly creditable importation made by that other party, and that reimbursement does not constitute the consideration for a taxable supply, the amount reimbursed shall be net of any input tax credit that relates to that acquisition or importation.
- g) The parties agree to make any reasonable changes which, in the reasonably held opinion of any party, are required to be made to this agreement to reflect changes in the GST Law.
- h) For the purposes of this clause 5 the terms 'supplier', 'recipient', 'taxable supply', 'consideration', 'tax invoice', 'adjustment event', 'creditable acquisition', 'creditable importation', 'input tax credit' and 'GST Law', have the same meanings as given to them in the *A New Tax System (Goods and Services Tax) Act 1999* and any substantially similar legislation which is passed into law and which may operate at any time during the term of this agreement."

2.7 In Clause 9, by inserting "(including the use by Pharmaxis of the name of the ANU or any school, department, faculty or other body of ANU or any employee, researcher, visiting fellow, staff member or council or committee member of ANU)".

2.8 In Clause 10, by renumbering the text of the clause as a) and adding the following new clause b):

"If any research is performed by the ANU or Anutech which is fully funded by Pharmaxis before the Research Funding Agreement is entered into, in relation to any intellectual Property which is created in the performance of that research, the ANU and Anutech:

- i) assign to Pharmaxis all such Intellectual Property;
- ii) shall make available to Pharmaxis upon request and allow Pharmaxis to use for commercial purposes all such Intellectual Property which is confidential information and know how and each party shall thereafter treat that information and know how as Confidential information of the other party for the purposes of this Agreement,".

2.9 In Clause 18.1b, by deleting the text and replacing the text with: "Pharmaxis shall reimburse Anutech for one third of any costs incurred in filing, maintaining and renewing the Licensed Patents and patent applications incurred before 31 December 2003".

2.10 Insert new Clause 18.1c as follows: "Pharmaxis shall reimburse Anutech for all costs incurred in filing, maintaining and renewing the Licensed Patents and patent applications incurred after 31 December 2003".

2.11 Former Clause 18.1c in the agreement is renamed Clause 18.1d.

2.12 In Clause 23.4, by adding the following details for Pharmaxis:

The Company Secretary
Pharmaxis Ltd
2/10 Rodborough Road
Frenchs Forest, NSW 2086
AUSTRALIA

Facsimile No: 02 9451 3622

3. Effective Date of the Amendments

3.1 The amendments made by this deed shall be taken to have been made at the time the EL Agreement was entered into and the rights and obligations of the parties shall be altered and construed accordingly.

Executed by the parties as a deed:

Executed in accordance with)
section 127 of the Corporations)
Act 2001 by **ANU Enterprise Pty Ltd:**

[SEAL]

/s/ L. E. Cram
Signature of Director /

/s/ James Fulton Muir
Signature of Director

L. E. CRAM
Name

JAMES FULTON MUIR
Name

Executed in accordance with)
section 127 of the Corporations)
Act 2001 by **Pharmaxis Ltd:**)

/s/ David McGarvey
Signature of Director / Secretary

/s/ Alan D Robertson
Signature of Director

DAVID MCGARVEY
Name

A.D. ROBERTSON
Name

</TEXT>

</DOCUMENT>

<DOCUMENT>

<TYPE> EX-4.5

<DESCRIPTION> Exhibit 4.5

<FILENAME> a2162308zex-4_5.htm

<TEXT>

Exhibit 4.5

PATENT LICENCE AGREEMENT made 10th October 2001

BETWEEN

PRAXIS PHARMACEUTICALS AUSTRALIA PTY LTD (ACN 082 811 530) of 60 Marcus Clarke Street, Canberra, ACT 2601 ('PRAXIS')

AND

CENTRAL SYDNEY AREA HEALTH SERVICE of QE II Building. RPAH Campus, Missender Road, Camperdown NSW ('CSAHS')

RECITALS

- A CSAHS has knowledge in respect of powder technologies for use in the management of respiratory disease. Aspects of this knowledge are protected by patents and patent applications in a number of countries.
- B CSAHS proposes to provide the knowledge to PRAXIS and to enter into an exclusive licence with PRAXIS to allow PRAXIS to exploit the knowledge on the following terms and conditions.
- C CSAHS also has an Ausindustry Start grant (GRA0078) related to the use of inhaled mannitol as a test for airway hyperresponsiveness. This grant is currently suspended.
- D CSAHS proposes that PRAXIS enter into Start grant GRA0078 for the development of inhaled mannitol and assume the rights and obligations currently held by Rhone Poulenc Rorer, as part of this agreement.

AGREEMENT

Definitions

In this Agreement:

'Additional Patents' means patents applications and patents in respect of new inventions pursuant to clause 3.

'CSAHS Intellectual Property' means the Patents, Additional Patents and Knowledge in respect of powder technologies.

'Confidential Information' means information (including methodology) treated by the disclosing party as confidential, and disclosed to the other party in the course of exercising this licence.

'Cost of Sales' means

- (a) all costs of direct materials, labour and overhead expenses incurred in the manufacture, production and delivery of sales of Products and Services.
 - (b) any tax or government charge (other than an income tax) levied on the sale, transportation or delivery of sales of Products and Services.
 - (c) trade and quantity discounts or rebates actually allowed and taken in respect of sales of Products and Services, and
-

(d) credits or allowances given or made for return of Products previously sold in the Territory.

‘exploit’ means to do any act in relation to the Patents that would infringe the Patents except for this license. It includes making or manufacture of powder products, marketing, selling and hiring of powder products and provision of diagnostic or therapeutic services involving powder, using powder products and processes involving powders, including for or in research and development, importing powder products, and keeping powder products for the purpose of doing any of these things.

‘Gross Margin’ means Net Sales less Cost of Sales.

‘Knowledge’ in respect of powder technologies’ means the knowledge outlined in Attachment I.

‘Net Sales’ means the aggregate of the invoiced price of Products sold and Services provided in a country less returns and allowances in respect of those sales.

‘Patents’ means patents and patent applications owned by CSAHS in the countries listed in Attachment 2 and such other patents applied for by CSAHS or Praxis which claims priority from any of those patents.

‘Product’ means a powder product manufactured and supplied by PRAXIS or a PRAXIS licensee that exploits the Patents.

‘Service’ means a service provider by PRAXIS or a PRAXIS licensee that exploits the Patents

‘Royalty Term’ means, in respect of Net Sales in a country, the period of time equal to the longer of:

- (a) ten years from the date of the first commercial sale of a Product or Service in that country and
- (b) the expiry of the last of the Patents registered in that country.

1. Objectives

1.1 CSAHS agrees that it shall use all reasonable endeavors to assist PRAXIS to enter into Start grant GRA0078.

1.2 PRAXIS agrees that it shall

- (a) use all reasonable endeavours to secure the grant of the Patents; and
- (b) use all reasonable endeavours to maintain the Patents in force.

1.3 PRAXIS agrees that it shall

- (a) use reasonable endeavours at its expense to:
 - (i) exploit the CSAHS Intellectual Property:
 - (ii) undertake either itself or through third parties further research and development based on the CSAHS Intellectual Property: and

- (iii) as and when required, undertake itself or through Related Corporations, or enter into appropriate third party licensing or marketing arrangements, to optimise the returns from sales of Products and Services at the earliest practicable and economically and commercially prudent date; and
- (b) Use reasonable endeavours to ensure that each Product sold:
 - (i) is of merchantable quality;
 - (ii) is fit for the purpose for which it is sold;
 - (iii) satisfies any conditions and warranties implied by the law of that county in which it is sold;
 - (iv) complies with all laws and standards regulating manufacture, assembly, labelling, packaging, storage and sale in the country in which it is sold.

2. Intellectual Property Rights

- 2.1 Each party agrees CSAHS owns the Patents.
- 2.2 CSAHS will bear all past costs incurred in applying for registering and maintaining the Patents in force up to the date of this agreement.
- 2.3 The parties will cooperate in prosecuting and maintaining the Patents in force and both parties will be kept fully informed by the Patent Attorney.
- 2.4 Praxis will be responsible for instructing patents attorneys in applying for, registering and maintaining the Patents in force and for covering the cost of this from the date of this agreement. Praxis will perform these tasks in consultation with CSAHS. The expected costs for the years beginning 1 July and ending 30 June are shown in Attachments 2.
- 2.5 The CSAHS has the right to register and maintain the Patents in force for countries not selected by Praxis.
- 2.6 Each party must in relation to the Patents:
 - (a) Advise the other party immediately on becoming aware of any anticipated, suspected or actual infringement by any person of any of the Patents;
 - (b) do all things reasonably requested by CSAHS to enable it to protect, and to prove ownership of the Patents, and
 - (c) provide all documents and assistance (other than financial assistance) required or reasonably requested by CSAHS to allow it other prompt and good faith negotiations between the parties, to protect (including in any litigation) the Patents
- 2.7 Praxis may institute any proceedings to protect the Patents if CSAHS fails to do so within a reasonable time of a written request from Praxis

3. New Intellectual Property Rights

3.1 With respect to any new patentable inventions arising in the course of exploiting the Patents:

- (a) PRAXIS may prosecute a new patent application in the name of Praxis for the invention or agree to treat the invention as new confidential information.
- (b) all costs incurred in applying for, registering and maintaining those new patent applications and subsequent patents in force are to the borne by PRAXIS
- (d) if PRAXIS decides not to request patent protection for any new patentable invention in any country, CSAHS may file patent applications at its own cost.

4. Licences

4.1 CSAHS's grants PRAXIS a worldwide exclusive sub-licensable license to exploit the CSAHS Intellectual Property.

4.2 Rights to Sub-Licence

Subject to clause 4.3, CSAHS grants to Praxis the right to sub-license CSAHS Intellectual Property. Praxis will inform CSAHS in writing of the details of these sub-licences.

4.3 Sub-Licence terms

Praxis may only grant a sub-licence of the CSAHS Intellectual Property third parties if

- (a) the third party being granted the sub-licence has the commercial capacity to promote and exploit the CSAHS Intellectual Property and has at least sufficient skills and resources to comply with obligations placed upon PRAXIS in relation to the CSAHS Intellectual Property in the relevant country or countries;
- (b) the sub-licence a wholly consistent with the terms of this Licence and in particular:
 - (i) such sub-licence could not support to extend or continue in any circumstances where this Licence may be terminated; and
 - (ii) the sub-licensee acknowledges that CSAHS owns the CSAHS Intellectual Property;
- (c) the sub-licence prohibits the Sub-Licensee from taking any action or allowing any action to be taken which detracts from the ownership of the CSAHS Intellectual Property by CSAHS or conflicts with the provisions contained in this Licence in relation to prosecuting or defending the

- Patents or defending any allegation of infringement of the CSAHS Intellectual Property other than the Patents;
- (d) the sub-licence is in the English language, executed by the sub-licensee and giving its place of business;
 - (e) the sub-licence requires the sub-licensee to maintain all books, records and accounts necessary to enable verification of its sales and royalties and other amounts required to be paid by Praxis the CSAHS and to allow CSAHS to inspect those books, records and accounts on terms similar to those contained in clause 7.3, and
 - (f) the sub-licence limits the duration of the sub-licence in respect of the CSAHS Intellectual Property for the term of this Agreement and further provides for the sub-licence to terminate automatically upon the termination of this Agreement

5. Product Development

It is the intention of the parties to cooperate fully in the development of the Products and Services

6. Royalties

6.1 In consideration of the rights granted to PRAXIS by the CSAHS in this Agreement PRAXIS will pay to CSAHS royalties on Net Sales of Products and Services sold in a country for the Royalty Term in respect of the country as follows:

- (a) in respect of the upper and lower airway function test applications of the Patent;
 - (i) no royalties until aggregate Net Sales (ie. the aggregate of sales of Products and Services from all countries) of A \$500,000 have been achieved, and PRAXIS will notify the CSAHS immediately in writing when this event occurs.
 - (ii) a royalty of 4% of the Gross Margin if the Net Sales of the Product or Service by PRAXIS achieve a Gross Margin of 20% or less
 - (iii) a royalty of 8% of the Gross Margin if the Net Sales of the Product or Service by PRAXIS achieve a Gross Margin between 20% and 40%.
 - (iv) a royalty of 10% of the Gross Margin if the Net Sales of the Product or Service by PRAXIS achieve a Gross Margin greater than 40% and
 - (v) 20% of any royalty received from a sub-licensee
- (b) In respect of the mucociliary clearance and sputum induction applications of the patent:

- (i) no royalties until sales representing a Gross Margin of \$1.0 million have been achieved then, when the Gross Margin achieved by product sales is between \$1 million and \$25 million a 3% royalty will apply, when it is between \$25 million and \$75 million a 2.5% royalty will apply and when it is greater than \$75 million a 2.0% royalty will apply, and
- (ii) 20% of any royalty received from a sub-licensee
- (c) The allowances, that is the volume of samples provided free of charge or provided at a discount, will be limited to eight per cent (8%) of the total volume of sales on a country by country basis. By mutual agreement between PRAXIS and the CSAHS this volume of samples and discounted Product may be varied during the first year in which sales of a Product commences.

7. Accounting

- 7.1 Within 45 days after the end of each calendar quarter PRAXIS must pay to the CSAHS all royalties due under this Agreement and with that payment furnish to CSAHS an operating statement in the agreed form to explain each royalty payment.
- 7.2 PRAXIS will keep and maintain proper books of account and records fully written up in accordance with generally accepted accounting standards and principles consistently applied to record its operations as licensee under this Agreement including details of all Net Sales Prices. Gross Revenue and royalties payable to CSAHS
- 7.3 Upon request by CSAHS, PRAXIS will permit a representative appointed by CSAHS in have access to the books and records of PRAXIS with the right to inspect, copy and take extracts for the purpose of verifying the Net Sale Prices, the Gross Revenue and the Cost of Sales and the royalties payable to CSAHS.
- 7.4 On receipt of any statement pursuant to clause 7.1 CSAHS may require an investigation of the books and records of PRAXIS by a chartered accountant selected and paid for by CSAHS for the purposes of verifying the accuracy of the statement and in which case CSAHS will notify PRAXIS in writing, PRAXIS will permit the chartered accountant to inspect, copy and take extracts from its books and records and shall promptly produce for inspection all vouchers, invoices, statements, accounts and other evidence in support of the statement as may be reasonably required. If any discrepancy occurs, it shall be subject to alteration at CSAHS's option with the arbitrator's decisions binding.
- 7.5 In the event that any amount due by PRAXIS to CSAHS under this Agreement is paid on or before the due date for payment then without prejudice to any other rights or remedies of CSAHS the unpaid amount shall carry interest at the Australian 10 year period rate prevailing at that time, calculated on daily balances from the due date to the date of payment in full

8. Confidential Information

- 8.1 Each party ('first party') must in relation to Confidential Information of the other party ('other party') disclosed to further this Agreement and marked to indicate its confidential nature:
- (a) to the best of its ability keep it confidential;
 - (b) to the best of its ability use it only to further the objectives of clause 1 of this Agreement;
 - (c) use its best endeavours not to disclose it to any person other than:
 - (i) to those of the first party's employees who have a need to know (and only to the extent that each such employee has a need to know) and who have first been directed to keep it confidential and to use it only as permitted under this Agreement ('Direction');
 - (ii) to other people (except to the extent permitted in accordance with clause 8.2), such as contractors and visitors, who have a need to know (and only to the extent that each such person has a need to know), and who have agreed in writing (in a form similar to this Agreement) to keep it confidential and to use it only as permitted under this Agreement (also a 'Direction');
 - (d) enforce each Direction at its cost;
 - (e) not copy it or any part of it that is in material form other than as strictly necessary and must mark any such copy 'confidential - (Owner)';
 - (f) safeguard it in accordance with its usual security practices against unauthorised copying, use or disclosure (whether that disclosure is oral, in writing or in any other form);
 - (g) notify the first party immediately of or actual unauthorised copying, use or disclosure; and
 - (h) comply with any reasonable direction issued regarding actual breach.
- 8.2 The first party's obligations of confidentiality under this Agreement do not apply to information that (whether before or after this Agreement is executed):
- (a) the first party creates (whether alone or jointly with any person) independently of the other party's Confidential Information and outside the scope of this Agreement;
 - (b) is public knowledge (otherwise than as a result of a breach of confidentiality by the first party);
 - (c) is rightfully known to or in the Possession or control of the first party and not subject to an obligation of confidentiality on the first party; or
 - (d) the first party is required by law to retain or disclose (but only to the extent so required)

8.3 Each party must

- (a) ensure that any of its personnel who attend the other party's premises, comply with that other party's usual staff and security practices while attending those premises; and
- (b) notify the other party of its usual staff and security practices to enable the other party to comply with paragraph (a).

9. Exclusion and Limitation of Liability

9.1 PRAXIS agrees that it (and each PRAXIS licensee) exploits the Patents at its own risk.

9.2 Each party excludes all implied conditions and warranties except to the extent that any such exclusion would contravene any applicable law or cause this clause to be void.

9.3 PRAXIS indemnifies CSAHS against all loss and damage (including costs on a solicitor and client basis) that the CSAHS may sustain or incur as a result of any actions, claims, suits, proceedings or demands arising directly or indirectly out of the breach of this Agreement by Praxis

9.4 PRAXIS undertakes that during the term of this Agreement and for six years after its termination it will, subject to such policy being available on commercially reasonable terms, maintain a policy of product liability insurance with a reputable underwriter for an amount acceptable by CSAHS (acting reasonably) in respect of all loss or damage occasioned directly or indirectly by the exploitation of the Patents by PRAXIS and each PRAXIS licensee. CSAHS shall be named in that insurance as an additional insured and PRAXIS shall provide to CSAHS upon request a copy of the policy and all endorsements with evidence of the payment of premiums.

