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Patent Licence toolkit

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## INTRODUCTION

This document provides the articles and sections to draft a patent licence agreement between an academic research institute and a SME or start-up. In addition, it provides a variety of optional clauses on topics which play a role in the various contexts these licences are drafted and explanatory notes to put these in context. The drafters recognize that agreements are based on the outcome of unencumbered negotiations and requires expertise related to technical, commercial and legal matters.

The *toolkit* offers the building blocks, both the essential and the optional for the majority of the cases, in all patent domains. Given the above remark, it does not claim to replace either the freedom to negotiate or the necessity of expertise. With this in mind the structure of the toolkit was set up. It consists of a template licence agreement and an expanded clause list with explanatory notes. The template licence agreement is what the drafters consider to be the essential clauses. The clause list provides additional clauses to tailor the agreement, or at least the starting point of the negotiations, to the industry, parties and technology at hand. By offering these building blocks it will help build a common starting point and understanding, it will identify possible topics and offer concrete wording.

Although it is conceivable that in a given context parties merely fill in the details, in practice, the case at hand will often require amendments to make the text fit the context. This, and identifying which topics are relevant, mean that it is not to be treated as a form. By offering a template and a menu to construct the agreement the parties, can better prepare, decide what they want to arrange and, if they use a term sheet, refer to these clauses and incorporate them by reference. This approach aims to reduce friction and misunderstandings and enable negotiators to focus on the relevant topics.

Negotiations between the parties should focus on identifying what either side values and what the boundary conditions are. Within this area there need to be discussions and trade-offs. By offering wording on societal impact, this toolkit offers an expanded set of options to make that exchange. Although applicable to specific cases the share the general principle that they aim at rewarding compliance by offering positive incentives.

## PATENT LICENCE AGREEMENT

### This agreement is made and entered into by and between:

[University/Institute/Academic Medical Centre], a legal entity governed by Dutch public law (*publiekrechtelijke rechtspersoon*), having its registered seat at [municipality], registered at the Dutch Chamber of Commerce under registration number [number], hereinafter “**Licensor**”; and

[Name], a company organised under the laws of [country], whose corporate seat is at [municipality], registered at the Chamber of Commerce under registration number [number], hereinafter “**Licensee**”;

### Whereas

- A. Licensor has unique expertise in the field of [academic field], developed within the [department] of Licensor;
- B. Licensor’s employees and/or students made certain inventions during the course of their academic research, giving rise to intellectual property rights;
- C. it is understood that Licensor is committed to the policy that its research results, ideas and insights should have societal impact;
- D. Licensor desires effective availability of products and/or processes based on Licensor’s research results, ideas and insights and such availability leads to the greatest possible public benefit;
- E. Licensor has drafted and submitted patent application[s] for the disclosed invention[s];
- F. [Licensee is a start-up company (co-)founded by Licensor;]
- G. Licensee is an enterprise involved in [core business];
- H. Licensee wishes to obtain a licence to certain patent (application from Licensor related to said invention[s] for a specific field of use;
- I. Licensee wishes to develop, manufacture, perform, practice, use, and sell in the market products and/or processes with the use of said invention[s]; and
- J. Licensor wishes to grant such licence to Licensee in accordance with the terms of this agreement.

### Now therefore

## I. Definitions

The following terms and expressions in this Agreement shall have the meaning defined below. In the event a term or expression is used solely in a single article, it is defined in the relevant article.

**Academic Licence** means the right to practice the Licensed Patents for any Non-Profit Research, including research and teaching purposes and sponsored research and collaborations.

**Affiliate** means - with respect to any individual or legal entity- any entity that controls, is controlled by or is under common control with such first entity. For purposes of this definition only, “control” means (a) to possess, directly or indirectly, the power to direct the management or policies of a entity, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or (b) to own, directly or indirectly, more than fifty percent (50%) of the outstanding voting securities or other ownership interest of such entity;

**Agreement** refers to the present agreement concluded between Parties, including all annexes thereto;

**Annex** means any annex to this Agreement;

**Development Plan** means the plan detailing the research, development, commercialisation and other aspects, including but not limited to timelines and Milestones, required to ensure the effective availability of the Licensed Products and Processes, attached as Annex 1;

**Diligent Efforts** means, with respect to a Party's obligation under this Agreement, the level of efforts and resources reasonably required (and which in no event shall be less than the level of effort and resources standard in the relevant industry for a company similar in size and scope to such party) to diligently develop, manufacture, and/or commercialize (as applicable) a product or process in a sustained manner. With respect to a particular task or obligation, Diligent Efforts requires that the applicable Party promptly assign responsibility for such task and consistently make and implement decisions and allocate resources designed to advance progress with respect to such task or obligation;

**Effective Date** is [...];

**Exclusive** refers to the exclusivity of the granted licence only. An exclusive licence restricts the licensor in its own use;

**Field of Use** are the fields of use as specified in Annex 2;

**Licence** refers to the Patent Licence granted to Licensee in this Agreement;

**Licensed Patents** means the patent families and all patents or applications thereto of any country or region, owned or controlled by Licensor at the Effective Date of this Agreement as listed in Annex 3 or added during the term of this Agreement, as well as any divisionals, continuations, continuations-in-part, extensions or reissues thereof, any patents granted on any of the foregoing and any foreign patents or applications, procedurally corresponding to any of the foregoing;

**Licensed Products and Processes** mean the products and/or processes which fall within the scope of a Valid Claim of the Licensed Patents;

**Milestones** mean the milestones as listed in section VII(6) and any other milestone agreed upon pursuant to any provision of this Agreement and the Development Plan;

**Public Research Organisation:** means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities) organised under public law, irrespective of its legal status or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer;

**Non-Profit Research** means use of patents and/or trade secrets for academic research or other not-for-profit scholarly purposes which are undertaken at a Public Research Organisation or governmental institution;

**Non-Royalty Sublicence Income** means all proceeds, other than Royalty Sublicence Income, received by Licensee under a granted sublicence with respect to Licensed Patents;

**Parties** refer to the parties to this Agreement, Licensor and Licensee;

**Patent Licence** has the meaning given by section III(1);

**Royalty Sublicence Income** means all variable proceeds received by Licensee under a granted sublicence with respect to Licensed Patents;

**Territory** consist of the following countries or territories: the entire world;

**Valid Claim** means a claim of an issued and unexpired patent or patent application included within the Licensed Patents, which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise.

## II. Interpretation

1. Headings and titles in this Agreement are for convenience only and shall not influence the construction, performance and enforcement of its provisions.
2. English language words used in this Agreement intend to describe Dutch legal concepts only and the consequences of the use of those words in English law or any other foreign law shall be disregarded.
3. This Agreement sets forth the understanding and agreement between the Parties as to the subject matter hereof and precedes all prior arrangements. In case of conflict between the provisions of this Agreement and any other arrangement, the provisions of this Agreement will prevail.
4. In the event of any conflict or inconsistency between the provisions in the body of this Agreement and any Annex to this Agreement, the provisions in the body of this Agreement shall prevail.
5. A waiver by any Party of a breach or default of another Party under any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions. Nor shall any delay or omission on the part of any Party to exercise or avail itself of any right, power or privilege that it has or may have under this Agreement, operate as a waiver of any breach or default by another Party.
6. Should any part or provision of this Agreement be or become invalid or held unenforceable or in conflict with the law of any jurisdiction, such provision shall be severed and the remainder of this Agreement shall continue in full force and effect to the fullest extent permitted by law. The Parties agree to negotiate in good faith in order to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
7. This Agreement may be amended only by a written document signed by duly authorised representatives of the Parties.
8. Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, licence or other rights upon Licensee by implication, estoppel or otherwise as to any technology, intellectual property rights, products or biological material of Licensor, or any other entity, regardless of whether such technology, intellectual property rights, products or biological material are dominant, subordinate or otherwise related to any Licensed Patents.

9. Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.

### III. Grant of Rights

1. Licensor hereby grants to Licensee and Licensee hereby accepts an Exclusive licence to use the Licensed Patents in relation to the Licensed Products and Processes (the “**Patent Licence**”).
2. The Licence granted is restricted to the Field of Use in the Territory.
3. The Licence granted also extends to Licensee’s Affiliates, under the condition that Licensee shall be fully responsible for compliance by its Affiliates with this Agreement. Any act or omission by an Affiliate shall also be attributed to Licensee. Licensee hereby undertakes that it shall be fully liable for non-compliance by an Affiliate. Licensee shall be the central point of contact on behalf of itself and its Affiliates.
4. At all times, Licensor retains an Academic Licence.

### IV. Sublicence

1. Licensee is entitled to grant sublicences to non-Affiliates in the Field of Use in the Territory on no less strict conditions than this Agreement.
2. Any sublicense granted by Licensee to a sublicensee shall be set out in a written agreement and shall not conflict with the terms and conditions of this Agreement. Any sublicense which contains terms and conditions which are not in compliance with the terms of this Agreement shall require the prior written approval of Licensor. Licensee hereby undertakes that it shall be fully responsible and liable for sublicensee’s actions and non-actions relevant to this Agreement and for diligently collecting all amounts due to Licensee from sublicensees. Licensee has the burden of proof that its sublicensees comply with all requirements that follow from this Agreement.
3. Licensee shall within **30 (thirty) days** of execution, submit to Licensor a copy of each sublicense agreement, any subsequent amendments. Licensee will report relevant parts of sublicensees’ financial and progress reports in its own progress reports, as detailed in articles VII and VIII.
4. Each sublicense will automatically terminate upon termination or expiration of this Agreement.
5. Licensee shall be fully responsible for any breach of a sublicense agreement by any sublicensee or sublicensee thereof that results in a material breach of this Agreement. Licensee shall either (a) remedy such breach (if capable of remedy) within **ninety (90) days** after having become aware of it, or (b) enforce its rights by terminating such sublicense agreement in accordance with the terms thereof.