10 Indemnity

Each party ('first party') indemnifies the other party (each an 'indemnified party') against all loss and damage (including costs of a solicitor and own client basis) that an indemnified party may sustain, or incur as a result of any damage to the first party's property or injury to or death of any of the first party's personnel arising out of this Agreement.

11 Resolution of Disputes

11.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement ("Dispute") unless it has complied with the clause.

11.2 A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute ('Notification')

11.3 On receipt of a Notification each party must refer the Dispute for resolution by its Chief Executive Officer or the CEO's nominee.

11.4 If the Dispute is not received under the clause 11.3 within 30 days (or longer period agreed between the parties), the parties must refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the conciliation Rules of ACDC

11.5 If the Dispute is not resolved under clause 11.4 within 60 days (or longer period agreed between the parties) either party may require binding arbitration.

12 Termination

12.1 This agreement shall commence on the date of its signing and shall unless earlier terminated in accordance with clause 12.2 or 12.4, continue in respect of each country until the expiry of the royalty term in respect of that country.

12.2 Either party ("termination party") may terminate this Agreement at any time with immediate effect by giving the other party notice if the other party breaches any other provision of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so.

12.3 Praxis may terminate this agreement on 60 days notice if in its commercial judgment it is not prudent to continue the agreement.

12.4 Termination for Insolvency

Subject to clause 12.6 and notwithstanding anything contained in clause 12.2(a), this agreement may be terminated by a party giving notice to the other party upon the happening of any of the following events in respect of that other party.

- (a) the expiration of four weeks from the other party having a receiver, manager, receiver and manager or agent in possession validly appointed for the whole or any substantial part of its assets or from a court order being validly made for the winding up of the other party other than for the purpose of reorganization or reconstruction.
- (b) immediately a resolution of the other party's shareholder passed for the winding up of that party other than for the purpose of reorganisation or reconstruction.
- (c) in the event that the other party files a petition in bankruptcy or similar proceedings or is adjudicated bankrupt or if a petition for bankruptcy or similar proceedings is filed against the other party and is not stayed or discharged within 45 days of such filing or if the party becomes insolvent or makes an assignment for the benefit of creditors or enters into any agreement, arrangement or composition pursuant to bankruptcy law or otherwise acknowledges insolvency or is adjudged bankrupt or of the other party discontinues business.
- (d) the other party is in breach of an undertaking given pursuant to clause 12.2(a).

12.5 Reconstruction Exception

A winding up or liquidation for the purposes of reconstruction or amalgamation by the other party shall not be an event permitting or giving rise to termination if after that reconstruction or amalgamation the resulting corporation becomes bound by the terms of this Agreement by way of assignment or notation.

12.6 Termination to be without prejudice

Any termination of this agreement shall be without prejudice to the rights which a party has against the other in respect of anything done or omitted to be done hereunder prior to such termination or in respect of any sums or other claims outstanding at the time of termination.

12.7 In the event that PRAXIS chooses not to obtain or seek approval or seek registration in any Country, then PRAXIS will not unreasonably refuse to convert the licence granted by this Agreement into a non-exclusive licence in that country.

13 After Termination

13.1 On termination of this Agreement (unless otherwise agreed between the parties and each party agrees to negotiate in good faith with the other to reach such an agreement):

- (a) the licences granted under clause 4 (Licenses) cease, and PRAXIS and each PRAXIS licensee must stop exploiting and may not grant any further sub-licences (except that PRAXIS and PRAXIS licensees will fill existing orders and may continue to supply any Products manufactured before termination, and must then pay the CSAHS royalties on these Products in accordance with clause 6 (Royalties): and
- (b) PRAXIS must in relation to the Confidential Information of CSAHS.
 - (i) stop using that Confidential Information; and
 - (ii) at the option of CSAHS return that Confidential Information.
- (c) PRAXIS must pay CSAHS all royalties due under clause 6.

13.2 The obligations of confidentiality (but not the right to use and disclose) under clause 8 (Confidential Information) continue to apply to the parties to this Agreement (in addition to any assignee) after the termination of this Agreement.

13.3 Clauses 9 (Exclusion and Limitation of Liability) and 10 (Indemnity) continue after termination of this Agreement

13.4 Termination of this Agreement will not affect any accrued rights and remedies either party may have

14 Force Majeure

14.1 Force Majeure Event affecting a party means anything outside that party's reasonable control, including but not limited to, acts or omissions of the other party, fire, storm, flood and earthquake, war, transportation embargo or failure or delay in transportation, act or omission (including laws, regulations,

disapprovals or failures to approve) of any third person (including but not limited to, subcontractors, customers, governments or government agencies)

14.2 If a Force Majeure Event affecting a party precludes that party (“precluded party”) partially or wholly from complying with its obligations under this Agreement then:

- (a) as soon as reasonably practicable after that Force Majeure Event arises, the precluded party must notify the other party of the Force Majeure Event, and
- (b) to the extent and for the period that the precluded party is precluded by the Force Majeure Event from complying with its obligations under this Agreement, those obligations will be suspended.

14.3 This clause does not apply to any obligation to pay money.

15 Relationships

This Agreement does not create a relationship of employment, agency or partnership between the parties.

16 Assignment

A party must not assign or attempt to assign or otherwise transfer any right arising out of this Agreement except as implied in relevant sublicensing clause 4 without the written consent of the other party.

17 Severability

If the whole or any part of any clause of this Agreement that is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

18 Waiver

The failure of a party at any one time to insist on performance of any obligation of another party under this Agreement is not a waiver of its right.

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to insist on performance of that or any other obligation of another party under this Agreement

19 Notices

19.1 A party notifying or giving notice under this Agreement must give notice

- (a) in writing
- (b) addressed to the address of the recipient specified in this Agreement or as altered by notice given in accordance with this clause; and
- (c) left at or sent by prepaid post or by fax to that address

19.2 A notice given in accordance with clause 19.1 will be deemed received

- (a) if left at the recipient's address, on the date of delivery;
- (b) if sent by prepaid post, 2 days after the date of posting, and
- (c) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

20 Headings

Headings are for ease of reference only and do not affect the construction of this Agreement.

21. Governing Law

This Agreement is governed by the laws of New South Wales.

22 Entire Agreement

This Agreement:

- (a) is the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matters and
- (b) may only be altered in writing signed by both parties

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of)
PRAXIS PTY LIMITED by a duly)
authorised director in the presence)
of:)

/s/ Alan D. Robertson
Signature of Authorised Person

/s/ Lewis Schulz
Witness

General Manager
Title of Authorized Person

Alan D. Robertson
Name of Authorized Person

SIGNED for and on behalf of)
CENTRAL SYDNEY AREA)
CSAHS by its Chief Executive)
Officer Dr Diana B)
Horvath in the presence of:)

/s/ Diana Horvath

/s/ Michael Wallace
Witness Michael Wallace
DCEO CSAHS

Attachment 1. Knowledge in respect of powder technologies
Attachment 2. Patents

**ATTACHMENT 1
EXISTING KNOWLEDGE
for mannitol as Diagnostic Test for bronchial hyperresponsiveness and
for the therapeutic use of mannitol to increase mucociliary clearance**

Dr Anderson and her colleagues have experimental evidence to show that the airways of persons with clinically recognised asthma, whose airways narrow in response to inhaling a wet aerosol of 4.5% saline and, whose airways narrow with hyperpnea with dry air as experienced during exercise, also narrow in response to inhaling dry powders of substances capable of increasing the osmolarity of the airways. (Australian Patent No 682,756, US Patent No. 5817.028 , PCT AU 95/00086)

Airway narrowing has been measured indirectly by measuring a reduction in forced expiratory volume in one second (FEV_1). A fall in FEV_1 of 15% or more is considered an abnormal airway response. Healthy subjects had a mean fall of $2.1\% \pm 2.3\%$ (SD) at the highest dose tested.

The powders used include mannitol and sodium chloride but other powders, capable of increasing airway osmolarity, such as mineral salts, organic salts, sugars and sugar alcohols would be expected to do the same. The powders of mannitol and sodium chloride were required to be biologically active i.e. to have an adequate proportion of particles, by weight, within the respirable range (less than 7 microns) to cause airway narrowing as described in the patent.

The powder was encapsulated (5mg, 10 mg, 20 mg, and 40 mg capsules) and inhaled from a Halermatic, a Dinkihaler or a Boehringer Inhalator in increasing doses 5mg, 10 mg, 20 mg, 40 mg, 80 mg (2×40), 160 mg (4×40), 160 mg (4×40), 160 mg (4×40) to a cumulative dose of 635 mg. The FEV_1 was measured in duplicate after inhaling each dose. It was found that all devices worked well and devices of a similar nature should work easily as well. Other measurements included inspiratory flow rates, oxygen saturation and recovery of lung function.

REFERENCES

Anderson SD, Brannan J, Spring J, Spalding N, Rodwell LT, Chan K, Gonda I, Walsh A, Clark AR. A new method for bronchial provocation testing in asthmatic subjects using a dry powder mannitol. *Am J Respir Crit Care Med* 1997; 156: 758-765.

Brannan JD, Koskela H, Anderson SD, Chew N. Responsiveness to mannitol in asthmatic subjects with exercise and hyperventilation-induced asthma. *Am J Respir Crit Care Med*, 1998: 158:1120-1126.

Subbarao P, Brannan JD, Ho B, Anderson SD, Chan H-K, Coates AL. Inhaled mannitol identifies methacholine-responsive children with current asthma. *Pediatr Pulmonol* 2000; 29:291-298.

Brannan JD, Anderson SD, Freed R, Leuppi JD, Koskela H, Chan H-K. Nedocromil sodium inhibits responsiveness to inhaled mannitol in asthmatic subjects. *Am J Respir Crit Care Med* 2000; 161; 2096-2099.

Leuppi JD, Salome CM, Jenkins CR, Anderson SD, Xuan W, Marks GB, Koskela H, Brannan JD, Freed R, Andersson M, Chan H-K, Woolcock AJ

Predictive markers of asthma exacerbation during stepwise dose reduction of inhaled corticosteroids. *Am J Respir Crit Care Med* 2001; 163:406-412.

Högman M, Lúdviksdóttir D, Anderson SD, George S, Hakansson L, Chan HK, Meriläinen P, Hedenström H. Inhaled mannitol shifts exhaled nitric oxide in opposite directions in asthmatic and healthy subjects. *Respiration Physiology* 2001; 124:141-150.

Brannan JD, Anderson SD, Gomes K, King GG, Chan H-K, Seale JP. Fexofenadine decreases sensitivity to and montelukast improves recovery from inhaled mannitol. *Am J Respir Crit Care Med* 2001; 163:1420-5.

Leuppi JD, Salome CM, Jenkins CR, Koskela H, Anderson SD, Andersson M, Chan H-K, Woolcock AJ. No relationship between markers of airway inflammation and airway hyperresponsiveness in patients with well-controlled asthma. *Eur Respir J* 2001, in press

Dr Anderson and her colleagues also have experimental evidence, in a small number of subjects, to show that in healthy persons, persons with clinically recognised asthma, persons with bronchiectasis, persons with cystic fibrosis there is a measurable increase in mucociliary clearance as measured by clearance of the radio nuclide ^{99m}Tc sulphur colloid after inhalation of powdered mannitol in a dose up to a cumulative dose of 300mg.

The powders used was mannitol but other powders, capable of increasing airway osmolarity, such as mineral salts, organic salts, sugars and sugar alcohols would be expected to do the same. The powdered mannitol was required to be biologically active i.e. to have an adequate proportion of particles, by weight, within the respirable range (less than 7 microns) to cause deposition in the lower airway. The use of such powders to increase mucociliary clearance is covered by Australian Patent No 682,756, US Patent No 5817.028, PCT AU 95/00086.

The data supporting this is summarised below in the form of abstracts of published studies. However considerable amount of research would need to bring this therapeutic application to market particularly in the area of toxicology.

Daviskas E, Anderson SD, Brannan JD, Chan H-K, Eberl S, Bautovich G. Inhalation of dry powder mannitol increases mucociliary clearance. *Eur Resp J*, 1997; 10: 2449-2454.

Inhalation of hypertonic saline stimulates mucociliary clearance (MCC) in healthy subjects and those with obstructive lung disease. We investigated the effect of inhaling the osmotic agent mannitol on MCC. We used a dry-powder preparation of mannitol British Pharmacopoea (BP) which was encapsulated and delivered using a Dinkihaler. MCC was measured for 75 min in six asthmatic and six healthy subjects on two occasions before and after the mannitol inhalation or its control, using ^{99m}Tc-sulphur colloid and a gamma camera. The inhaled dose of mannitol was 267±171 mg (mean ±SD) and 400 mg and the percentage fall in forced expiratory volume in one second (FEV1) was 22 ±3% and 4 ±2% in the asthmatic and healthy subjects, respectively. The total clearance in the whole right lung for the 60 min from the start of inhalation of mannitol was greater by 263±11.9% in the asthmatic and 18.1±4.9% in the healthy subjects compared to the control. The total clearance over 75 min was 54.7±9.6% and 33.6±9.4% on the mannitol and control day (p<0.002), respectively, in the asthmatic subjects and 40.5±7.1% and 24.8±7.8% (p<0.002) in the healthy subjects. In conclusion, inhalation of dry-powder

mannitol increases mucociliary clearance in asthmatic and healthy subjects and may benefit patients with abnormal mucociliary clearance.

Daviskas E, Anderson SD, Eberl S, Chan H-K, Bautovich G. Inhalation of dry powder mannitol improves mucociliary clearance in patients with bronchiectasis. Amer Rev Respir Crit Care Med 1999; 159:1843-8.

Bronchiectasis is a disease characterized by hypersecretion and retention of mucus requiring physical and pharmacologic treatment. Recently we reported that inhalation of dry powder mannitol markedly increases mucociliary clearance (MCC) in asthmatic and in healthy subjects. Inhalation of dry-powder mannitol increases mucociliary clearance. In this study we investigated the effect of mannitol on MC in patients with bronchiectasis. Eleven patients 40 to 62 yr of age inhaled mannitol (approximately 300 mg) from a Dinkihaler. MCC was measured over 90 min, in the supine position, on three occasions involving: mannitol or control or baseline, using a radioaerosol technique. On the control day patients reproduced the breathing maneuvers and the number of coughs induced by the mannitol.

Mannitol significantly increased MCC over the 75 min from the start of the intervention compared with control and baseline in the whole right lung, central, and intermediate region. Mean (+/- SEM) clearance with mannitol was 34.0 +/- 5.0% versus 17.4 +/- 3.8% with control and 11.7 +/- 4.4% with baseline in the whole right lung ($p < 0.0001$). The mean number of coughs induced by mannitol was 49 +/- 11. In conclusion, inhalation of dry powder mannitol increased clearance of mucus and thus has the potential to benefit patients with bronchiectasis.

Robinson M, Daviskas E, Eberl S, Baker J, Anderson SD, Bye PTP. The effects of inhaled mannitol on bronchial mucus clearance in cystic fibrosis patients: a pilot study. Eur Respir J 1999; 14(3):678-685.

It has been postulated that hypertonic saline (HS) might impair the antimicrobial effects of defensins within the airways. Alternative non-ionic osmotic agents such as mannitol may thus be preferable to HS in promoting bronchial mucus clearance (BMC) in patients with cystic fibrosis (CF). This study reports the effect of inhalation of another osmotic agent, dry powder Mannitol (300 mg), compared with its control (empty capsules plus matched voluntary cough) and a 6% solution of HS on BMC in 12 patients with cystic fibrosis (CF). Mucus clearance was measured using a radioaerosol/gamma camera technique. Post-intervention clearance was measured for 60 min, followed by cough clearance for 30 min. Neither mannitol nor HS improved BMC during the actual intervention period compared with their respective controls. However during the post-intervention measurement there was a significant improvement in BMC for both the mannitol (8.7 +/- 3.3% versus 2.8 +/- 0.7%) and HS (10.0 +/- 2.3% versus 3.5 +/- 0.8%). There was also a significant improvement in cough clearance with the Mannitol (9.7 +/- 2.4%) compared with its control (2.5 +/- 0.8%). Despite premedication with bronchodilator, a small fall in forced expiratory volume in one second (FEV1) was seen immediately after administration of both the mannitol (7.3 +/- 2.5%) and HS (5.8 +/- 1.2%). Values of FEV1 returned to baseline by the end of the study. Inhaled mannitol is a potential mucoactive agent in cystic fibrosis patients. Further studies are required to establish the optimal dose and the long-term effectiveness of mannitol.

Daviskas E, Anderson SD, Eberl S, Chan H-K, Young IH. The 24 hr effect of mannitol on the clearance of mucus in patients with bronchiectasis. Chest 2000; 199: 414-421.

An investigation was carried out on the acute effect of mannitol on the clearance of mucus, and (1) the 24-h mucus retention, and (2) the mucus clearance rate and lung function 24 h after inhalation of a single dose of mannitol. Clearance of mucus was measured on 3 consecutive days using (99m)Tc-sulfur colloid radioaerosol and a gamma camera. Mannitol, 330 +/- 68 mg (mean +/- SD), was inhaled using a dry powder inhaler only on day 2. Eight patients with bronchiectasis (age range, 29 to 70 years). Measurements and results: On each day, lung images were collected over 2 h and at 24 h. Key findings of the study are as follows: (1) the 24-h retention of mucus was reduced the day after mannitol had been inhaled, compared to the day without mannitol (day 1) in the whole right lung (57.6 +/- 6.2% vs 68.1 +/- 5.9%), central (47.5 +/- 6.7% vs 56.9 +/- 6.5%), intermediate (61.7 +/- 5.6% vs 73.8 +/- 5.5%), and peripheral regions (70.9 +/- 4.3% vs 86.6 +/- 4.6%) ($p < 0.02$); and (2) mannitol helped patients clear mucus within 2 h that might otherwise take up to 24 h, from the whole right lung and defined regions. However, clearance over 60 min measured 24 h after mannitol inhalation was not significantly different to baseline clearance without mannitol (8.7 +/- 1.9% on day 1 vs 9.7 +/- 3.7% 24 h after mannitol; $p > 0.8$). The patients maintained the same lung function the day before and after mannitol had been inhaled: FEV(1) (percent predicted), 79 +/- 5 on day 1 vs 80 +/- 5 on day 3; and forced expiratory flow, midexpiratory phase (percent predicted), 50 +/- 6 on day 1 vs 51 +/- 6 on day 3; $p > 0.6$). Mannitol inhalation acutely increases clearance of mucus, and this effect extends beyond the acute study period, resulting in decreased mucus retention at 24 h.

Attachment 2

Country	Official Number (Patent or Application)	2001/2002 (expected cost)	2002/2003 (expected cost)	2003/2004 (expected cost)
Australia	682756	A\$300	A\$345	A\$390
Canada	2183471	A\$655	A\$5,655	A\$5,655
Europe (EPO)	95910331.8	A\$6,520	A\$6,570	A\$31,620
Japan	7-522021		A\$10,000	A\$10,000
Malaysia	P19603590	A\$3,640	A\$3,675	A\$705
New Zealand	281522			A\$500
Peoples Republic Of China	95191808.7	A\$5,405	A\$5,405	A\$405
Republic Of Korea	96-704666	A\$5,660	A\$5,831	A\$831
Singapore	34525	A\$777	A\$777	A\$917
The Philippines	I-54034	A\$3,640	A\$3,700	A\$750
United States Of America	5817028		A\$1,528	
Viet Nam	SC0131/96		A\$5,000	A\$5,000
TOTAL		A\$26,597	A\$48,486	A\$56,773

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<DESCRIPTION> Exhibit 4.6

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Exhibit 4.6

SERVICE AGREEMENT

THIS AGREEMENT is made the 9th day of December 2002

BETWEEN: ANUTECH PTY LTD ABN 31 008 548 650 of Anutech Court, Cnr Barry Drive & North Rd. ACT 2601 (“Anutech”).

AND: PHARMAXIS PTY LTD ABN 75 082 811 630 of 2/10 Rodborough Road, Frenchs Forest, NSW 2086 (“PharmAxis”).

Recitals

- A. Anutech is a wholly owned subsidiary of the Australian National University (“ANU”)
- B. Anutech and PharmAxis (formerly Praxis Pty Ltd) have entered into an Exclusive License Agreement dated October 1999 for the use of phosphosugars as therapeutics.
- C. PharmAxis has requested and Anutech has agreed, to provide the Services to PharmAxis in accordance with and subject to the terms of this agreement.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, except insofar as the context or subject matter otherwise indicates or requires, the following terms and expressions will have the following meanings:

“**Commencement Date**” means January 1, 2003.

“**Confidential Information**” means all know how, trade secrets, technical information, specifications, data, intellectual property, software, marketing procedures, pricing information, customer and client records, business and corporate or trade information of a party to this agreement which:

- (a) is disclosed to the Recipient by or on behalf of the Discloser or which is otherwise acquired directly or indirectly by the Recipient from the Discloser or any adviser engaged by the Discloser;
- (b) is in oral or visual form, or is recorded or stored in a Document,

and includes without limitation, the fact that Confidential Information is being made available by the Discloser.

“**Intellectual Property**” means all rights in and relating to inventions (including patents): registered and unregistered trade marks, copyright, moral rights, circuit layouts, registered designs, trade secrets, plant varieties, processes, know-how, Confidential Information and all other rights of intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

“**Force Majeure**” event means an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, an act of terrorism, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, and any other cause, whether the kind specifically

enumerated above or otherwise which is not reasonably within the control of the party affected.

“**Foreground IP**” means all:

- (a) Intellectual Property and all intellectual property rights in any materials, including substances, compounds, biological materials, products, samples and devices; and
- (b) Confidential Information;

generated by the staff employed as a result of the Services during the Term.

“**Premises**” means John Curtin School of Medical Research.

“**Fee**” means the amount paid to Anutech, exclusive of GST, for provision of the Services calculated as follows:

$$\text{Fee} = \text{staff salaries} - \text{SRE} + \text{Anutech management fee}$$

where

- (i) staff salaries = total salaries paid to staff employed by Anutech in accordance with this agreement, including leave entitlements such as annual leave and long service leave, where approved by PharmAxis;
- (ii) SRE = all salary related expenses including superannuation, payroll tax, death and disability insurance, leave loading; and
- (iii) Anutech management fee = 15% of staff salaries + SRE

“**Services**” means the:

- (a) employment of research staff, identified by PharmAxis; and
- (b) human resources management;

provided by Anutech to PharmAxis in accordance with clause 2.

“**Term**” means the period commencing on the Commencement Date and continuing for two (2) calendar years.

1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (b) a reference to a convention, statute, ordinance, code or other law or requirement includes regulators and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (c) the singular includes the plural and vice versa;
- (d) all references to currency are to and all payments must be in Australian dollars.
- (e) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (f) the words “include”, “including” or “for example” are not to be interpreted as words of limitation; and
- (g) headings are inserted for convenience and do not affect the interpretation of this Agreement.

2. Provision of Services

2.1 Services

- (a) Anutech will use best endeavours to provide the Services to PharmAxis.
- (b) In the case of staff employment.
 - (i) Anutech will employ staff on terms acceptable to PharmAxis;
 - (ii) PharmAxis will advise Anutech of acceptable terms, including level of remuneration and term of contract;
 - (iii) PharmAxis will be responsible for management of the day to day activities of the staff; and
 - (iv) PharmAxis will be responsible for ensuring that staff take leave entitlements.
- (c) In the case of human resources management Anutech will:
 - (i) ensure that staff are paid fortnightly;
 - (ii) ensure superannuation entitlements are paid; and
 - (iii) undertake payment of payroll tax and other disbursements.

2.2 Fees

- (a) PharmAxis pay Anutech the Fee described in **Schedule 1** quarterly in advance
- (b) PharmAxis will not be obligated to pay Anutech any amounts, or reimburse Anutech for any expenses, not specifically provided for in this agreement, except to the extent PharmAxis specifically approves any such payment in advance in writing.

3. Provision of Premises

PharmAxis

- (a) is responsible for obtaining access to the Premises, and
- (b) will make the Premises available to Anutech to the extent required by Anutech to carry out the Services.

4. Confidentiality

4.1 Recipient and Discloser

If any party discloses Confidential Information to another party, directly or indirectly, the disclosing party is the Discloser and the receiving party is the Recipient

4.2 Must not disclose

The Recipient agrees that it will

- (a) hold Confidential Information in strict confidence and not disclose or cause or permit the disclosure of the Confidential Information, except as permitted under this agreement or with the prior written consent of the Discloser; and
- (b) keep Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this agreement.

4.3 Permitted disclosure

- (a) **Clause 4.2** does not apply to any Confidential Information that:

- (i) subject to clause 4.3(b), the Recipient is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator;
 - (ii) is in the public domain other than as a result of a breach of this agreement or breach of confidence by any other person; or
 - (iii) is received by the Recipient from a party (other than the Discloser or any employee, officer, agent or adviser of the Discloser) legally entitled to possess that information and provide it to the Recipient.
 - (iv) is already in possession of the receiving party at the time of disclosure by the Discloser; or
 - (v) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information.
- (b) If the Recipient must make a disclosure referred to in clause 4.3(a)(i):
- (i) the Recipient must disclose only the minimum Confidential Information required to comply with the applicable law or order; and
 - (ii) before making such disclosure, the Recipient must:
 - (A) give the Discloser written notice of:
 - (I) the full circumstances of the required disclosure; and
 - (II) the Confidential Information which it, proposes to disclose; and
 - (B) consult with the Discloser as to the form of the disclosure.

5. Ownership of Intellectual Property

- (a) Foreground IP will be owned by, and vest in its creation in, PharmAxis.
- (b) PharmAxis grants ANU a royalty free, irrevocable and perpetual non exclusive license to Foreground IP for non-commercial research purposes, including, with the prior written consent of Pharmaxis, collaborations with third parties.
- (c) ANU must not transfer, license, assign or otherwise deal with, or use for any commercial purpose, any Foreground IP without the prior written consent of PharmAxis.

6. Use of Name and Publicity

- (a) Any proposed use of ANU's or a party's name including in the case of ANU the use of the name of any school, department or staff member, in any published material or in connection with any products, promotions or advertising must be approved by the other party in writing prior to release, such approval will not be unreasonably withheld
- (b) PharmAxis may issue press releases factually describing its relationship with Anutech as required by law, regulation or the rules of public stock exchanges.

7. Termination

- (a) This agreement will continue for the Term unless extended or sooner terminated in accordance with the provisions of this clause.
- (b) Either party may terminate:

- (i) immediately by notice if the other party does not remedy any failure to meet any obligations under this agreement within sixty (60) days of written notice of that breach;
 - (ii) immediately by notice at any time after the bankruptcy, insolvency, dissolution or winding up of the other party (other than dissolution or winding up for the purposes of reconstruction or amalgamation);
 - (iii) by sixty (60) days notice, whether or not for cause.
- (c) If PharmAxis terminates this agreement or defaults on its obligations during the Term PharmAxis will meet all financial obligations with respect to:
- (i) salaries and related costs, including termination costs, of any employee appointed under this agreement; and
 - (ii) any commitments incurred as of the date of the notice of termination that cannot be cancelled.
- (d) Termination or expiration of this agreement will not effect the rights and obligations accrued prior to termination

8. Dispute Resolution

- (a) A party seeking to resolve a dispute must notify the other party and upon receipt of such notification the parties must defer resolution of the Dispute to their respective chief executive officers.
- (b) If the dispute is not resolved in thirty (30) days the parties may refer the matter to the Australian Commercial Dispute Centre Limited ("ACDC") for mediation.
- (c) If a dispute has not been resolved within (60) days of referral to ACDC either party is free to initiate proceedings in court.
- (d) This clause 8 does not need to be followed if a party is seeking urgent interlocutory relief.

9. Tax

- (a) Anutech will invoice PharmAxis quarterly in advance with a correctly rendered tax invoice, with the amount of GST shown as a separate item to obtain PharmAxis's payment of the Fee.
- (b) Where a GST is payable in respect of services made to PharmAxis under this Agreement, then PharmAxis must increase its Fee to the full effect of the GST and any other New Tax System changes.
- (c) PharmAxis will not be liable to increase the funding (as detailed in Schedule 2) by more than the amount of GST and other New Tax System changes payable on the contributions made under this agreement.
- (c) For the purpose of this Clause
 - (i) "GST" has the meaning as given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999;
 - (ii) "Supply" has the meaning as given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999; and
 - (iii) "New Tax System changes" has the meaning as given in section 75AT of the Trade Practices Act 1974

10. Warranties

10.1 General Warranties

The Parties warrant that

- (a) each has the power to enter into and perform this Agreement; and
- (b) this Agreement is a legal and valid obligation binding upon each of them and enforceable in accordance with its terms.

10.2 Warranties by Anutech

Anutech makes no warranties, express or implied, as to any matter whatsoever, including, without limitation, the condition, originality, or accuracy of the research or any invention(s) or product(s), whether tangible or intangible, conceived, discovered, or developed under this agreement, or the ownership, merchantability, or fitness for a particular purpose of the research or any such invention or product.

11. Indemnity

- (a) Anutech will not be liable for any direct, consequential, or other damages suffered by PharmAxis, any licensee, or any others resulting from the use of the research results or any such invention or product.
- (b) Subject to **clause 11(a)**, each party will be responsible and assume liability for its own sole negligent acts or wilful omissions and those of its officers or employees in the performance of this agreement and agrees to indemnify and hold harmless the other party from such liability.

12. Notices

- (a) Any Notices under this Agreement must be in writing and will be considered delivered when sent by pre-paid registered mail or facsimile (providing a printed confirmation that the facsimile was successfully sent is obtained) and addressed to the Parties as set out below, or at such substituted addresses as the Parties may notify each other in writing.
- (b) In the absence of proof to the contrary, a notice will be deemed to have been received, in the case of pre-paid registered mail, 3 days after it was sent if sent locally and 10 days after it was sent if sent overseas and in the case of facsimile transmission, at the time recorded on the transmission confirmation report.

PharmAxis
Chief Executive Officer
2/10 Rodborough Road
Frenchs Forest
NSW 2086
Fax: 02 9451 3622

Anutech
General Manager - Technology Division
Anutech Pty Ltd
GPO Box 4
Canberra. Act 2601
Fax (+61) 2 62571433

13. Force Majeure

13.1 Force Majeure consequences

Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligation under this agreement, and that party:

- (a) gives to the other party prompt notice of that Force Majeure including reasonable particulars, and in so far as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation;
- (b) uses all possible diligence to remove that Force Majeure as quickly as possible having regard to the nature and extent of the Force Majeure;
- (c) that obligation is suspended so far as it is affected by Force Majeure during the continuance of that Force Majeure and that party will be allowed a reasonable extension of time to perform its obligations.

13.2 Work-around

If after a period of thirty (30) days, the Force Majeure has not ceased, the parties must meet to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.

13.3 Strikes

The requirement that only Force Majeure must be removed with all possible diligence does not require the settlement of strikes, lockouts and other labour disputes or claims on terms contrary to the wishes of the party affected.

14. General Provisions

14.1 Applicable law

This Agreement will be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory. The parties submit to the exclusive jurisdiction of the Courts of the Australian Capital Territory.

14.2 Clause severance

Any provision of this agreement that is held void by a court of competent jurisdiction or is voidable by a party or is or becomes at that time unlawful or unenforceable will, to the extent to which it is void or voidable or is unlawful or unenforceable, be deemed to be excised from and not form party of this agreement, without affecting the validity or enforceability of the remaining provisions to the fullest extent permitted by law or in equity.

14.3 Costs

Each party agrees to bear its own legal and other costs and expenses of and incidental to, the preparation, execution and completion of this Agreement and of any related documentation.

14.4 Entire agreement

This agreement

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes all prior communications, negotiations, arrangements and agreements, whether oral or written, with respect to the subject matter of this Agreement.

14.5 Relationship between the parties

- (a) A party must not represent itself and must make best endeavours to ensure that its employees, agents and contractors do not represent themselves, as being employees or, agents or partners of the other party.

(b) Nothing in this agreement will be taken to constitute a relationship of employment, agency, partnership or joint venture between the parties.

14.6 Survival

Clauses 4,5,6,7(c), 8, 10.1, 11 and 12 will survive the expiration of early termination of this Agreement

14.7 Variation

This Agreement may only be amended in writing signed by all Parties.

14.8 Waiver

A waiver by a Party of any rights arising from a breach or non-observance by the other Party of a term of this Agreement will not be taken to operate in any way as a waiver of any right arising from any subsequent continuation of that breach or non-observance, or any further or other breach or non-observance of the same or any other term.

EXECUTED as an agreement

SIGNED SEALED and DELIVERED for
Anutech Pty Ltd by an authorised
officer in the presence of

/s/ G. Page

/s/ Fiona Tapfer
Signature of witness

/s/ G. Page
Name of Officer

/s/ Fiona Tapfer
Name of witness (print)

Managing Director
Office held

SIGNED SEALED and DELIVERED for
the **PharmAxis Pty Ltd** by an authorised
officer in the presence of

/s/ Alan D Robertson

/s/ David McGarvey
Signature of witness

/s/ A.D. Robertson
Name of Officer

/s/ David McGarvey
Name of witness (print)

CEO
Office held

Schedule 1

The Fee is calculated as:

$$\text{Fee} = \text{staff salaries} + \text{SRE} + \text{Anutech management fee}$$

Where:

- (i) staff salaries = total salaries paid to staff employed by Anutech in accordance with this agreement, including leave entitlements such as annual leave and long service leave, where approved by PharmAxis;
- (ii) SRE = all salary related expenses including superannuation, payroll tax, death and disability insurance, leave loading; and
- (iii) Anutech management fee = 15 % of staff salaries + SRE

As of the Commencement Date the Fee covers the following staff at the indicated salary levels, although this is subject to change pursuant to the terms of this agreement.

Staff	Salary	SRE (*)	Total
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
			\$ *
Anutech Mgt Fee			\$ *
Annual Total			\$ *

Quarterly Payment	Payment Due	Amount Due
1/1/03-31/12/03	1/1/03	\$ *
	1/4/03	\$ *
	1/7/03	\$ *
	1/10/03	\$ *
1/1/04-31/12/04	1/1/04	\$ *
	1/4/04	\$ *
	1/7/04	\$ *
	1/10/04	\$ *

* Confidential portion omitted and filed separately with the Commission.



1st December 2004

Dr Christine Hirst
Technology Manager • Biomedical & Health
ANU INNOVATION

Dear Christine,

Service Agreement between Pharmaxis Ltd and ANU Enterprises Pty Ltd
Dated 9th December 2002

The above Service Agreement expires on 31st December 2004. Pharmaxis wishes to extend the agreement on the same terms and conditions as contained in the current agreement for a further two years, to 31 December 2006. A copy of the current list of staff, their salaries and the amount payable to ANU Enterprises is attached. Pharmaxis will pay any increases to these stated salaries that arise from any Enterprise Agreement of ANU Enterprises Pty Ltd with the project staff.

Will you please confirm in writing your agreement to our proposal.