[V. Material & VI. Support Services left blank]

### VII. Financial Compensation & Payments

1. In consideration of the Licence granted, Licensee shall pay to Licensor as royalties, [...] % ([...] percent) of the Licensee’s Net Sales. “Net Sales” shall mean the total gross receipts for sales, leases, and other transfers of Licensed Products and Processes billed, invoiced, or received by, or on behalf of, Licensee, its Affiliates, and sublicensees to third parties, less the

following: a. customary trade, quantity, or cash discounts to the extent actually allowed and taken; b. amounts repaid or credited by reason of rejection or return; c. to the extent separately stated on purchase orders, invoices, or other documents of sale, any taxes or other governmental charges levied on the manufacture, sale, transportation, delivery, provision, practice, or use of Licensed Products and Processes; and d. outbound transportation costs prepaid or allowed and costs of insurance in transit.

2. In further consideration of the Licence granted, Licensee shall pay to Licensor
  - a) in case of Non-Royalty Sublicence Income, [...] % ([...] percent) of all Non-Royalty Sublicence Income received by Licensee and its Affiliates
  - b) in case of Royalty Sublicence Income, [...] % ([...] percent) of all Net Sales generated by the sublicensees
3. In addition to the payments set out above, Licensee shall pay to Licensors the following amounts upon the following events, as further described in the Development Plan:
  - a) [patent Milestone. a milestone fee of EUR [...] ([...] Euro) upon granting of the first patent within the Licensed Patents in the [United States of America] [or] [Europe] by the [US Patent Office] [or] [European Patent Office];]
  - b) [Marketing Milestone. a milestone fee of EUR [...] ([...] Euro) upon receiving first marketing approval authorisation from the EMA to commence marketing the first Licensed Product in the EU;]
  - c) [First commercial sale Milestone. a milestone fee of EUR [...] ([...] Euro) upon the first sale of Licensed Products and Processes in any country;]
4. Licensee shall submit to Licensor within **six (6) months** of the end of each calendar year a financial report setting forth for such reporting period:
  - a) the number of Licensed Products and Processes sold in each country;
  - b) total billings for such Licensed Products and Processes;
  - c) deductions applicable to determine the Net Sales thereof;
  - d) the amount of Non-Royalty Sublicence Income received;
  - e) the amount of royalties due, or, if no royalties are due for any reporting period, the statement that no royalties are due;
  - f) the number of Milestones successfully completed and the corresponding amounts of milestone payments due as a result thereof; and
5. If multiple technologies are covered by the Licence, Licensee shall specify in a separate royalty report which of the Licensed Patents are utilized for each Licensed Products and Processes.
6. This Agreement and the financial statements of Licensee list all amounts in euros and all amounts will be payable in Euro (EUR). The conversion of foreign currency to Euro will be made at the conversion rate of the European Central Bank in Frankfurt, Germany (i.e. Euro foreign exchange reference rates) on the last working day of each royalty period. No transfer, currency conversion, collection or other charges will be deducted from such payments.



7. Licensor shall submit an invoice to Licensee for all amounts due hereunder with respect to the corresponding reporting period. Licensee shall pay all amounts due under this Agreement within **thirty (30) days** of the date of the corresponding invoice from Licensor.
8. All payments due hereunder will be deemed received by Licensor when the funds are credited to the bank account of Licensor with reference to relevant case number and invoice number.
9. All amounts to be paid to Licensors pursuant to this Agreement will be without deduction of exchange, collection, or other charges, and, specifically, without deduction of withholding or similar taxes or other government-imposed fees or taxes.
10. Any amount set out in this Agreement is exclusive of any value added tax (VAT). If any payment under this Agreement is subject to VAT, Licensor will charge such taxes to Licensee, which shall be paid by Licensee in addition to the payments pursuant to this Agreement.