Sincerely,

/s/ David McGarvey
David McGarvey
Chief Financial Officer/Company Secretary

Extension Approved:

Signed by a duly authorised officer on) /s/ **[ILLEGIBLE]**
Behalf of **ANU Enterprises Pty Ltd ABN**
31 008 548 650 in the presence of:)

/s/ **[ILLEGIBLE]**) FRANK PAPA
Witness) Print Name CFO/SECRETARY

[ILLEGIBLE]) 6/12/2004
Print Name) Date

Pharmaxis Ltd
ABN 75 082 811 630

Unit 2, 10 Rodborough Road T 02 9451 5961
Frenchs Forest NSW 2086 F 02 9451 3822
Australia www.pharmaxis.com.au

**Schedule 1
as at 1 January, 2005**

Staff	Salary	SRE (*)	Total
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
*	\$ *	\$ *	\$ *
			\$ *
ANU Enterprise fee 15%			\$ *
			\$ *
Quarterly payment			\$ *

* Confidential portion omitted and filed separately with the Commission

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Exhibit 4.7



Industry

Research and

**R & D Start Program
Grant Agreement**

Development

Board

General Conditions

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Operative Provisions

1 Interpretation

1.1 Unless the contrary intention appears:

Application means the application submitted by the Grantee in respect of which the Grant has been awarded.

Approved Financial Institution means a deposit taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia.

Budget means the budget of planned Eligible Expenditure (by Financial Year) for the Project (set out in item 7 of the schedule).

Completion Date means the agreed completion date for the Project set out in item 3(b) of the schedule.

Control has the meaning given by section 50AA of the Corporations Act 2001 (Cth)

Core Start has the meaning given in the definition of "Start Grants" in clause 4(1) of the Directions.

Deal With means:

- (a) sell, transfer, novate, declare a trust over or otherwise dispose of or procure or effect the disposal of, any interest or right; or
- (b) effect a change in the beneficial interest or beneficial unit holding under a trust which has an interest or right.

Directions means the R&D Start Program Directions No. 3 of 2002.

Eligible Expenditure has the meaning given in clause 4(1) of the Directions and the relevant Industry Research and Development Board policies effective at the date of this deed.

Encumbrance means a security interest or any other legal or equitable interest or right which is either imposed by law or which is given to any person, over property or rights under a contract.

Financial Year means the 12 month period beginning 1 July of one year and ending 30 June of the following year.

Floating Charge has the meaning given by section 9 of the Corporations Act 2001 (Cth).

Grant means the amount set out in item 4 of the schedule.

Grant Percentage means the percentage of Eligible Expenditure to be paid to the Grantee as the Grant, as set out in item 5 of the schedule.

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

Insolvent means being an insolvent under administration or insolvent (each as defined in the Corporations Act 2001) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment, or

composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or similar effect happen under the laws of any jurisdiction.

Intellectual Property means all statutory and other proprietary rights in respect of trade marks, patents, circuit layouts, copyrights, designs, moral rights, confidential information, expertise, knowledge, skills, techniques, methods, procedures, ideas and concepts, plant varieties and all other rights with respect to intellectual property as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation.

National Benefit Indicators for Commercialisation Purposes means the desirable indicators agreed by the Industry Research & Development Board, from time to time, by which the national benefit contribution for commercialisation purposes of R&D Start projects to Australia and the Australian economy is to be assessed.

Particular Conditions means those conditions which are specific to the Grant and the Project.

Payment Schedule means the schedule of annual payments of the Grant (by Financial Year) set out in item 7 of the schedule.

Performance Milestone means a performance milestone set out in item 10 of the schedule.

Program Funding means the funding made available by the Parliament of the Commonwealth of Australia for the R&D Start Program in any given Financial Year, being the funding specified in the Portfolio Budget Statement (as varied by any Portfolio Additional Estimates Statement) for that year.

Project means the project described in item 9 of the schedule.

Project Intellectual Property means Intellectual Property created in the course of the Project including improvements, inventions and discoveries arising out of the conduct of the Project.

R&D Start Program has the meaning given to that term in clause 4(1) of the Directions.

Relevant Year for the Grantee means:

- (a) if the Grantee has been incorporated for each of the 3 years preceding the year of income in which the Application is made - each of those years; or
- (b) if the Grantee has been incorporated for fewer than 3 years preceding the year of income in which the Application is made - each of those years in which the Grantee was incorporated.

Repayable Contribution means that part of the Grant which is made under Start Premium that is:

- (a) that percentage by which the Grant exceeds 50% of the Eligible Expenditure on the Project, where provided in conjunction with Core Start; and

- (b) that percentage by which the Grant exceeds 20% of the Eligible Expenditure on the Project, where provided in conjunction with Start Plus.

Retention Amount means the amount specified in item 11 of the schedule.

Start Plus means the program of financial assistance for research and development projects of non tax-exempt companies with turnovers of \$50 million or more in one, or more than one, Relevant Year.

Start Premium means the program of financial assistance:

- (a) for high merit research and development projects of non tax-exempt companies; and
- (b) that is repayable to the Commonwealth.

1.2 **Including, includes and in particular** do not limit the words which precede them or to which they refer.

1.3 Unless the contrary intention appears:

- (a) a person includes a firm, a body corporate, an unincorporated association or an authority;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (c) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements or any of them; and
- (f) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.4 Headings are inserted for convenience of reference only and are not to be used in the interpretation of this deed.

1.5 A reference to the schedule is a reference to the schedule to the Particular Conditions.

1.6 A reference to this deed includes the Particular Conditions.

2. Warranties

2.1 The Grantee warrants that as at the date of this deed and on each day during the term of this deed:

- (a) all information that the Grantee provides to the Commonwealth from time to time (including information given in the Application (except as otherwise specified in this deed), incorporated into the Particular Conditions, or given in any report to the Commonwealth by the Grantee under this deed is true and correct;

- (b) Without limiting the generality of clause 2.1(a):
- (1) the Grantee is:
 - (A) incorporated under the Corporations Act 2001 (Cth); and
 - (B) not exempt from income tax; and
 - (C) registered for GST purposes pursuant to the A New Tax System (Goods and Services Tax) Act 1999 with the Australian Business Number as specified adjacent to the Grantee's name on the first page of the Particular Conditions;
 - (2) the Project involves research and development activities (as defined in the Industry Research and Development Act 1986 (Cth));
 - (3) the Grantee does not have any interests or obligations that conflict with its interests or obligations under this deed; and
 - (4) if the Grantee is a recipient of financial assistance under Core Start, the combined turnover of the Grantee, and each body corporate (if any) related to the Grantee, is less than \$50 million in the Relevant Year;
- (c) the Grantee, has and will have, at all times, all the necessary rights in respect of all Intellectual Property and technical information, including but not limited to, all designs, specifications, data, drawings, plans, reports, models, prototypes and other things that will be required to conduct the Project and to commercialise the Project's outcome; and
- (d) the Grantee is not aware of any circumstances which adversely affect or might adversely affect the Grantee's ability to fulfill its obligations under this deed.
- 2.2 If the Grantee becomes aware of a breach of warranty, the Grantee must immediately notify the Commonwealth of that breach.
- 2.3 The Commonwealth warrants that as at the date of this deed, and on each day during the term of this deed, the Department of Industry, Tourism and Resources is registered for GST purposes pursuant to the A New Tax System (Goods and Services Tax) Act 1999 with the Australian Business Number as specified adjacent to the Commonwealth's name on the first page of the Particular Conditions.

3 Payment of Grant

Payment of Grant

- 3.1 The Commonwealth is obliged to pay the Grant to the Grantee in accordance with the Payment Schedule only if:
- (a) The commonwealth has sufficient Program Funding available at the time a payment is due to the Grantee; and

- (b) the Grantee has demonstrated satisfactory progress and expenditure on the Project in accordance with this deed.
- 3.2 The Grantee will be entitled to be paid the Grant Percentage of Eligible Expenditure incurred on the Project during the duration of the Project as specified in item 3 of the schedule, up to but not exceeding the amount of the Grant.
- 3.3 Expenditure incurred on the Project which is not paid by the Grantee within 3 months of completion of the Project will be deemed not to be Eligible Expenditure.
- 3.4 In any given Financial Year of the Project, the Commonwealth is not obliged to pay to the Grantee an amount in excess of the total amount shown as payable during that year in the Payment Schedule.
- 3.5 On or about 16 March of each Financial Year, the Commonwealth may;
 - (a) where a revised Budget has been approved under clause 4.4 for that year:
 - (1) vary the Grant to equal the Grant Percentage of revised Budgeted Eligible Expenditure; or
 - (2) vary the Payment Schedule to reflect any change in the timing or amount of Budgeted Eligible Expenditure; or
 - (b) where no revised Budget has been approved under clause 4.4 for that year - vary the Grant or the Payment Schedule as the Commonwealth considers reasonably necessary having regard to actual Eligible Expenditure incurred to date and progress of the Project.

Progress Payments

- 3.6 The Grant will be paid in instalments by direct credit to the bank account established by the Grantee under clause 4.12.
- 3.7 An initial payment, and subsequent progress payments, may be made in advance for the next quarterly period, in the Commonwealth's absolute discretion.
- 3.8 Subject to the other terms of this deed, subsequent progress payments will be made if the Commonwealth is satisfied the Grantee has incurred the relevant Eligible Expenditure, achieved satisfactory progress on the Project having regard to Performance Milestones, submitted all progress reports due, and met its other obligations under this deed.
- 3.9 The commonwealth may defer a progress payment otherwise due in a Financial Year to the next Financial Year if, in the Commonwealth's reasonable opinion, insufficient Program Funding may be available to meet that commitment in the first-mentioned Financial Year.
- 3.10 Notwithstanding any other clause of this deed, the Grantee is not entitled to a payment if that payment would result in the Grantee having received in total more than the Grant Percentage of Eligible Expenditure incurred by the Grantee up to the date of the most recent progress report.

- 3.11 Subject to clause 3.12, the final payment, including the Retention Amount, will be made to the Grantee when the Project has been completed to the satisfaction of the Commonwealth and the Grantee has provided all reports, and will be equal to the Grant Percentage of the total Eligible Expenditure that the Grantee has made on the Project, less all payments previously made.
- 3.12 The Grantee will not be entitled to receive any amount which, when added to all payments previously made, would result in the Grantee receiving more than the total amount of the Grant.

Commonwealth rights

- 3.13 The Commonwealth's determination as to whether expenditure on the Project is Eligible Expenditure is final and binding on the Grantee.
- 3.14 The Commonwealth is not obliged to make any payment of the Grant:
- (c) if, in the Commonwealth's reasonable opinion, the Grantee has not complied with all its obligations under this deed;
 - (d) if the Grantee becomes Insolvent; or
 - (e) after the Commonwealth has become entitled to terminate the deed.

4 Conduct of Project

Conduct of Project

- 4.1 The Grantee must use the Grant solely for the Project and in accordance with the Budget and the terms of this deed.

Initial Project Budget

- 4.2 The Grantee must, if it has not already done so, provide the Commonwealth with a Budget within 7 days of the date of this deed, in the form approved by the Commonwealth.

Annual Budget review

- 4.3 The Grantee must give to the Commonwealth by 1 February of each Financial Year a revised Budget in the form approved by the Commonwealth, including details of any changes the Grantee reasonably considers necessary so as to ensure the Budget continues to accurately reflect planned Eligible Expenditure for the Project.
- 4.4 The Commonwealth may approve or reject a revised Budget in its sole discretion within 30 days of receipt.
- 4.5 If the revised Budget is approved by the Commonwealth, the then current Budget is replaced by the revised Budget approved under clause 4.4.

Project Performance

- 4.6 If a Performance Milestone is not achieved or is unlikely to be achieved by the date for achievement of that Performance Milestone as set out in item 10 of the schedule the Grantee must notify the Commonwealth in its next report.

- 4.7 When notifying the Commonwealth pursuant to clause 4.6, the Grantee must specify:
- (a) the Grantee's proposal to ensure that the planned outcomes of the Project are achieved;
 - (b) the planned date for achievement of the relevant Performance Milestone;
 - (c) the expected effect the delay will have on the Project; and
 - (d) changes to key personnel, if any, having an impact on the matters reported under paragraphs (a) to (c).
- 4.8 Upon receipt of notification pursuant to clause 4.6, if the Commonwealth considers in the Commonwealth's absolute discretion that the failure by the Grantee to reach a Performance Milestone may compromise the capacity of the Grantee to achieve the planned outcomes for the Project the Commonwealth may terminate the deed pursuant to clause 9.

Variations

- 4.9 The Grantee may reallocate Budgeted expenditure or vary its work methods and schedules as it considers necessary to undertake and complete the Project, provided it does not materially change the Project.
- 4.10 If the Grantee wishes to alter or modify a Performance Milestone or there is any breach or likely breach of this deed the Grantee must notify the Commonwealth in its next report.
- 4.11 Upon receipt of notification pursuant to clause 4.10, the Commonwealth may, in the Commonwealth's absolute discretion, by written response to the Grantee, approve or not approve the Grantee's proposal to ensure that the planned outcomes of the Project are achieved.

Bank Account

- 4.12 The grantee must establish a separate account with an Approved Financial Institution for the sole purpose of handling the Grant and interest on the Grant, and provide the Commonwealth with sufficient details to identify the account on request.
- 4.13 The Grantee must pay all installments of the Grant into the account and not use the account for any purpose other than the deposit and withdrawal of the Grant and any interest.

Reporting

- 4.14 The Grantee must give to the Commonwealth reports relating to the conduct and management of the project and the commercialisation of its outcomes in the form, containing the matters and at the times required by the Commonwealth from time to time, which requirements as at the date of this deed are set out in item 12 of the schedule.
- 4.15 If the Commonwealth requires a report to be audited, the report must be audited by a member of the Institute of Chartered Accountants, a member of the Society of Certified Practising Accountants or a Public Practice Certified

Member of the National Institute of Accountants, not being an employee, shareholder, director or other officeholder of the Grantee.

- 4.16 If in the Commonwealth's opinion either the form or the content of a report is not adequate for the Commonwealth's purposes, and the Commonwealth gives notice to the Grantee to that effect, the Grantee must submit a revised report satisfactory to the Commonwealth within 30 days of receipt of notice by the Grantee.

Records to be kept

- 4.17 The Grantee must keep to the Commonwealth's satisfaction all records (including original receipts and invoices) relating to the conduct and management of the Project and commercialisation of its outcomes, necessary to provide a complete, detailed record and explanation of:

- (a) expenditure by the Grantee on the Project;
- (b) Project activities and the progress of the Project and its commercialisation;
- (c) any amounts of GST paid by the Grantee in respect of any supply made to the Commonwealth under this deed; and

any other records relating to the Project which are required by the Commonwealth.

- 4.18 Those records must be retained by the Grantee during the Project and for 5 years after the Completion Date.

Inspection and audit

- 4.19 The Commonwealth or its auditor may at reasonable times and on reasonable notice enter the Grantee's premises and inspect the records kept by the Grantee, and progress with the Project, to review the Grantee's compliance with this deed.
- 4.20 The Grantee must give the Commonwealth and its auditor all necessary facilities and assistance to enable them to conduct an audit.
- 4.21 In conducting a review under clause 4.19, the Commonwealth or its auditor may take copies of any records (books, documents, invoices, receipts and any other papers) that the Commonwealth or the auditor considers relevant to the Project.

Confidentiality

- 4.22 The Commonwealth must ensure that it and anyone authorised by it use confidential information to which they are given access, only for the purposes of this deed and do not disclose or use it for any other purpose unless required by law.

Affirmative Action

- 4.23 The Grantee must in undertaking the Project and commercialising its outcomes comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999*.

5 Evaluation

- 5.1 The Grantee must cooperate in the evaluation of the R&D Start Program by the Commonwealth.
- 5.2 The Grantee must, if requested by the Commonwealth, provide information and completed survey forms relating to the Project and the R&D Start Program during the Project and for 5 years after the Completion Date.
- 5.3 The Grantee must comply with a request under clause 5.2 within 28 days of receiving the request.

6 Commercialisation

- 6.1 The Grantee must use its best endeavours to commercialise the Project on normal commercial terms within a reasonable time of completion of the Project.
- 6.2 The parties acknowledge that the giving of the Grant for the purposes of the Grantee undertaking the Project is intended to deliver substantial national benefit to Australia, and that substantial national benefit will be deemed to have been satisfactorily delivered either where the Project is undertaken and commercialised as represented by the Grantee in the Application, or where although the Project is commercialised in a country other than Australia it is undertaken and commercialised in line with the National Benefit Indicators for Commercialisation Purposes.
- 6.3 The Grantee must notify the Commonwealth immediately if, at any time, the Grantee decides that it wishes to commercialise the Project other than as represented in the Application and as a result of the proposed change:
 - (a) the Project would no longer be commercialised on normal commercial terms;
 - (b) significantly additional aspects of the Project would be commercialised in a country other than Australia; or
 - (c) any overseas commercialisation would deliver significantly reduced national benefit when compared to the proposed commercialisation arrangements set out in the Application.

The Grantee must when notifying the Commonwealth give details of its reasons for making its decision.

- 6.4 If the Commonwealth (whether or not it has received a notice from the Grantee under clause 6.3) is of the opinion that the Grantee is not commercialising the Project on normal commercial terms, or that the Grantee's commercialisation is not delivering substantial national benefit as contemplated by clause 6.2, the Commonwealth may by notice to the Grantee require the Grantee to repay some or all of the Grant, together with interest at the rate specified in item 6 of the schedule.

7 Other Financial Assistance

- 7.1 The Grantee must give the Commonwealth details of any financial assistance the Project receives from another Commonwealth, State or Territory government source.
- 7.2 The Commonwealth may reduce the size of the Grant after taking into account that other financial assistance.

8 Acquittal of Grant

- 8.1 If at any time the total amount paid to the Grantee under this deed exceeds:
- (a) the Grant; or
 - (b) the total of the Grant Percentage of the Eligible Expenditure incurred to date,
- the Commonwealth may by notice to the Grantee require the Grantee to repay the amount of the excess to the Commonwealth.
- 8.2 If the Grantee expends the Grant other than in accordance with this deed the Commonwealth may by notice require the Grantee to repay all or some of the Grant paid to the Grantee, plus interest at the rate set out in item 6 of the schedule.
- 8.3 If the Commonwealth gives the Grantee a notice under clause 8.1 or 8.2, the Grantee must repay to the Commonwealth the amount notified within 28 days of receipt of the notice.

9 Termination

- 9.1 Subject to clause 9.4 the Commonwealth may terminate this deed by notice to the Grantee if:
- (a) the Grantee is in breach of this deed, that breach is capable of being remedied and the Grantee fails to remedy that breach within 21 days of receipt of a notice from the Commonwealth requiring it to do so (or within any longer period specified in the notice);
 - (b) the Grantee is in breach of a warranty set out in this deed;
 - (c) the Grantee is otherwise in breach of this deed; or
 - (d) the Grantee is unable, or threatens to become unable, to pay all of its debts as and when they become due, or goes into administration or receivership.
- 9.2 On termination of this deed:
- (a) the Commonwealth's obligation to pay any amount of the Grant that is unpaid as at the date of termination ceases;
 - (b) the Grantee must give the Commonwealth reports as required by the Commonwealth as at the date of termination; and

(c) the Commonwealth may by notice to the Grantee require the Grantee to repay some or all of the Grant paid to the Grantee, plus interest at the rate set out in item 6 of the schedule.

- 9.3 Interest payable under clauses 6.4, 8.2 and 9.2(c) is calculated on daily rests from the date of payment by the Commonwealth of an amount under clause 3 to the date of repayment by the Grantee.
- 9.4 The Commonwealth may not take action under clause 9 for a breach of this deed due to a cause or causes beyond the Grantee's reasonable control which does not continue for more than 12 weeks in the aggregate.
- 9.5 This deed may be terminated at any time by the mutual written agreement of the parties.

10. No Dealing With Grantee's rights

- 10.1 Unless expressly authorised to do so under this deed, the Grantee must not Deal With or grant or create any Encumbrance over its rights under this deed or its interest in the Project Intellectual Property without the prior written consent of the Commonwealth.
- 10.2 A change in Control of the Grantee is taken to be Dealing With the Grantee's rights under this deed.
- 10.3 If the Grantee Deals With, or grants or creates any Encumbrance over its rights under this deed or its interest in the Project Intellectual Property without the prior written consent of the Commonwealth and the Commonwealth reasonably considers that this event adversely affects or may adversely affect the objectives from time to time of the R&D Start Program, the Commonwealth may terminate this deed pursuant to clause 9.
- 10.4 The Commonwealth may impose conditions (a breach of which is a breach of this deed) in giving its consent under clause 10.1, including, but not limited to, requiring the Grantee and any other person concerned in a transaction referred to in clause 10.1 to execute all documentation as required by the Commonwealth.
- 10.5 The giving of a Floating Charge over the assets and undertaking of the Grantee is not to be taken to be a breach of clause 10.1.

11 Start Premium: Repayable Contribution

- 11.1 If the Grantee is a recipient of financial assistance under Start Premium, the Grantee must repay to the Commonwealth the Repayable Contribution plus interest at the rate set out in item 15.3 of the schedule in accordance with the requirement set out in item 15 of the schedule.

12. Acknowledgement and Public Statements

- 12.1 The Grantee must acknowledge the financial assistance received from the Commonwealth under the R&D Start Program in any public statements about the Project until the Completion Date.

- 12.2 The Commonwealth may publicise the awarding of the Grant at any time after it is awarded.
- 12.3 The Commonwealth may include in press releases and general announcements about the Grant and in its annual report, the following information.
- (a) the name of the Grantee;
 - (b) the amount of the Grant; and
 - (c) the title and a brief description of the Project.

13 Goods and Services Tax

- 13.1 Unless otherwise indicated, all consideration for any supply under this deed is exclusive of any GST imposed in relation to the supply.
- 13.2 If GST is imposed on any supply made by the Grantee to the Commonwealth under this deed, the Commonwealth will pay the amount imposed to the Grantee in addition to the consideration required under this deed.
- 13.3 If for any reason the Commonwealth pays to the Grantee an amount under clause 13.2 which is more than the GST imposed on the supply, the Grantee must repay the excess to the Commonwealth on demand, or the Commonwealth may set-off the excess against any other amounts due to the Grantee.
- 13.4 The Grantee must comply with Part VB of the Trade Practices Act 1974 in relation to any supply made to the Commonwealth under this deed.
- 13.5 The Commonwealth is not liable to reimburse the Grantee for any amount in relation to which the Grantee may claim an input tax credit (whether or not claimed).
- 13.6 If GST is imposed on any supply made by the Grantee to the Commonwealth under this deed in return for all or any part of the Grant, the Department of Industry, Tourism and Resources may issue a 'recipient created tax invoice' to the Grantee for the supply in question and the Grantee must not issue a tax invoice for that supply.
- 13.7 If for any reason the Grantee or the Department of Industry, Tourism and Resources ceases to be registered for GST purposes, becomes aware of any reason why its registration may be cancelled, or ceases to satisfy any of the requirements of public ruling GSTR 2000/10, it must immediately notify the other party.
- 13.8 If the Grantee is of the opinion that it is a 'government related entity' and that the Grant is 'specifically covered by any appropriation under an Australian law' for the purposes of section 9-15(3)(c) of the A New Tax System (Goods and Services Tax) Act 1999, the Grantee must immediately notify the Department of Industry, Tourism and Resources and provide materials supporting that opinion.

14 Notices

- 14.1 Any notice, request, approval, consent or other communication to be given or served pursuant to this deed must be in writing and addressed and signed as the case may be, as specified in item 13 of the schedule.
- 14.2 A notice, request, approval, consent or other communication must be delivered by hand, sent by prepaid post, transmitted electronically or transmitted by facsimile.
- 14.3 A notice, request approval, consent or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;
 - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 business days after the date on which it was sent; and
 - (c) if transmitted electronically or by facsimile, upon receipt by the sender of an electronic or facsimile acknowledgment that the communication has been properly transmitted to the recipient.

15. General

- 15.1 A provision of, or a right created under, this deed may not be:
- (a) waived except in writing signed by the party granting the waiver; or
 - (b) varied except in writing signed by the parties.
- 15.2 This deed and the transactions contemplated by this deed are governed by the Industry Research and Development Act 1986 and the laws in force in the Australian Capital Territory.
- 15.3 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and courts of appeal from them for determining any dispute concerning this deed or the transactions contemplated by this deed.
- 15.4 Each party waives any right it has to object to an action being brought in those courts, including claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.
- 15.5 Obligations under this deed, unless otherwise stated, terminate 5 years after the Completion Date.

Project No: GRA02819



**R&D Start Program
Grant Agreement**

Particular Conditions

Parties

**Commonwealth of Australia acting
through the Industry Research and
Development Board**

ABN 51 835 430 479 001
(Department of Industry, Tourism and
Resources)

Postal Address NSW State Manager
Department of Industry, Tourism and Resources
GPO Box 9839
SYDNEY NSW 2001

The Grantee

Pharm Axis Pty Ltd

- ABN 75082811630
- ACN 082 811 630
- postal address 2/10 Rodborough Road
FRENCHS FOREST NSW 2086
- business address 2/10 Rodborough Road
FRENCHS FOREST NSW 2086

Operative Provisions

1. This Grant is made to the Grantee in respect of the Project by the Industry Research and Development Board on behalf of the Commonwealth to the Grantee under the R&D Start Program.
2. The Grant is made pursuant to the Industry Research and Development Act 1986 and the relevant Ministerial Directions issued under sections 19 and 20 of that Act.
3. The Grant is made on the terms and conditions of the Grant Agreement, which comprises the General Conditions (version 7.2) and the Particular Conditions (including the schedule).
4. The Grantee acknowledges that it has received and read a copy of the General Conditions (version 7.2), and agrees that the terms and conditions of the General Conditions form part of the Grant Agreement.
5. Terms defined in the General Conditions (version 7.2) have the same meaning in the Particular Conditions.
6. If there is an inconsistency between the Particular Conditions and the General Conditions (version 7.2), the Particular Conditions prevail to the extent of the inconsistency.

The Schedule

- 1 Project Title** The Development of New Treatments for Cystic Fibrosis
- 2 Project Reference Number** GRA02819
- 3 Project Duration**
 - (a) Commencement Date: 6 March 2003
 - (b) Completion Date: 31 December 2005
- 4 Grant** A maximum amount of \$3,013,658
- 5 Grant Percentage of Eligible Expenditure** 50%
- 6 Interest Rates** 4.75% per annum
- 7 Project Planned Eligible Expenditure by Financial Year**

Head of Expenditure	Estimated Expenditure \$				Total \$
	2002/03	2003/04	2004/05	2005/2006	
R&D Salary Expenditure	*	*	*	*	*
Contract Expenditure	*	*	*	*	*
Plant Expenditure	*	*	*	*	*
Prototype Expenditure	*	*	*	*	*
Other Expenditure	*	*	*	*	*
Project Eligible Expenditure	*	*	*	*	*
Annual Cap Amount	*	*	*	*	3,013,658

- 8 Initial Payment** \$700,000

9 Project Description and Planned Outcomes

The product will be a new treatment option for patients suffering from cystic fibrosis. It will be administered as a dry powder for inhalation to improve lung functions and reduce infection rate.

* Confidential portion omitted and filed separately with the Commission

10 Performance Milestones and Planned Achievement Dates

Major Milestone	Expected Achievement Date
1 *	*
2 *	*
3 *	*
4 *	*
5 *	*
6 *	*
7 *	*
8 *	*
9 *	*
10 *	*
11 *	*
12 *	*

11 Retention Amount \$150,683

12 Reports

Review Type	Due Date	Report Period	Audit Report Y/N
Progress	28 July 2003	7 March 2003 in 30 June 2003	
Progress	28 October 2003	1 July 2003 to 30 September 2003	
Progress	28 January 2004	1 October 2003 to 31 December 2003	
Progress	28 April 2004	1 January 2004 to 31 March 2004	
Progress	28 July 2004	1 April 2004 to 30 June 2004	Y
Progress	28 October 2004	1 July 2004 to 30 September 2004	
Progress	28 January 2005	1 October 2004 to 31 December 2004	
Progress	28 April 2005	1 January 2005 to 31 March 2005	
Progress	28 July 2005	1 April 2005 to 30 June 2005	
Progress	28 October 2005	1 July 2005 to 30 September 2005	
Final	14 February	1 October 2005 to 31 December 2005	Y

Reports must conform with the requirements in the Project Reporting Guide supplied to the Grantee by the Commonwealth, as varied from time to time by the Commonwealth and notified to the Grantee.

Unless the Grantee is otherwise notified by the Commonwealth, commercialisation reports will be required 1, 3 and 5 years after completion of the Project, in the format supplied by the Commonwealth at those times.

* Confidential portion omitted and filed separately with the Commission

13 Notices

Notices must be addressed as follows:

- a) if given to the Commonwealth, addressed and forwarded to the Director, AusIndustry State Office, Department of Industry, Tourism and Resources for the attention of an AusIndustry Customer Service Manager at the following address:

Address: GPO Box 9839, Sydney NSW 2001
Facsimile No: 61 2 9226 6001
Email address: ainsw@industry.gov.au

or as otherwise notified in writing by an AusIndustry Customer Service Manager; and

- b) if given by the Commonwealth, signed by an authorised delegate of the Industry Research and Development Board and forwarded to the Grantee at the following address:

PharmAxis Ltd
Dr A Robertson
Chief Executive Officer
2/10 Rodborough Road
FRENCHS FOREST NSW 2086

or as otherwise notified in writing by the Grantee.

14 Special Conditions

The IR&D Board approved overseas expenditure of up to 31% of eligible project costs.

15 Repayment of Repayable Contribution Under Start Premium

Not applicable

NATIONAL BENEFIT INDICATORS - COMMERCIALISATION

The Industry Research and Development (IR&D) Board understands the increasing global nature of business and the need for innovative companies to respond flexibly to market needs. For example, while the IR&D Board is keen to support projects which involve manufacturing or production in Australia, it accepts that there will be instances where Australian manufacture could limit the commercialisation prospects of intellectual property developed with its grant funding. This does not remove the necessity for the commercialisation of project outcomes to provide national benefits.

Set out below are the indicators by which the IR&D Board will assess the level of national benefit contribution to Australia and the Australian economy from the commercialisation of R&D Start projects where commercialisation will not take place in Australia:

- the commercialisation plan includes Australia being maintained as the home base for future R&D, manufacture or product development;
- the ongoing development of the commercial outcomes, (product, process or service), arising from R&D activities involves interactions with other firms and research institutions (both domestic and international);
- the commercialisation of the products, processes or services arising from R&D activities result in an increase in the number of employees in the company's operations based in Australia;
- as a result of the commercialisation, Australian residents receive commercial compensation through royalties, licence fees, equity, dividends or outright sale; and
- production overseas could be considered reasonable as:
 - local production is demonstrated to be uneconomic in terms of cost structure; and/or
 - the production or commercialisation requires close physical interaction with overseas companies, customers, suppliers and competitors.

Where a company is proposing to conduct exploitation overseas due to economic viability in terms of cost structure, the Board will consider:

- the level of commitment to retaining or enhancing the companies R&D facilities in Australia;
- the degree of globalisation of the relevant industry sector;
- the relative input costs to production as identified by the company;
- the relative transport costs as identified by the company;
- the relative costs of skilled labour as identified by the company; and
- legal barriers to entry; or
- any other factors the Board considers relevant.

Where the company is proposing to conduct exploitation overseas due to close proximity to customers, suppliers and competitors, the Board will consider:

- the level of commitment to retaining or enhancing the companies R&D facilities in Australia;
- the mechanisms established to disseminate knowledge and market intelligence from overseas to the companies operations based in Australia;
- the industry norms in terms of proximity;
- the level of competition in the industry sector and the need to innovate quickly;
- the nature of the products' inputs which require close contact eg perishables, knowledge, etc; and
- any other factors the Board considers relevant.

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Exhibit 4.8

PHARMACEUTICALS PARTNERSHIPS PROGRAM

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FUNDING AGREEMENT

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1 INTERPRETATION

1.1 Definitions

In this Funding Agreement:

“Accrued Overperformance” means any part of Overperformance in Previous Financial Years which has not been used previously to offset Underperformance under **clause 3.3** or **clause 3.4**.

“Accrued Underperformance”, in relation to a Payment Year, means any part of Underperformance in the Financial Year immediately preceding the Payment Year which has not been previously offset by Overperformance under **clause 3.3**.

“Actual Activity”, in relation to a Financial Year, means the Eligible Pharmaceutical R&D Activity performed by the Participant and Members, or performed for or on behalf of the Participant or a Member by any person under a contract with the Participant or a Member, during that Financial Year.

“Actual Expenditure”, in relation to a Financial Year, means the Eligible Expenditure which the Participant and Members have spent on the Actual Activity in that Financial Year.

“Ad Hoc Review” means an assessment under **clause 8.3(a)**.

“Annual Report” means a report in accordance with **clause 7.3**.

“Application” means the application to participate in the Round of the Program submitted by the Participant.

“Approvals” means all legislative, ethical, government and regulatory approvals required in relation to the Portfolio and includes Ethical and Regulatory Approvals.

“Audit Statement” means a statement which:

- (a) is prepared and personally signed by a member of the Institute of Chartered Accountants, a member of the Society of Certified Practising Accountants or a Public Practice Certified Member of the National Institute of Accountants not being an associate, employee, shareholder, director or other officeholder of the Participant or a member of the Group;
- (b) contains a declaration that the Program Guidelines have been complied with in the conduct of the audit; and
- (c) is prepared in accordance with auditing standard AUS902 “Review of Financial Reports” issued by the Australian Accounting Research Foundation.

“Audited Third Base Year Expenditure” means the Eligible Expenditure spent on the Portfolio in the Third Base Year by the Participant and people who were members of the Group at the closing date for submission of applications to participate in the Round, as verified by the Audit Statement under **clause 5.1**.

“Base Expenditure” means:

- (a) where the Commonwealth has not issued a notice under **clause 5.2**, the amount set out in Item 2(d) of the Schedule; or
- (b) where the Commonwealth has issued a notice under **clause 5.2**, the amount of Base Expenditure set out in the notice or, if no amount of Base Expenditure is set out in the notice, the Base Expenditure calculated in accordance with **clause 5.2**.

“Business Day” means a day which is not a Saturday, Sunday or public holiday in Canberra.

“Commonwealth” means the Commonwealth of Australia and includes the Minister (as defined in the Directions), the delegate of the Minister (as defined in the Directions), the Industry Research and Development Board and the Pharmaceuticals Committee of the Industry Research and Development Board (as defined in the Program Guidelines).

“Communication” means a notice, demand, certification, process, approval, consent, proposal or other communication from one party to the other party relating to this Funding Agreement.

“Confidential Information” means all information belonging to the Participant, a Member or any person who performs Eligible Pharmaceutical R&D Activity under a contract with the Participant or a Member that is by its nature confidential, and includes to the extent that it is confidential:

- (a) information forming part of or relating to the Application;
- (b) subject to this Funding Agreement, information relating to a specific Eligible Pharmaceutical R&D Activity;
- (c) Contract Material;

but does not include information that:

- (d) is in or becomes part of the public domain other than through breach of this Funding Agreement or an obligation of confidence owed to the owner of the information; or
- (e) the Commonwealth acquires from another source entitled to disclose it.

“Contract Material” means all Material:

- (a) brought into existence by the Participant for the purpose of reporting on the performance of its obligations under this Funding Agreement;
- (b) incorporated in, supplied or required to be supplied with the Material referred to in paragraph (a).

“Control”, in relation to an entity, means:

- (a) legally or beneficially owning more than 50% of any distribution of capital or income from the entity; or

(b) having the right to exercise more than 50% of the voting power in respect of the entity.