### VIII. Anti-shelving & Diligence

1. Licensee shall use Diligent Effort to research, develop, manufacture, market or sublicense to effect introduction of Licensed Products and Processes into the market as soon as reasonably practicable, consistent with sound and reasonable business practice and judgment, in accordance with the Development Plan. Thereafter, until the expiration of this Agreement, Licensee shall endeavour to keep the Licensed Products and Processes available to the public.
2. Licensee shall submit to Licensor within **six (6) months** of the end of each calendar year a progress report considering the Development Plan setting forth for such reporting period:
  - a. the effort and outcome of the application of the Licensed Patents and the development of the Licensed Products and Processes by Licensee, Affiliates and its sublicensee(s) if applicable;
  - b. the achievement of Milestones;
  - c. events with a material impact on the development of the Licensed Products and Processes;
  - d. evolution of the Licensee and its Affiliates and sublicensees and their businesses with impact on the Licensed Products and Processes;
  - e. other information relevant to Licensor to determine the likely success of the development of the Licensed Products and Processes.
3. In the event Licensee is unable to achieve the goals or unable to meet the timelines set out in the Development Plan, it will inform Licensee within **3 (three) months** becoming aware this inability and the reasons for it. Licensee shall include a proposed amended development plan to Licensor, if it so desires.
4. During this **3 (three) month** period the Parties will in good faith discuss the reasons the Development Plan cannot be executed and negotiate in good faith about the proposed amended development plan, if provided by Licensor. If Parties reach agreement on an amended Development Plan, this will replace the existing Development Plan. If no agreement can be reached, either Party may submit the dispute to an arbitrator, to be mutually agreed upon. The arbiter will then make a choice between Licensee's proposed amended

Development Plan and Licensor's arguments why it does not meet the standard of Diligent Effort on the part of Licensee. The arbitrator will choose which views in his opinion align best with relevant market standards and will not provide his own terms. The costs for this arbitration shall be borne by Licensee.

5. If Licensor fails to provide an amended Development Plan, or the arbitrator rules in favour of the Licensor, the Patent Licence shall become non-Exclusive upon **one (1) month** written notice by Licensor.
6. In the event Licensee has not fulfilled its Diligent Effort obligations, as may be ruled by an arbitrator or by a competent court, Licensee will be in a material breach, which is subject to section XVI (Termination).

## IX. Reports, records & Audit

1. Licensee shall keep and shall require its Affiliates and sublicensees to keep, accurate records together with supporting documentation of the use of the Licensed Patents [and Trade Secrets] and the development, production and/or use, including efforts thereto, of Licensed Products and Processes and/or sold under this Agreement, as well as achievement of Milestones and progress of the Development Plan, appropriate to determine the payments and the amounts due to Licensor under this Agreement. Such records and documentation shall be retained for at least **seven (7) years** following the end of the reporting period to which they relate.
2. Licensee shall make, and shall require its Affiliates and sublicensees to make, these records and documentation available during normal business hours for examination by a certified public accountant or other authorised auditor appointed by Licensor, for the sole purpose of verifying progress and/or financial reports and payments under this Agreement. In conducting examinations pursuant to this article, the accountant or auditor shall have access to all records which Licensor or the accountant or auditor reasonably believe to be relevant for these examinations. The accountant or auditor shall not disclose to Licensor any information other than information relating to the accuracy of reports and payments made under this Agreement. An examination by an accountant or auditor may take place once per calendar year.
3. In the event any such examination discloses that Licensee has underpaid any amount due to Licensor under this Agreement, Licensee shall forthwith pay to Licensor all amounts that would have been payable to Licensor had Licensee reported correctly, plus interest at the statutory rate for commercial agreements, as set out in article 6:119a of the Dutch Civil Code.
4. Such examination by an accountant or auditor will be at the expense of Licensor, except that if such examination shows an underreporting or underpayment in excess of five percent (5%) for any 12 months' period or a material underrepresentation in the activity of Licensee to develop the Licensed Products and Processes, then Licensee shall pay the costs of such examination.

## X. Prosecution & Maintenance

1. Upon the expiry of **six (6) months** after the Effective Date, Licensee shall reimburse Licensor for all reasonable and documented out-of-pocket expenses incurred by Licensor (excluding internal costs) before the Effective Date in connection with the filing, prosecution and

maintenance of the Licensed Patents provided that upon **six (6) months** after the Effective Date:

- a. this Agreement is in full force and effect;
  - b. neither Party has sent a termination notice;
  - c. no material breach of this Agreement by the Licensor has occurred; and
  - d. Licensor has provided Licensee with a detailed invoice and upon request proof of payment of such expenses.
2. As from the Effective Date Licensee shall reimburse Licensor for all reasonable and documented out-of-pocket expenses incurred by Licensor (excluding internal costs) after the Effective Date in connection with the filing, prosecution and maintenance of the Licensed Patents. Licensor shall consult Licensee as to any material steps in the preparation, filing, and maintenance of the Licensed Patents and shall furnish to Licensee copies of all material documents relevant thereto. If required, Licensee shall cooperate fully in the preparation, filing, and maintenance of the Licensed Patents, executing all papers and instruments so as to enable Licensor to apply for, to prosecute, and to maintain the Licensed Patents. Each Party shall promptly notify the other Party of all matters which come to its attention and which may affect the preparation, filing, or maintenance of any Licensed Patent.
  3. In the event Licensee wishes to reduce the scope of the claims of Licensed Patents, for specific countries if relevant, it shall submit a written proposal to that effect to Licensor detailing the amendments and arguments to do so, on a country by country basis if relevant. The Licensee shall respond within **sixty (60) days'** to the proposed amendment(s) and indicate whether it approves them or not. Such approval shall not be withheld unreasonable. In the event such amendments are not accepted by Licensor, the Patent Right(s) will be excluded from the scope of this Agreement with regard to the countries concerned as of the end of the mentioned period.
  4. Licensee may elect to limit the territorial scope of the Licence (including related maintenance obligations) by removing countries from the Territory, for specific Licensed Patents if relevant. The Licensee may do so upon **sixty (60) days'** written notice to Licensor. Such limitation will not relieve Licensee from its obligation to reimburse Licensor for costs and expenses incurred in relation to the excluded countries prior to the expiration of said notice period. Following limitation, Licensor may continue such Licensed Patents in such country after expiration of said notice period in its own name and at its own risk and expense. In case of such limitation, (a) Licensee shall cooperate fully in the cancellation of all registrations concerning the Licence to the excluded Licensed Patents in the applicable patent registers, and (ii) such Licensed Patents in such country will be excluded from the scope of this Agreement as of the expiration date of said notice period, all so as to enable Licensor to retain all rights to the surrendered Licensed Patents in the countries concerned.
  5. Licensee will provide written notice to Licensor at least **fourteen (14) days** prior to bringing an action seeking to invalidate any Licensed Patent or a declaration of non-infringement. Licensee declares and accepts that this obligation also applies with regard to intended actions of any of its Affiliates and sublicensees.

## XI. Enforcement & Litigation

1. Each Party shall immediately notify the other Party of any act or omission by any third party that it becomes aware of and that can reasonably be regarded as an infringement or a potential infringement of any Licensed Patent under this Agreement.
2. Nothing in this Agreement shall be construed as an obligation for Licensor or Licensee to take legal action against infringement or potential infringement of the Licensed Patents.
3. Licensee is entitled to prosecute in its own name and at its own expense all infringements of Licensed Patents. Commencement of an action by Licensee with respect to any infringement is subject to prior written permission by Licensor. Licensor shall not unreasonably withhold such permission.
4. If Licensee commences an action as described above, Licensor shall render any reasonable assistance to assist Licensee in such infringement proceedings, shall lend its name to such proceedings, and grant a power of attorney to Licensee to act on behalf of Licensor in any such proceedings, provided Licensee reimburses Licensor all reasonable out of pocket costs it incurs in doing so.
5. In the event the Licensor joins the action, Licensee and Licensor shall each bear their own costs incurred during the course of the action and related thereto.
6. No settlement, consent judgment or other voluntary final disposition of legal proceedings may be entered into without the prior written consent of Licensor, which consent shall not be unreasonably withheld by Licensor.
7. Subject to the above arrangements between the Parties who bear the costs, recoveries or reimbursements from actions commenced will first be applied to reimburse Parties for out-of-pocket costs incurred in the action. Any remaining recoveries or reimbursements will be shared equally by Parties.
8. In case Licensee has not commenced such action within a **thirty (30) day** period established by Licensor upon notice to Licensee, Licensor may do so at its own expense, controlling such action and retaining all recoveries therefrom. At the request of Licensor, Licensee shall cooperate fully with Licensor and render any reasonable assistance to assist Licensor in such infringement proceedings, provided Licensor reimburses Licensee all reasonable out of pocket costs it incurs.
9. If a declaratory judgment action is brought naming Licensee as a defendant and alleging invalidity of any Licensed Patents, Licensor may at all times elect to take over the sole defence of the action at its own expense. Licensee shall cooperate fully with Licensor and render any reasonable assistance to assist Licensor in connection with any such action, provided Licensor reimburses Licensee all reasonable out of pocket costs it incurs in doing so.

[XII. Purchase Option left blank]

## XIII. Confidentiality & Publications

1. In relation to the subject matter of this Agreement, Parties shall exchange oral, written or otherwise recorded information to each other of which they know or should know that it is confidential by nature, including books and records and (other) information of the business of the other Party ("Confidential Information").