“Directions” means the Pharmaceuticals Partnerships Program Directions No. 1 of 2003 given under subsections 19(1) and 20(1) of the *Industry Research and Development Act 1986* (Cth).

“Eligibility Criteria” means the eligibility criteria for the Program as set out in Section 3 of the Program Guidelines.

“Eligible Expenditure” has the meaning given in the Program Guidelines.

“Eligible Pharmaceutical R&D Activity” means an eligible pharmaceutical research and development (R&D) activity as defined in the Directions which is performed by the Participant or a Member, or performed for or on behalf of the Participant or a Member by any person under a contract with the Participant or a Member, in connection with the Portfolio.

“Estimated Third Base Year Expenditure” means the estimated Eligible Expenditure spent or to be spent on the Portfolio in the Third Base Year by the Participant and people who were members of the Group at the closing date for submission of applications to participate in the Round, as set out in the Application.

“Ethical and Regulatory Approval” means, in relation to an activity, prior formal approval by a qualified regulatory body or committee that the activity complies with all relevant ethics codes and guidelines adopted by the National Health and Medical Research Council, the Office of the Gene Technology Regulator, the Therapeutic Goods Administration and all other relevant regulatory agencies operating in Australia.

“Exit Date” means the date set out in Item 1 (b) of the Schedule.

“Financial Year” means the 12 month period beginning on 1 July in one calendar year and ending on 30 June in the following calendar year.

“First Base Year” means the Financial Year set out in Item 2(a) of the Schedule.

“Forecast Activity”, in relation to a Financial Year, means the Eligible Pharmaceutical R&D Activity which the Participant proposes that the Participant and Members will perform, or will procure a person to perform for or on behalf of the Participant or a Member under a contract with the Participant or a Member, in that Financial Year, being the activity set out in Item 5 of the Schedule.

“Forecast Expenditure”, in relation to a Financial Year, means the Eligible Expenditure which the Participant proposes that the Participant and Members will spend on the Portfolio in that Financial Year, being:

- (a) where the Commonwealth has not issued a notice under **clause 8.4**, the amount of Forecast Expenditure set out in Item 3 of the Schedule in respect of that Financial Year; or
- (b) where the Commonwealth has issued one or more notices under **clause 8.4**, the amount set out in the most recent notice in respect of that Financial Year or, if no amount is set out in the most recent notice, the amount calculated in accordance with **clause 8.4** for that Financial Year as at the date of the most recent notice.

“Funding” means the funding provided to the Participant under this Funding Agreement.

“Funding Agreement” means this deed.

“Government Grant” means any financial assistance, other than by way of equity injection, received from a Commonwealth, State or Territory government source in respect of the Portfolio during the term of this Funding Agreement, excluding any amount received or to be received under this Funding Agreement.

“Group” means all:

- (a) persons who Control the Participant;
- (b) persons who are Controlled by the Participant; and
- (c) persons who are Controlled by a person referred to in paragraph (a) or (b).

“GST Law” has the meaning given to that expression in the GST Act.

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Insolvency Event” means, in relation to a person, any of the following:

- (a) a person is or states that the person is unable to pay from the person’s own money all the person’s debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a person;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the corporation or any action is taken to appoint any such person;
- (e) a receiver or receiver and manager is appointed in respect of any property of a person;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or a deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person’s creditors or members or a moratorium involving any of them; or
- (i) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

“Intellectual Property” includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant breeder’s rights, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

“Interest” means an amount of interest calculated:

- (a) at the rate set out in Item 7 of the Schedule;
- (b) on a daily basis upon the amount that was and is outstanding (as the case may be) in respect of each amount required to be repaid;
- (c) from and including the day when any part of the moneys upon which interest is payable was first paid to the Participant by the Commonwealth under this Funding Agreement until but excluding the day of payment of those moneys; and
- (d) on the actual number of days elapsed on the basis of a 365 day year.

“Material” includes documents, equipment, software, information and data stored by any means.

“Maximum Annual Payment”, in respect of a Financial Year, means:

- (a) where the Commonwealth has not issued a notice under **clause 5.3(d)** or **clause 8.4**, the Maximum Annual Payment set out in respect of that Financial Year in Item 3 of the Schedule; or
- (b) where the Commonwealth has issued one or more notices under **clause 5.3(d)** or **clause 8.4**, the Maximum Annual Payment in respect of that Financial Year set out in the most recent notice or, if no Maximum Annual Payment is set out in the most recent notice, the amount calculated in accordance with **clause 5.3(d)** or **clause 8.4** (as appropriate) as at the date of the notice.

“Maximum Payment” means:

- (a) where the Commonwealth has not issued a notice under **clause 5.3(d)** or **clause 8.4**, the Maximum Payment set out in Item 3 of the Schedule; or
- (b) where the Commonwealth has issued one or more notices under **clause 5.3(d)** or **clause 8.4**, the Maximum Payment set out in the most recent notice or, if no Maximum Payment is set out in the most recent notice, the Maximum Payment calculated in accordance with **clause 5.3(d)** or **clause 8.4** (as appropriate) as at the date of the notice.

“Member” means a person set out in Item 6 of the Schedule, being a person who is a member of the Group and who either performs Eligible Pharmaceutical R&D Activity, or procures any person to perform Eligible Pharmaceutical R&D Activity for or on behalf of the Member under a contract with the Member, or both.

“Overperformance” means, in relation to a Financial Year, the amount by which the Actual Expenditure in respect of that Financial Year exceeds Forecast Expenditure in respect of that Financial Year.

“Participant” means the company identified as the Participant in the Particular Conditions.

“Particular Conditions” means the Particular Conditions entered into by the Participant and the Commonwealth which refer to these General Conditions.

“Payment Year” means a Financial Year during the term of this Funding Agreement.

“Performance Milestones” means the performance milestones set out in Item 5 of the Schedule.

“Preceding Year” means the Financial Year immediately preceding the relevant Payment Year.

“Portfolio” means the agreed portfolio of R&D activities set out in Item 4 of the Schedule.

“Previous Financial Years”, in relation to a Financial Year, means the Financial Years occurring in the period from the Start Date to the beginning of that Financial Year.

“Program” means the Pharmaceuticals Partnerships Program, known as P³, administered by the Department of Industry, Tourism and Resources.

“Program Funding” means the funding made available by the Parliament of the Commonwealth of Australia for the Program in any given Financial Year, being the funding specified in the Portfolio Budget Statement (as varied by any Portfolio Additional Estimates Statement).

“Program Guidelines” means the Pharmaceuticals Partnerships Program Guidelines published by the Department of Industry, Tourism and Resources, dated September 2003.

“Quarter” means a period of 3 months beginning on 1 July 1 October, 1 January or 1 April of any Financial Year.

“Quarterly Report” means a report in accordance with **clause 7.2**.

“Report” means any report required to be submitted to the Commonwealth by the Participant under this Funding Agreement and includes the Audit Statement under **clause 5.1**, Quarterly Reports and the Annual Report.

“Round” means the funding round for the Program which starts on the Start Date.

“Second Base Year” means the Financial Year set out in Item 2(b) of the Schedule.

“Selection Criteria” means the merit criteria set out in Part 3 of the Directions.

“Start Date” means the date set out in Item 1(a) of the Schedule.

“Third Base Year” means the Financial Year set out in Item 2(c) of the Schedule.

“Underperformance” means, in relation to a Financial Year, the amount by which Forecast Expenditure in respect of that Financial Year exceeds Actual Expenditure in respect of that Financial Year.

1.2 Construction

Unless expressed to the contrary, in this Funding Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors and permitted assigns and persons substituted by novation, if permitted;
 - (iii) an organisation includes a body which replaces or substitutes for that organisation, having substantially the same functions as that organisation;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (v) an obligation includes a warranty or representation and a reference to failure to comply with an obligation includes a breach of warranty or representation;
 - (vi) a right includes a benefit, remedy, discretion or power;
 - (vii) time is to local time in Canberra;
 - (viii) “\$” or “dollars” is a reference to Australian currency;
 - (ix) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and
 - (x) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Funding Agreement;
- (g) if the date on or by which any act must be done under this Funding Agreement is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this Funding Agreement.

2 PERFORMANCE AND UNDERTAKING

- (a) Subject to this Funding Agreement, the Participant must, or must procure Members (either personally or through other persons) to perform the Forecast Activity and undertake the Forecast Expenditure.
- (b) In performing, undertaking and procuring the performance and undertaking of the Forecast Activity and the Forecast Expenditure, the Participant must make every effort to ensure that the Performance Milestones are met.
- (c) The Participant must procure that all Eligible Pharmaceutical R&D Activity performed by a person other than the Participant or a Member is the subject of a prior written contract between that person and the Participant or the Member (as the case may be) which specifies the nature of the work to be performed.
- (d) The Participant acknowledges and agrees that although all or any part of the Forecast Activity or the Forecast Expenditure may be performed or undertaken by a person other than the Participant, the Participant remains responsible for ensuring that all obligations of the Participant under this Funding Agreement are met.
- (e) In performing, undertaking and procuring the performance and undertaking of the Forecast Activity and the Forecast Expenditure, the Participant must, and must procure all persons performing or undertaking the Forecast Activity and the Forecast Expenditure to:
 - (i) obtain and comply with all Approvals;
 - (ii) comply with all applicable laws, legislation and regulations of the Commonwealth or of any State, Territory or local authority, including the *Crimes Act 1914 (Cth)*, *Privacy Act 1998 (Cth)*, *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)* and *Disability Discrimination Act 1992 (Cth)*; and
 - (iii) comply with all relevant obligations under the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*.

3 PAYMENT OF FUNDING

3.1 Payment by Commonwealth

Subject to this Funding Agreement, for each Payment Year, the Commonwealth must pay to the Participant the aggregate of:

- (a) if **clause 3.2** applies, the amount calculated in accordance with **clause 3.2** in respect of the Payment Year;
- (b) if **clause 3.3** applies, the amount calculated in accordance with **clause 3.3** in respect of the Payment Year; and
- (c) if **clause 3.4** applies, the amount calculated in accordance with **clause 3.4** in respect of the Payment Year.

less the value of any Government Grant received in respect of the Payment Year.

3.2 Payment in respect of Actual Expenditure in a Payment Year

Where the Actual Expenditure in the Payment Year exceeds Base Expenditure, the amount to be paid under **clause 3.1(a)** in respect of the Payment Year is the lower of:

- (a) the Maximum Annual Payment for the Payment Year; and
- (b) an amount calculated in accordance with the formula:

$$(AE - BE) \times 30\%$$

where:

- (i) AE means Actual Expenditure for the Payment Year; and
- (ii) BE means Base Expenditure.

3.3 Underperformance in a Payment Year may be offset by Over performance in Previous Financial Years

Subject to this Funding Agreement, where:

- (a) there is Underperformance in the Payment Year;
- (b) an amount of Accrued Overperformance remains at the end of the Payment Year;
- (c) **[the Participant meets the 75% test]** the aggregate of:
 - (i) the Actual Expenditure incurred in the Payment Year; and
 - (ii) any Accrued Overperformance that will be used to offset Underperformance in the Payment Year under this **clause 3.3**,

is not less than 75% of the Forecast Expenditure for the Payment Year; and

- (d) **[the Participant meets the 50% test]** the amount calculated in accordance with **clause 3.2(b)** in respect of the Payment Year is not less than 50% of the Maximum Annual Payment for the Payment Year,

then the amount to be paid under **clause 3.1(b)** in respect of the Payment Year is the lower of:

- (e) 30% of the Underperformance in the Payment Year; and
- (f) 30% of the Accrued Overperformance.

3.4 Overperformance in a Payment Year may offset Underperformance in the immediately preceding Financial Year

Subject to this Funding Agreement, where:

- (a) there is Overperformance in the Payment Year;
 - (b) an amount of Accrued Underperformance remains at the end of the Payment Year;
 - (c) *[the Participant meets the 75% test]* the aggregate of:
 - (i) the Actual Expenditure incurred in the Preceding Year; and
 - (ii) any Overperformance in Previous Financial Years to the Preceding Year that has been used to offset Underperformance in the Preceding Year,was not less than 75% of the Forecast Expenditure for the Preceding Year; and
 - (d) *[the Participant meets the 50% test]* the amount calculated in accordance with **clause 3.2(b)** in respect of the Preceding Year was not less than 50% of the Maximum Annual Payment for the Preceding Year,
- then the amount to be paid under **clause 3.1(c)** in respect of the Payment Year is the lower of:
- (e) 30% of the Accrued Underperformance; and
 - (f) 30% of the Overperformance for the Payment Year.

3.5 Conditions precedent to payment

- (a) Notwithstanding any other clause of this Funding Agreement, the Participant is not entitled to receive, and the Commonwealth is not obliged to pay to the Participant, an amount under this **clause 3** if:
 - (i) the Commonwealth has insufficient Program Funding available at the time a payment is due to the Participant;
 - (ii) the Participant has not submitted all Reports due for submission at the time a payment is otherwise due to the Participant;
 - (iii) the Participant has not complied with any other of its obligations under this Funding Agreement; or
 - (iv) the Commonwealth has become entitled to terminate this Funding Agreement under **clause 13.3**.
- (b) The Commonwealth may withhold any payment where it has reasonable grounds to suspect that the Participant may not be entitled to payment, for such time as the Commonwealth reasonably requires to make such further inquiries as are needed to determine the Participant's entitlement to payment.

3.6 Maximum payment

Notwithstanding any other clause of this Funding Agreement, if the Commonwealth is required under this Funding Agreement to pay to the Participant an amount (“**Amount**”), the Amount which the Commonwealth is required to pay will be reduced so that:

- (a) [**Program cap**] the aggregate of the Amount and all previous payments to the Participant under the Program does not exceed \$10 million;
- (b) [**Maximum Payment**] the aggregate of the Amount and all previous payments to the Participant under this Funding Agreement does not exceed the Maximum Payment;
- (c) [**first Quarterly cap**] where the Amount is payable under **clause 3.1** in connection with **clause 3.1(a)** in respect of the first Quarter of a Payment Year, the aggregate of:
 - (i) the Amount; and
 - (ii) the value of any Government Grant received or to be received in respect of the first Quarter of the Payment Year,

does not exceed 25% of the Maximum Annual Payment for that Payment Year;

- (d) [**second Quarterly cap**] where the Amount is payable under **clause 3.1** in connection with **clause 3.1(a)** in respect of the second Quarter of a Payment Year, the aggregate of:
 - (i) the Amount;
 - (ii) all payments previously made to the Participant under this Funding Agreement in respect of that Payment Year; and
 - (iii) the value of any Government Grant received or to be received in respect of the first two Quarters of the Payment Year,

does not exceed 50% of the Maximum Annual Payment for that Payment Year; and

- (e) [**third Quarterly cap**] where the Amount is payable under **clause 3.1** in connection with **clause 3.1(a)** in respect of the third Quarter of a Payment Year, the aggregate of:
 - (i) the Amount;
 - (ii) all payments previously made to the Participant under this Funding Agreement in respect of that Payment Year; and
 - (iii) the value of any Government Grant received or to be received in respect of the first three Quarters of the Payment Year,

does not exceed 75% of the Maximum Annual Payment for that Payment Year.

3.8 Taxable grant

The Participant acknowledges that payments made under this Funding Agreement are made as a taxable grant.

3.9 Set-off

The Commonwealth may set-off any money due for payment by the Commonwealth to the Participant under this Funding Agreement against any money due for payment by the Participant to the Commonwealth under this Funding Agreement.

3.10 Recovery by Commonwealth

- (a) If at any time, for any reason, the Commonwealth has paid the Participant more than the Participant is entitled to under **clauses 3.1 to 3.9** inclusive, the Commonwealth may by notice in writing to the Participant require the Participant to repay to the Commonwealth the amount of the excess.
- (b) In addition to the amount of the excess required to be repaid under **clause 3.10(a)**, the Commonwealth may, in its discretion, require the Participant to pay Interest on the amount of the excess.
- (c) If the Commonwealth gives a notice to the Participant under this **clause 3.10**, the Participant must repay the amount in full within 30 days of the date of the notice.
- (d) If the Participant is required to pay an amount to the Commonwealth under this Funding Agreement, the Commonwealth may recover the amount as a debt due and payable to the Commonwealth.

4 COMMONWEALTH'S DETERMINATION BINDING

4.1 Matters for binding determination

The Commonwealth's determination as to all or any of the following matters is final and binding on the Participant:

- (a) whether activity is Eligible Pharmaceutical R&D Activity;
- (b) whether expenditure is Eligible Expenditure;
- (c) whether expenditure has been incurred in respect of the Portfolio; and
- (d) whether a Performance Milestone has been met.

4.2 Procedure for binding determination

- (a) In making a determination under **clause 4.1**, the Commonwealth must take into account all relevant documentation and submissions made by the Participant in relation to the determination.
- (b) After making a determination under **clause 4.1**, the Commonwealth must provide to the Participant written reasons for the determination.

5 BASE EXPENDITURE

5.1 Audit Statement

Within 60 days after the end of the Third Base Year, the Participant must provide to the Commonwealth an Audit Statement verifying:

- (a) the Actual Expenditure in respect of the Third Base Year; and
- (b) that the expenditure reported as Actual Expenditure in respect of the Third Base Year is Eligible Expenditure and has been spent on the Portfolio.

5.2 Adjustment of Base Expenditure

Where Audited Third Base Year Expenditure is higher than Estimated Third Base Year Expenditure, the Commonwealth may by notice in writing to the Participant, increase Base Expenditure to an amount equal to the average of the following amounts:

- (a) the amount of Expenditure set out in Item 2(a) of the Schedule in respect of the First Base Year;
- (b) the amount of Expenditure set out in Item 2(b) of the Schedule in respect of the Second Base Year; and
- (c) the Audited Third Base Year Expenditure.

5.3 Adjustment of maximum payments

If the Commonwealth increases Base Expenditure under **clause 5.2**:

- (a) [**Participant may submit proposals**] the Commonwealth must allow the Participant 30 days from the date of the notice referred to in **clause 5.2** to submit one or more proposals to vary any or all of the Forecast Activity, Forecast Expenditure and the Portfolio, so that the Participant can retain the benefit of the original Maximum Annual Payments and original Maximum Payment;
- (b) [**Commonwealth may accept or reject proposals**] subject to **clause 16.1(c)**, the Commonwealth may, in its discretion, accept or reject a proposal referred to in **clause 5.3(a)**, with or without conditions;
- (c) [**variation of Funding Agreement**] if the Commonwealth accepts a proposal referred to in **clause 5.3(a)**, this Funding Agreement will be varied when the parties enter into a valid variation in accordance with **clause 16.1(c)(ii)**; and
- (d) if the Participant does not submit any proposals under **clause 5.3(a)** or the Commonwealth rejects all proposals made by the Participant pursuant to **clause 5.3(a)**, the Commonwealth may by notice in writing to the Participant:

- (i) [**reduce Maximum Annual Payments**] reduce the Maximum Annual Payment for each of the Payment Years in the period from the Start Date to the Exit Date to an amount calculated in accordance with the formula
$$(FE - BE) \times 30\%$$
where:
 - (A) FE means Forecast Expenditure for that Payment Year; and
 - (B) BE means Base Expenditure calculated in accordance with **clause 5.2**; and
- (ii) [**reduce Maximum Payment**] reduce the Maximum Payment so that it is equal to the aggregate of the Maximum Annual Payments for each of the Payment Years in the period from the Start Date to the Exit Date, as reduced under **clause 5.3(d)(i)**.

6 MATTERS FOR REPORTING

6.1 Cessation of activity and change in corporate group

- (a) The Participant must notify the Commonwealth in its next Quarterly Report if an Eligible Pharmaceutical R&D Activity ceases to be performed.
- (b) The Participant must notify the Commonwealth immediately in writing:
 - (i) if an activity in the Portfolio ceases to be performed by the Participant and Members or under contract with the Participant or a Member, and commences to be performed by a person who is not the Participant or a Member and who is not performing the activity under a contract with the Participant or a Member;
 - (ii) where there is a change in the identity of the person who Controls the Participant or a Member;
 - (iii) where a Member ceases to be a member of the Group; and
 - (iv) where a person who is not a Member;
 - (A) is or becomes a member of the Group; and
 - (B) commences either:
 - (v) performing eligible pharmaceutical research and development (R&D) activity as defined in the Directions; or
 - (vi) procuring someone else to perform eligible pharmaceutical research and development (R&D) activity as defined in the Directions for or on behalf of that person under a contract with that person, or both.

- (c) The Participant must provide to the Commonwealth the information required by Attachment C of the Program Guidelines within 90 days of the event referred to in **clause 6.1(b)** occurring.
- (d) Where an event referred to in **clause 6.1(b)** occurs:
 - (i) subject to **clause 6.1(d)(iii)**, the Commonwealth and the Participant must negotiate in good faith in relation to varying this Funding Agreement to take into account the event;
 - (ii) if the Commonwealth and the Participant agree to a variation of this Funding Agreement, this Funding Agreement will be varied when the parties enter into a valid variation in accordance with **clause 16.1(c)(ii)**; and
 - (iii) if the Commonwealth and the Participant do not reach agreement within 60 days of the date of the notification referred to in **clause 6.1 (b)**, the Commonwealth may by notice in writing terminate this Funding Agreement with effect from the date on which the event referred to in **clause 6.1(b)** occurred.

6.2 Government Grants

If, during the term of this Funding Agreement, the Participant receives a Government Grant, it must immediately:

- (a) notify the Commonwealth; and
- (b) provide to the Commonwealth sufficient information to allow the Commonwealth to determine the effect of the receipt of the Government Grant on payments under this Funding Agreement.

7 REPORTS

7.1 Reporting and estimating expenditure

In reporting and estimating expenditure, the Participant must, and must procure its auditor to, comply with the requirements of the Program Guidelines.

7.2 Quarterly Reports

Within 30 days of the end of each of the first three Quarters of each Payment Year, the Participant must submit a report which:

- (a) sets out the Actual Expenditure incurred in that Quarter;
- (b) indicates where Actual Activity and Actual Expenditure are not proceeding in accordance with the Performance Milestones;
- (c) provides details of any breach or likely breach of this Funding Agreement;
- (d) complies with requirements of the Program Guidelines; and

- (e) contains the information and is in the form required by the Commonwealth from time to time, provided that the Commonwealth has notified the Participant in writing of any changes to the required format before the end of the relevant Quarter.

7.3 Annual Report

Within 60 days of the end of each Payment Year and within 60 days of the termination of this Funding Agreement, the Participant must submit a report which:

- (a) sets out the Actual Expenditure incurred in the fourth Quarter;
- (b) indicates where Actual Activity and Actual Expenditure are not proceeding in accordance with the Performance Milestones;
- (c) sets out the Actual Expenditure incurred in the Payment Year;
- (d) sets out the Actual Activity performed in the Payment Year;
- (e) includes an Audit Statement which verifies the Actual Expenditure incurred in the Payment Year;
- (f) sets out and provides reasons for any Underperformance or Overperformance in respect of the Payment Year;
- (g) details and provides reasons for any potential future Underperformance or Overperformance;
- (h) provides detailed information in respect of the Participant's progress against the Performance Milestones;
- (i) details any expected changes to Forecast Activity, Forecast Expenditure and the Participant's progress against the Performance Milestones, and in particular, whether the Participant knows that it or Members will not or may not meet the Performance Milestones, Forecast Activity or Forecast Expenditure;
- (j) provides details of any breach or likely breach of this Funding Agreement;
- (k) complies with requirements of the Program Guidelines; and
- (l) contains the information and is in the form required by the Commonwealth from time to time, provided that the Commonwealth has notified the Participant in writing of any changes to the required format before the end of the relevant Payment Year.

7.4 Requesting further information

- (a) The Commonwealth may request from the Participant additional information which relates to this Funding Agreement or the Participant's participation in the Program.
- (b) If the Commonwealth requests information under **clause 7.3(?) (a)**, the Participant must provide the information to the Commonwealth within 30 days of the request or such other time as is agreed between the parties.

7.5 Extension of time for Reports

- (a) Before the due date for submission of a Report, the Participant may, in writing setting out the reason for the application, apply for an extension of time for submission of the Report.
- (b) The Commonwealth may, in its absolute discretion, grant to the Participant an extension of time ending on a specific date for submission of a Report.

7.6 Failure to submit Reports

If the Participant fails to submit two or more Reports consecutively by the due dates for submission (or, where the Commonwealth has granted the Participant an extension under **clause 7.5(b)**, the due date for submission as extended under **clause 7.5(b)**), the Commonwealth may by notice in writing terminate this Funding Agreement.

7.7 Evaluation

- (a) The Participant must, and must procure that Members, cooperate in the evaluation of the Program by the Commonwealth.
- (b) During the term of this Funding Agreement and for 5 years after the Exit Date, the Participant must, within 30 days of a request by the Commonwealth to do so, provide information and completed survey forms relating to the Program and this Funding Agreement.

8 REVIEW

8.1 Annual Assessment and Mid Term Review

- (a) Without limiting its right to do so at any other time, the Commonwealth may undertake an assessment of the Participant's performance of its obligations under this Funding Agreement:
 - (i) after it has received the Annual Report; and
 - (ii) at the end of the 2005/2006 Financial Year.
- (b) Without limiting **clause 8.2**, the Commonwealth may use the assessment process referred to in **clause 8.1(a)** to determine whether the Commonwealth is entitled to undertake an Ad Hoc Review under **clause 8.2**.

8.2 Ad Hoc Review trigger

Clauses 8.3 and 8.4 apply where, in a Payment Year:

- (a) the aggregate of:
 - (i) the Actual Expenditure incurred in that Payment Year; and
 - (ii) any Overperformance in Previous Financial Years to that Payment Year that has been used to offset Underperformance in that Payment Year,
- was less than Base Expenditure;

- (b) the aggregate of:
 - (i) the Actual Expenditure incurred in that Payment Year; and
 - (ii) any Overperformance in Previous Financial Years to that Payment Year that has been used to offset Underperformance in that Payment Year,was less than 75% of the Forecast Expenditure for that Payment Year; or
- (c) in the opinion of the Commonwealth, the Participant has not met one or more of the Performance Milestones to a sufficient degree.

8.3 Ad Hoc Review process

- (a) Subject to **clause 8.2**, the Commonwealth may undertake an assessment of the Participant's performance of its obligations under this Funding Agreement and consider the Participant's continued participation in the Program.
- (b) The Commonwealth must notify the Participant in writing of a decision to undertake an assessment under **clause 8.3(a)**.

8.4 Effect of Ad Hoc Review

- (a) Subject to **clause 8.2**, the Commonwealth may, by notice in writing to the Participant, reduce Forecast Expenditure for each of the Payment Years in the period from the end of the Payment Year referred to in **clause 8.2** to the Exit Date so that it is equal to an amount calculated in accordance with the formula:
$$FE \times (TAE/TFE)$$
where:
 - (i) FE means Forecast Expenditure for the relevant Payment Year before the reduction in accordance with this **clause 8.4(a)**;
 - (ii) TAE means the aggregate of the Actual Expenditure incurred in each of the Payment Years in the period from the Start Date to the end of the Payment Year referred to in **clause 8.2**; and
 - (iii) TFE means the aggregate of Forecast Expenditure for each of the Payment Years in the period from the Start Date to the end of the Payment Year referred to in **clause 8.2**.
- (b) Subject to **clause 8.2**, where the Commonwealth is of the opinion that an activity performed by or on behalf of the Participant or a Member is not Eligible Pharmaceutical R&D Activity, the Commonwealth may by notice in writing to the Participant do one or more of the following:
 - (i) reduce Forecast Expenditure for each of the Payment Years in the period from the end of the Payment Year referred to in **clause 8.2** to the Exit Date so that it does not include any amounts for activities which are not Eligible Pharmaceutical R&D Activity;

- (ii) remove any activity which is not Eligible Pharmaceutical R&D Activity from the Portfolio; and
 - (iii) require the Participant to repay any amount which has been paid by the Commonwealth to the Participant in connection with activity which is not Eligible Pharmaceutical R&D Activity and, in its discretion, require the Participant to pay Interest on the amount, whereupon the Participant must repay the amount and Interest (if required) within 30 days of the date of the notice.
- (c) Where the Commonwealth reduces Forecast Expenditure under **clause 8.4(a)** or **clause 8.4(b)(i)**, the Commonwealth may also, in the same or a separate written notice to the Participant, reduce the Maximum Annual Payment for each of the Payment Years in the period from the end of the Payment Year referred to in **clause 8.2** to the Exit Date to an amount calculated in accordance with the formula:
- $(FE - BE) \times 30\%$
- where:
- (i) FE means Forecast Expenditure for that Payment Year as reduced under **clause 8.4(a)** or **clause 8.4(b)(i)** as appropriate; and
 - (ii) BE means Base Expenditure.
- (d) Where the Commonwealth reduces Forecast Expenditure under **clause 8.4(a)** or **clause 8.4(b)(i)**, the Commonwealth may also, in the same or a separate written notice to the Participant, reduce the Maximum Payment to an amount equal to the aggregate of the Maximum Annual Payments for each of the Payment Years in the period from the Start Date to the Exit Date, as reduced under **clause 8.4(c)**.
- (e) Subject to **clauses 8.2 and 8.4(f)**, where, in the Commonwealth's reasonable opinion:
- (i) the Actual Activity does not meet the Selection Criteria to the same extent as the Portfolio; and
 - (ii) the quality of the Actual Activity is lower than that which was required for entry into the Program in the Round.
- the Commonwealth may by notice in writing terminate this Funding Agreement.
- (f) Before the Commonwealth terminates this Funding Agreement in accordance with **clause 8.4(e)**, the Commonwealth must:
- (i) notify the Participant that the Commonwealth intends to terminate the Funding Agreement in accordance with **clause 8.4(e)**;
 - (ii) allow the Participant 14 days from the date on which the Commonwealth notifies the Participant in accordance with **clause 8.4(f)(i)** to provide written submissions in relation to the matters referred to in **clause 8.4(e)**; and

- (iii) take into account any submissions provided by the Participant pursuant to **clause 8.4(f)(ii)** in deciding whether or not to terminate this Funding Agreement in accordance with **clause 8.4(e)**.

9 INTELLECTUAL PROPERTY

9.1 Vesting of Intellectual Property

Subject to clause 9.2, the Commonwealth does not assert ownership of, or any right to, any Intellectual Property created under this Funding Agreement.

9.2 Licence

The Participant grants to the Commonwealth a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce, publish, electronically transmit, electronically distribute, adapt and modify any Contract Material, including any existing Material which is used for the purposes of the Program, for the purposes of the Commonwealth's dissemination, reporting and accountability requirements, but not to commercially exploit such Contract Material.

9.3 Documentation

If requested by the Commonwealth, the Participant agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this **clause 9**.

9.4 Warranty

The Participant warrants that:

- (a) it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this **clause 9**; and
- (b) it will use all reasonable endeavours to exploit the Intellectual Property created under this Agreement in order to meet the objectives of the Program as described in the Program Guidelines.

10 CONFIDENTIALITY

10.1 Publicity

- (a) The Participant must acknowledge the financial assistance received from the Commonwealth under this Funding Agreement in any public statements about the Portfolio or its Eligible Pharmaceutical R&D Activities as a whole.
- (b) The Commonwealth may publicise the involvement of the Participant in the Program, by including in press releases, general announcements, publications, presentations and annual reports, and may disclose in order to satisfy any other accountability requirement or reporting obligation, the following information:
 - (i) the name of the Participant;
 - (ii) a description of this Funding Agreement;

- (iii) a brief description of the Portfolio and any activity in the Portfolio, as agreed with the Participant in writing from time to time;
- (iv) the Maximum Payment and Maximum Annual Payments;
- (v) Actual Expenditure; and
- (vi) the amount of payments made by the Commonwealth under this Funding Agreement.

10.2 Confidential Information

The Commonwealth must not disclose any Confidential Information except:

- (a) with the prior consent of the Participant;
- (b) where required or permitted under law;
- (c) to the Minister (as defined in the Directions) or the Auditor-General or his or her delegate;
- (d) to the extent that they require the information for the purposes of this Funding Agreement or the Program, to officers, consultants, employees and advisers of the Commonwealth, provided that the Commonwealth ensures that the recipient of the information is aware of the confidentiality obligations under this **clause 10.2** and takes steps to ensure the recipient of the information complies with those confidentiality obligations; or
- (e) where permitted by **clause 10.1**.

11 RECORDS AND AUDIT

11.1 Records

- (a) The Participant must, and must procure that Members, keep to the Commonwealth's satisfaction;
 - (i) all records (including original receipts and invoices) in accordance with accounting principles generally applied in commercial practice and as required by law which are necessary to provide a complete, detailed record and explanation of Actual Expenditure and the Participant's performance of its obligations under this Funding Agreement; and
 - (ii) any other records relating to this Funding Agreement which are required by the Commonwealth.
- (b) The Participant must, and must procure Members to, retain the records referred to in **clause 11.1(a)**, during the term of the Program and for at least 7 years from the date of their creation.

11.2 Approvals and contract R&D

The Participant must, within 14 days of a request by the Commonwealth to do so, provide to the Commonwealth copies of:

- (a) any Approval; and
- (b) contracts under which Actual Activity has been performed by another person on behalf of the Participant or a Member.

11.3 Inspection and audit

- (a) The Participant must, and must procure Members to, allow the Commonwealth and its auditor, including the Australian National Audit Office, at reasonable times and on reasonable notice, to:
 - (i) enter the Participant's or Member's premises;
 - (ii) audit the Participant's compliance with this Funding Agreement; and
 - (iii) inspect records held by the Participant or the Member which are relevant to this Funding Agreement.
- (b) The Participant must, and must procure Members to, provide the Commonwealth and its auditor with all necessary facilities and assistance to enable them to conduct the audit.
- (c) The Participant must, and must procure Members to, allow the Commonwealth and its auditor to make copies of any records that the Commonwealth or its auditor considers relevant to the Participant's obligations under this Funding Agreement.
- (d) The Commonwealth and its auditor may only use the copies referred to in **clause 11.3(c)** for the purposes of:
 - (i) an audit;
 - (ii) verifying the Participant's performance of its obligations under this Funding Agreement; and
 - (iii) the Commonwealth's and the auditor's accountability and reporting obligations.

12 WARRANTIES

12.1 Corporate capacity

The Participant warrants that as at the date of this Funding Agreement and on each day during the term of this Funding Agreement:

- (a) [*incorporation*] the Participant is:
 - (i) incorporated under the *Corporations Act 2001* (Cth); and

- (ii) registered for GST purposes pursuant to the GST Act having the Australian Business Number as specified adjacent to the Participant's name in the Particular Conditions;
- (b) [**legal right and power**] it has the legal right and power to enter into this Funding Agreement and to perform its obligations under the terms of this Funding Agreement;
- (c) [**corporate action**] the execution, delivery and performance of this Funding Agreement by it has been duly and validly authorised by all necessary corporate action on its part;
- (d) [**binding agreement**] this Funding Agreement is a valid and binding agreement of it, enforceable in accordance with its terms; and
- (e) [**constitution**] the execution and performance of this Funding Agreement by it does not and the other transactions contemplated by this Funding Agreement do not, violate or conflict with or result in a breach of or constitute a default under its constitution.