2. Each Party shall, both during the term of this Agreement and for a period of **five (5) years** thereafter:
  - a. keep secret and confidential all Confidential Information of the other Party;
  - b. use the same degree of care in relation to the Confidential Information of the other Party as it normally uses to avoid unauthorised disclosure of its own Confidential Information;
  - c. only disclose to its officers, employees, representatives, students and contractors, and Affiliates and sublicensees Confidential Information of the other Party that is reasonably required for the performance of the Party's obligations or the exercise of its rights under this Agreement, inform them of the confidential nature of the Confidential Information and only after imposing confidentiality obligations no less restrictive than those set forth in this Agreement; and
  - d. promptly notify the other of any suspected or actual unauthorised disclosure of the Confidential Information of the other Party, and take all reasonable steps to prevent, limit or remedy the disclosure.
3. The obligation to keep secret and confidential shall not apply to any part of Confidential Information that:
  - a. is or becomes published or otherwise part of the public domain other than by acts of the receiving Party or its Affiliates or sublicensees in contravention of this Agreement;
  - b. is disclosed to the receiving Party or its Affiliates or sublicensees by a third party, provided such information was not obtained by such third party directly or indirectly under an obligation to keep such information confidential;
  - c. prior to disclosure under this Agreement, can be shown by written documents to have already been in the possession of the receiving Party or its Affiliates or sublicensees, provided such information was not obtained directly or indirectly under an obligation to keep such information confidential;
  - d. can be shown by written documents to have been independently developed by the receiving Party or its Affiliates or sublicensees without breach of any of the provisions of this Agreement or any agreement with the other Party; or
  - e. is disclosed by the receiving Party pursuant to an order or demand issued by a court or governmental agency or as otherwise required by law or regulations, provided that, the receiving Party notifies the disclosing Party prior to disclosure, giving the disclosing Party sufficient advance notice to permit it to seek a protective order or other similar order with respect to such information and provided further that the receiving Party furnishes only that portion of the information which it is legally required.
4. Licensee recognises the wishes of Licensor to disseminate research results. Licensor undertakes and agrees not to engage in any dissemination, without first submitting such an intended publication to Licensee. For the avoidance of doubt, Parties recognise that a publication in the meaning of this article may be both written and oral. Licensee shall respond within a period of **thirty (30) days** from the receipt of Licensor's written notice which

includes the intended publication. In case Licensee has not responded to such request within the above mentioned term, Licensor will be free to proceed with the publication without further delay.

5. Without prejudice to the previous section, Licensee shall have the right to delay the publication in the event it 1) contains information that may be subject of a patent application, in respect of which no patent application has yet been filed, or 2) contains Confidential Information originating from Licensee or its Affiliates.
  - a. In the event of information that may be subject of a patent application, Licensee will inform Licensor within the period of **thirty (30) days** of receiving the proposed publication of its findings and Parties will work in good faith in order for Licensor to be able to draft a patent and submit a patent application. In the event Parties are unable to do so in **three (3) months** after notification by the Licensee, Licensor will be free to proceed with the publication without further delay.
  - b. In the event of Confidential Information originating from Licensee, or its Affiliates, Licensee will inform Licensor within the period of **thirty (30) days** of receiving the proposed publication of its findings and indicate which parts of the proposed publication contain the Confidential Information. Licensor will then adapt the proposed publication in such a way, that it will not publish the information that Licensee identified as such. After doing so, Licensor will be free to proceed with the publication without further delay.
6. If Parties have previously concluded an Confidentiality Agreement that agreement shall remain in force in addition to this Agreement. In the event of any inconsistency between that agreement and this Agreement, this Agreement shall prevail.
7. Upon termination or expiry of this Agreement, each Party will at the first request of the disclosing Party return or destroy, at the election of the disclosing Party, any and all of the disclosing Party's Confidential Information, except for one copy for its legal files to determine the extent of its obligations hereunder. The aforementioned obligations do not apply to Confidential Information which is electronically stored in computer system backups in so far such Confidential Information cannot reasonably be isolated for deletion from such backup, provided that access to such backup is protected and such Confidential Information shall be immediately destroyed or returned should such backup be restored.

#### XIV. Liability & Indemnity

1. Licensor will indemnify Licensee for any loss suffered by Licensee arising from any claims against Licensee by third parties related to
  - a. breach by Licensor of any provisions, representations or warranties under this Agreement;
  - b. gross negligence or wilful misconduct of Licensor, whether by action or inaction; and
  - c. any violations by Licensor of applicable law or standards;in each case, except to the extent related to breach by Licensee of this Agreement.
2. Licensee shall provide prompt written notice to Licensor of the initiation of any action or proceeding that may reasonably lead to a claim from Licensee to Licensor for indemnification as the consequence of a third party claim to Licensee. Upon such notice, Licensor shall have

the right to assume the defence and settlement of such action or proceeding. Licensee shall cooperate with Licensor in the defence of such claim and provide assistance as it may reasonably be required.

3. To the extent permitted by law and except as set out in this Agreement, Licensor shall in no event be liable for any direct, indirect, or consequential loss, damage, claim, demand and/or expense - of whatever nature - whether arising by way of a third party claim or otherwise - resulting from or in connection with the use and/or the exploitation of the Licensed Patents by Licensee, its Affiliates and/or its sub-licensees under this Agreement. Notwithstanding the foregoing, this section does not exclude Licensor's liability for damages through wilful conduct or gross negligence and liability for breach of any warranty given in this Agreement.
4. Licensor's aggregate liability for all damages of any kind arising out of or relating to this Agreement or its subject matter under any contract, negligence, strict liability or other legal ground shall not exceed the amounts paid to Licensor under this Agreement.
5. Licensee will indemnify Licensor and its officers, employees, representatives, students and contractors for any loss suffered by Licensor arising from any claims against Licensor by third parties related to
  - a. breach by Licensee, its Affiliates and/or its sub-licensees of any provisions, representations or warranties under this Agreement;
  - b. gross negligence or wilful misconduct of Licensee, its Affiliates and/or its sub-licensees, whether by action or inaction;
  - c. any violations by Licensee, its Affiliates and/or its sub-licensees of applicable law or standards; and
  - d. the use and/or the exploitation of the Licensed Patents, Licensed Products and Processes, by Licensee, its Affiliates and/or its sub- licensees;

in each case, except to the extent related to breach by Licensor of this Agreement.