12.2 Application and Portfolio

The Participant warrants that as at the date of this Funding Agreement:

- (a) [**Application**] the Application has been made in accordance and compliance with the Program Guidelines and, in particular, has specified all Eligible Pharmaceutical R&D Activity performed in the First Base Year and the Second Base Year by or on behalf of the Participant and people who were members of the Group at the closing date for submission of applications to participate in the Round and all Eligible Pharmaceutical R&D Activity proposed to be performed in the Third Base Year and during the term of this Funding Agreement by or on behalf of the Participant and people who were members of the Group at the closing date for submission of applications to participate in the Round ; and
- (b) [**Portfolio**] the Portfolio consists of all Eligible Pharmaceutical R&D Activity that has been, and is proposed to be, performed by or on behalf of the Participant and Members.

12.3 Other warranties

The Participant warrants that as at the date of this Funding Agreement and on each day during the term until this Funding Agreement terminates:

- (a) [**eligibility**] the Participant satisfies the Eligibility Criteria;
- (b) [**financial capacity**] the Participant and the Members have the financial capacity to perform or procure performance of the Forecast Activity and undertake the Forecast Expenditure;
- (c) [**intellectual property**] the Participant, the Members and any person who is not a Member and who performs Eligible Pharmaceutical R&D Activity under a contract with the Participant or a Member will, at the relevant time, have access to all intellectual property rights necessary for them to perform or procure performance of the Forecast Activity and undertake the Forecast Expenditure;

- (d) [**accuracy of information**] all information provided by the Participant to the Commonwealth from time to time, including information:
- (i) given in the Application;
 - (ii) incorporated into the Particular Conditions; or
 - (iii) given in any Report to the Commonwealth by the Participant under this Funding Agreement,
- is true and correct;
- (e) [**conflict of interest**] the Participant, Members and any other person who performs Eligible Pharmaceutical R&D Activity under a contract with the Participant or a Member do not have any interests or obligations that conflict or may conflict with its interests or obligations under this Funding Agreement;
- (f) [**adverse circumstances**] the Participant is not aware of any circumstances which adversely affect or might adversely affect the Participant's ability to fulfil its obligations under this Funding Agreement;
- (g) [**activity**] the Forecast Activity does not include any activity which is not Eligible Pharmaceutical R&D Activity;
- (h) [**expenditure**] Actual Activity, Actual Expenditure, Base Expenditure, Forecast Activity and Forecast Expenditure have been reported in accordance with the requirements of the Program Guidelines;
- (i) [**Group**]:
- (i) it is the only member of the Group which applied for funding in the Round;
 - (ii) each Member is a member of the Group; and
 - (iii) all members of the Group which perform Eligible Pharmaceutical R&D Activity or procure other people to perform Eligible Pharmaceutical R&D Activity for or on behalf of the member under a contract with the member are included in the list of Members in Item 6 of the Schedule;
- (j) [**forecasts**] the Forecast Activity and Forecast Expenditure are realistic and achievable;
- (k) [**Ethical and regulatory approval**] in respect of any activity in the Portfolio involving research using genetic material from humans (including human embryos, stem cells and all other human organs, tissues and cells), animals or plants, or experimentation in animals or humans:
- (i) the Participant, Members and any other person who performs Eligible Pharmaceutical R&D Activity under a contract with the Participant or a Member will, at the relevant time, have received Ethical and Regulatory Approval for that activity; and

- (ii) the Participant, Members and any other person who performs Eligible Pharmaceutical R&D Activity under a contract with the Participant or a Member have, in performing or procuring performance of that activity, complied with all applicable and relevant law; and
- (l) [**contract R&D**] where Actual Activity, Actual Expenditure, Forecast Activity or Forecast Expenditure includes Eligible Pharmaceutical R&D Activity or Eligible Expenditure financed by a person who is not the Participant or a Member, it has been included by the Participant with the consent of that person.

12.4 Notification of breach

- (a) If the Participant becomes aware of a breach or potential breach of warranty, the Participant must immediately notify the Commonwealth in writing of that breach or potential breach.
- (b) The Participant acknowledges that, without limiting **clause 13.3**, breach of a warranty set out in this Funding Agreement justifies termination of this Funding Agreement by the Commonwealth.

13 TERM AND TERMINATION

13.1 Term

- (a) This Funding Agreement will start on the Start Date.
- (b) This Funding Agreement will terminate on the earliest occurring of the following events:
 - (i) the Exit Date;
 - (ii) the Commonwealth and the Participant enter into a new Funding Agreement following the selection of the Participant or a Member in a later funding round for the Program;
 - (iii) the Commonwealth and the Participant agree in writing to terminate this Funding Agreement;
 - (iv) the aggregate of all payments made to the Participant under this Funding Agreement equals the Maximum Payment; and
 - (v) the Commonwealth terminates this Funding Agreement under **clause 13.2** or **clause 13.3**.

but without prejudice to the following obligations, which survive such termination:

- (vi) any obligation of the Commonwealth to pay an amount to the Participant under **clause 3** in respect of any part of the Payment Year immediately preceding termination; and
- (vii) the obligation of the Participant to submit Reports under **clause 7** in respect of any part of the Payment Year immediately preceding termination.

13.2 Termination at any time

- (a) The Commonwealth may terminate this Funding Agreement at any time by giving not less than 30 days notice in writing to the Participant, specifying the effective date of termination.
- (b) If this Funding Agreement is terminated under **clause 13.2(a)**, the Commonwealth is liable only for:
 - (i) all payments due and not yet made to the Participant at the effective date of termination; and
 - (ii) any reasonable substantiated unavoidable loss (excluding loss of profits) incurred by the Participant as a direct consequence of termination of this Funding Agreement.

13.3 Termination for default

The Commonwealth may, without prejudice to any right of action or remedy which has accrued or which may accrue in favour of the Commonwealth, terminate this Funding Agreement by notice in writing to the Participant in the event of any one or more of the following:

- (a) the Participant is in breach of this Funding Agreement and in the opinion of the Commonwealth the breach is not capable of being remedied;
- (b) the Participant is otherwise in breach of this Funding Agreement and the Participant fails to remedy the breach within 21 days of receipt of a written notice from the Commonwealth requiring it to do so (or within any longer period specified in the notice);
- (c) the Participant is in breach of a warranty set out in this Funding Agreement;
- (d) the Commonwealth becomes entitled to terminate pursuant to **clause 6.1(d)**;
- (e) the Commonwealth becomes entitled to terminate pursuant to **clause 7.6**;
- (f) the Commonwealth becomes entitled to terminate pursuant to **clause 8.4(e)**; or
- (g) an Insolvency Event occurs in relation to the Participant.

13.4 Force majeure

The Commonwealth may not take action under **clause 13.3** for a breach of this Funding Agreement due to a cause or causes beyond the Participant's reasonable control which does not continue for more than 12 weeks in the aggregate.

13.5 Survival of obligations after termination

Clauses 3.10, 4, 7.1, 7.3, 7.3(I), 7.7, 9, 10, 11, and this **clause 13.5** of this Funding Agreement will remain in full force and effect and survive the expiry or termination of the agreement evidenced by this Funding Agreement.

14 COMMUNICATIONS

14.1 General

A Communication must be in writing in English and may be given by an agent of the sender.

14.2 How to give a Communication

In addition to any other lawful means, a Communication may be given to a party by being:

- (a) personally delivered to the party;
- (b) left at the party's registered office or current business address;
- (c) subject to **clauses 14.5 and 14.7**, sent by pre-paid ordinary mail to the party's current address nominated for receipt of Communications by mail or, if the address is outside Australia, by pre-paid airmail;
- (d) subject to **clauses 14.6 and 14.7**, sent by facsimile to the party's current facsimile number nominated for receipt of Communications by facsimile; or
- (e) subject to **clause 14.3**, by email sent to the party's current email address nominated for receipt of Communications by email.

14.3 Email communication

The following Communications must not be given by email:

- (a) Audit Statements;
- (b) Reports;
- (c) variations to this Funding Agreement; and
- (d) notices and information under **clauses 3.10, 5.2, 5.3, 6.1, 7.5, 8.3(b), 8.4, 12.4(a), 13.1(b)(iii), 13.2, 13.3, 15, 16.1 and 16.2**.

14.4 Current address for delivery of Communications

- (a) The particulars for delivery of Communications are initially as set out in Item 8 of the Schedule.
- (b) Each party may change its particulars for delivery of Communications by notice in writing to the other party.

14.5 Communications by post

Subject to **clause 14.7**, a Communication is given if posted:

- (a) within Australia to an Australian address, 3 days after posting; or
- (b) in any other case, 14 days after posting.

14.6 Communications by facsimile

Subject to **clause 14.7**, a communication is given if sent by facsimile, when the sender's facsimile machine produces a report that the facsimile was sent in full to the addressee, the report being conclusive evidence that the addressee received the facsimile in full at the time indicated on that report.

14.7 After hours communications

If a Communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

14.8 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Funding Agreement may be served by any method contemplated by this **clause 14** or in accordance with any applicable law.

15 GST

15.1 Construction

In this **clause 15** words and expressions which are not defined in this Funding Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

15.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Funding Agreement are exclusive of GST.

15.3 Payment of GST

If GST is payable by a supplier, or by the representative member for a GST group of which the supplier is a member, on any supply made under this Funding Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

15.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 15.3** in addition to and at the same time that the consideration for the supply is to be provided under this Funding Agreement.

15.5 Tax invoice

Except where **clause 15.8** applies:

- (a) the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 15.3**; and

- (b) the recipient can withhold payment of the amount payable under **clause 15.3** until the supplier provides a tax invoice or an adjustment note as appropriate.

15.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this Funding Agreement the amount payable by the recipient under **clause 15.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

15.7 Reimbursements

Where a party is required under this Funding Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

15.8 Recipient created tax invoice

Where the Participant makes a taxable supply to the Commonwealth under this Funding Agreement, the parties agree:

- (a) the Commonwealth will issue a recipient created tax invoice for the supply at the same time that the Commonwealth provides the consideration for the supply;
- (b) the Participant will not issue a tax invoice in respect of the supply;
- (c) the Commonwealth will issue an adjustment note for any adjustment event that arises in relation to the supply; and
- (d) the Participant will not issue an adjustment note for any adjustment event that arises in relation to the supply.

15.9 Acknowledgment by Commonwealth

The Commonwealth acknowledges that it is registered for GST at the date of entry into this Funding Agreement and that it will notify the Participant if it ceases to be so registered.

15.10 Acknowledgment by Participant

The Participant acknowledges that it is registered for GST at the date of entry into this Funding Agreement and that it will notify the Commonwealth if it ceases to be so registered.

16 SUBSTITUTION, VARIATION, ASSIGNMENT AND WAIVER

16.1 Substitution and variation

- (a) At any time during the term of this Funding Agreement, the Participant may submit in writing to the Commonwealth a proposal to:
 - (i) substitute a different Eligible Pharmaceutical R&D Activity for an activity in the Portfolio; or
 - (ii) add an Eligible Pharmaceutical R&D Activity to the Portfolio.
- (b) Subject to **clause 16.1(c)**, the Commonwealth may, in its discretion, accept or reject a proposal referred to in **clause 16.1 (a)**, with or without conditions.
- (c) This Funding Agreement may only be varied or replaced:
 - (i) in accordance with **clause 5.2, clause 5.3 or clause 8.4**; or
 - (ii) by written agreement of both parties.

16.2 Assignment and dealing

- (a) The Participant must not assign, novate or deal with any right under this Funding Agreement without the prior written consent of the Commonwealth.
- (b) Any assignment, novation or dealing or purported assignment, novation or dealing in breach of this **clause 16.2** will have no effect in so far as it might otherwise affect the Commonwealth.

16.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Funding Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

17 GENERAL

17.1 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Funding Agreement and to perform its obligations under it.

17.2 Governing law and jurisdiction

- (a) This Funding Agreement is governed by and is to be construed in accordance with the laws applicable in the Australian Capital Territory.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

17.3 Liability

An obligation of two or more persons binds them separately and together.

17.4 Good faith and reasonableness

During the term of this Funding Agreement, the parties must act towards each other reasonably and in good faith when exercising rights and discretions, considering consents or approvals, and performing obligations under this Funding Agreement.

17.5 Relationship of parties

- (a) This Funding Agreement does not create a partnership, joint venture, employment or agency relationship between the parties.
- (b) The Participant must not represent that it is, or act as if it was, a partner, joint venturer, employee or agent of the Commonwealth.

PHARMACEUTICALS PARTNERSHIPS PROGRAM

P³

FUNDING AGREEMENT

PARTICULAR CONDITIONS

33

PARTIES

1 Commonwealth of Australia represented by the Department of Industry, Tourism and Resources

ABN 51 835 430479 001

GPO Box 9839
Canberra ACT 2601

20 Allara Street
Canberra ACT 2600

2 The Participant

Pharmaxis Ltd

ABN 75082811630

Unit 2

10 Rodborough Road

FRENCHS FOREST NSW 2086

OPERATIVE PROVISIONS

- 1 This Funding Agreement is made, and the Funding is made available to the Participant, under the Pharmaceuticals Partnerships Program.
- 2 The Funding is made available to the Participant on the terms and conditions of the Funding Agreement, which comprises the General Conditions and the Particular Conditions (including the schedules).
- 3 The Participant acknowledges that it has received and read a copy of the General Conditions, and agrees that the terms and conditions of the General Conditions form part of the Funding Agreement.
- 4 Terms defined in the General Conditions have the same meaning in the Particular Conditions.
- 5 The Participant acknowledges that it has received and read a copy of the Program Guidelines.
- 6 If there is an inconsistency between the Particular Conditions and the General Conditions, the Particular Conditions prevail to the extent of the inconsistency.

EXECUTED as a deed.

Date of Deed: 12 AUGUST 2004

Commonwealth of Australia

SIGNED SEALED AND DELIVERED)
for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)
by Judith Zielber)
a delegate of the Minister for Industry)
Tourism and Resources)
in the presence of:)

/s/ Judith Zielber
Signature of delegate

/s/ Lyn Dodd
Signature of witness
/s/ Lyn Dodd
Name of witness (print)

I hereby accept the terms and conditions pursuant to which the Funding is made available.

Participant

THE COMMON SEAL of)
Pharmaxis Ltd)
)

_____ is affixed in the presence of:

[SEAL]

/s/ David M McGarvey
Company Secretary
David M McGarvey
Name of Company Secretary (print)

/s/ Alan D. Robertson
Director
Alan D Robertson
Name of Director (print)

SCHEDULE – PARTICULARS

- 1. (a) **Start Date:** 1 July 2004
- (b) **Exit Date:** 30 June 2008

2. **Base Expenditure**

Base Year	Expenditure
(a) First Base Year: 1 July 2001 to 30 June 2002	\$ *
(b) Second Base Year: 1 July 2002 to 30 June 2003	\$ *
(c) Third Base Year: 1 July 2003 to 30 June 2004	\$ *
(d) Base Expenditure:	\$*

3. **Forecast Expenditure, Maximum Annual Payment and Maximum Payment**

Payment Year	Forecast Expenditure	Base Expenditure	Maximum Annual Payment
2004/2005	\$ *	\$ *	\$ *
2005/2006	\$ *	\$ *	\$ *
2006/2007	\$ *	\$ *	\$ *
2007/2008	\$ *	\$ *	\$ *

Maximum Payment: \$6,126,398

* Confidential portion omitted and filed separately with the Commission

4. Portfolio

Project	Project Title	2004/2005	2005/2006	2006/2007	2007/2008
1	Development of new treatments for autoimmune diseases (multiple sclerosis and rheumatoid arthritis)	*	*	*	*
2	Development of new treatments for chronic respiratory disease	*	*	*	*

5. Forecast Activity and Performance Milestones

Project	Milestone	Expected Achievement Date
2	*	*
2	*	*
2	*	*
1	*	*
1	*	*
2	*	*
1	*	*
2	*	*
2	*	*
2	*	*
1	*	*
1	*	*
2	*	*
2	*	*
2	*	*
1	*	*
1	*	*
2	*	*
2	*	*
2	*	*
1	*	*
2	*	*
2	*	*
2	*	*

* Confidential portion omitted and filed separately with the Commission

- 6. Members:** Pharmaxis Ltd (ABN 75 082 811 630)
- 7. Interest:** 2 percentage points higher than the 90 day bank bill swap rate sourced from the Commonwealth Banking Corporation as published in the Australian Financial Review on the date of the notice for repayment, or if such rate ceases to be sourced or published, a rate which, in the Commonwealth's opinion, is an appropriate replacement for that rate.
- 8. Communications:**
- (a) Commonwealth Address: GPO Box 9839, Canberra ACT 2601
Facsimile: 02 6213 7360
Email: p3@industry.gov.au
Attention: Manager, P3 Program, AusIndustry
- (b) Participant Address: Unit 2, 10 Rodborough Road, Frenchs Forest NSW 2086
Facsimile: 02 9451 3622
Email: david.mcgarvey@pharmaxis.com.au
Attention: David McGarvey

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Exhibit 15.1

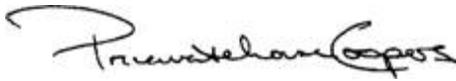
PRICEWATERHOUSECOOPERS

**PricewaterhouseCoopers
ABN 52 780 433 757**

Darling Park Tower 2
201 Sussex Street
GPO BOX 2650
SYDNEY NSW 1171
DX 77 Sydney
Australia
www.pwc.com/au
Telephone +61 2 8266 0000
Facsimile +61 2 8266 9999

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form 20-F of our report dated December 23, 2004, except for Note 14 for which the date is May 19, 2005, relating to the financial statements and financial statement schedule of Pharmaxis Ltd, which appear in such Registration Statement. We also consent to the references to us under the heading "Experts" in such Registration Statement.



PricewaterhouseCoopers

Sydney, Australia
August 16, 2005

Liability is limited by the Accountant's Scheme under the Professional Standards Act 1994 (NSW)