6. Licensor shall provide prompt written notice to Licensee of the initiation of any action or proceeding that may reasonably lead to a claim for indemnification. Upon such notice, Licensee shall have the right to assume the defence and settlement of such action or proceeding. Licensor shall cooperate with Licensee in the defence of such claim and provide assistance as it may reasonably be required.

## XV. Representations & Warranties

1. Other than the representations set out in this article, Licensor makes no representations and extends no warranties of any kind, either expressed or implied, in relation to the Licensed Patents, Licensed Products and Processes, the uses to which they may be put or their suitability for any particular purpose.
2. Licensor represents and warrants to Licensee that, at the Effective Date:
  - a. all Licensed Patents are in full force and effect, and, to the best of Licensor's knowledge the Licensed Patents exist and are not invalid or unenforceable, in whole or in part;
  - b. Licensor has the full right, power and authority to enter into this Agreement, to perform the activities hereunder, and to grant the Licence granted hereunder;

- c. Licensor has not prior to the Effective Date assigned, transferred, conveyed or otherwise encumbered its right, title and interest in the Licensed Patents, or otherwise granted any rights to any third parties that would conflict with the rights granted to Licensee hereunder;
  - d. it is the owner of the Licensed Patents, all of which are free and clear of any liens, charges and encumbrances, and to the best of Licensor's knowledge no other person, corporate or other private entity, or governmental entity or subdivision thereof, has or shall have any claim of ownership whatsoever with respect to the Licensed Patents;
  - e. to the best of Licensor's knowledge, the exercise of the Licence granted to Licensee does not interfere with or infringe any intellectual property rights owned or possessed by any third party; and
  - f. there are no claims, judgments or settlements against or owed by Licensor and no pending to the best of Licensor's knowledge threatened claims or litigation relating to the Licensed Patents.
3. Licensee warrants and represents that it
    - a. is entitled to enter into this Agreement;
    - b. is able to perform any and all of the obligations that may arise on its part out of this Agreement
    - c. shall inform Licensor of any shares, options or shares certificates held by employee(s) of Licensor or their spouses;

## XVI. Term & Termination

1. This Agreement enters into force on the Effective Date and will terminate upon expiry of the last Valid Claim unless terminated earlier in accordance with this article.
2. This Agreement may be terminated:
  - a. if so explicitly stipulated in any provision in this Agreement;
  - b. upon mutual written agreement between the Parties;
  - c. for convenience at any time by Licensee by giving **twelve (12) months'** written notice;
  - d. with immediate effect by Licensor on written notice in the event Licensee has made a false statement, or omitted a material fact in any report or statement required by this Agreement;
  - e. with immediate effect by Licensor on written notice in the event Licensee fails to pay any sums due under this Agreement by the due date and Licensee has failed to remedy that breach within **ninety (90) days** of being given written notice thereof, without prejudice to any other rights that Parties may have relating to late payment;
  - f. with immediate effect by Licensor on written notice in the event Licensee or one of its Affiliates, or one or more of their key employees, is convicted by a court of actions which conflict with the nature of Licensor's role or negatively impact its good standing (including but not limited to bribery, unethical behaviour, endangering the health or lives of people, criminal carelessness, criminal offenses by itself or key



employees, working with parties who can reasonably be assumed to wish to undermine society, or taking money from such parties);

- g. with immediate effect by Licensor on written notice in the event Licensee is found by an arbitrator or court to not have made Diligent Effort, and Licensee has failed to remedy that breach within **ninety (90) days** of being given written notice thereof, without prejudice to any other rights that Parties may have relating to this non-achievement;
  - h. with immediate effect by each Party on written notice in the event of a material breach of the other under this Agreement and that the breaching Party has failed to remedy that breach (if capable of remedy) within **ninety (90) days** of being given written notice thereof; and
  - i. with immediate effect by each Party on written notice in the event that the other Party becomes insolvent, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts.
3. Expiration or termination of this agreement will not release Parties of obligations which have accrued prior to such expiration or termination.
  4. Provisions of this Agreement which, by their very nature, are intended to continue notwithstanding an expiration or termination of this Agreement, will survive an expiration or termination including but not limited to articles XIII, XIV, XV, XVIII.

## XVII. Miscellaneous

1. Parties may make public statements regarding the subject matter of this Agreement without disclosing the terms and conditions, except to the extent such disclosure is required by law, provided that, the disclosing Party notifies the non-disclosing Party prior to disclosure, giving the non-disclosing Party sufficient advance notice to permit it to seek a protective order or other similar order with respect to such information and provided further that the disclosing Party furnishes only that portion of the information which it is legally required.
2. Neither Party shall use the names, logos, insignias or trademarks of the other Party, officers and employees, nor any adaptation of them, without prior written approval.
3. No press release regarding this Agreement or its terms shall be made by any Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
4. Any notice or other communication required or permitted under this Agreement will be sufficiently given through an email, send by registered mail (*aangetekende post*), or by courier to the addresses as stated in Annex 4, or to any substitute addresses as each Party may notify to the other Party.
5. Without prior written consent of Licensor in each instance, neither this Agreement nor the rights granted hereunder will be transferred, assigned, encumbered, or pledged in whole or in part by Licensee to any person or entity whether voluntarily or involuntarily, by operation

of law, or otherwise. Licensor may grant such consent to Licensee under additional conditions (e.g. extra payments or increased royalty rates). This agreement shall be binding upon the respective successors, legal representatives and assignees of Licensors and Licensee.

XVIII. Law & Forum

1. This Agreement shall be governed by Dutch law, excluding its conflict of law provisions.
2. In the event of any claim or dispute between the Parties arising out of or in connection with this Agreement, the Parties shall use their best efforts to seek an amicable settlement for said claim or dispute.
3. To this end the both Parties will attempt to find a mutually acceptable solution to the claim or dispute within thirty (30) days of the notification by one Party to the other Party of said claim or dispute. In the event Parties are not able to settle the claim or dispute within the time set out above, each Party shall designate a member of the senior management who is duly empowered to settle the claim or dispute. The designated managers shall endeavour to settle the claim or dispute within sixty (60) days. After the expiry of said period, and in absence of an amicable solution, each Party shall be at liberty to submit the claim or dispute to the competent court.
4. Any dispute or difference arising in connection with this Agreement which cannot be amicably settled between the Parties, shall, in first instance or in summary proceedings (kort geding), be submitted to the competent court of The Hague (Den Haag), the Netherlands. To this end, Parties waive all defences of lack of personal jurisdiction and forum non conveniens.

**Executed on behalf of the Parties**

<b>Licensor</b>	<b>Licensee</b>
Name:	Name:
Date:	Date:
Signature:	Signature:

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## Annexes

### **Annex 1 Development Plan**

[TO BE ADDED]

### **Annex 2 Field of Use**

[TO BE ADDED]

### **Annex 3 Licensed Patents**

[TO BE ADDED]

### **Annex 4 Contact details and addresses**

[TO BE ADDED]

## CLAUSE LIST AND EXPLANATORY NOTES

	<p>This agreement is made and entered into by and between:</p>	<p>The party heading sets out which entities have entered into the present agreement, the authorized representatives do not need to be mentioned here. It is advisable to verify the details of the entity and representatives with an independent and trusted source.</p>
	<p>[University/Institute/Academic Medical Centre], a legal entity governed by Dutch public law (<i>publiekrechtelijke rechtspersoon</i>), having its registered seat at [municipality], registered at the Dutch Chamber of Commerce under registration number [number], hereinafter "<b>Licensor</b>"; and</p>	<p>This provides the details of the research organisation which owns the patent and licenses it out.</p>
	<p>[Name], a company organised under the laws of [country], whose corporate seat is at [municipality], registered at the Chamber of Commerce under registration number [number], hereinafter "<b>Licensee</b>";</p>	<p>This section identifies the licensee. It needs to refer to unique identifiers, this includes the name but normally also the registration number at the Chamber of Commerce. This section needs to be amended to reflect the system used in the specific country to register legal entities, e.g. Companies House in the UK.</p>
	<p><b>Whereas</b></p> <ul style="list-style-type: none"> <li>K. Licensor has unique expertise in the field of [academic field], developed within the [department] of Licensor;</li> <li>L. Licensor's employees and/or students made certain inventions during the course of their academic research, giving rise to intellectual property rights;</li> <li>M. it is understood that Licensor is committed to the policy that its research results, ideas and insights should have societal impact;</li> <li>N. Licensor desires effective availability of products and/or processes based on Licensor's research results, ideas and insights and such availability leads to the greatest possible public benefit;</li> <li>O. Licensor has drafted and submitted patent application[s] for the disclosed invention[s];</li> <li>P. [Licensee is a start-up company (co-)founded by Licensor;]</li> <li>Q. Licensee is an enterprise involved in [core business];</li> <li>R. Licensee wishes to obtain a licence to certain patent (application)[, know-how] [and] [materials] from Licensor related to said invention[s] for a specific field of use;</li> <li>S. Licensee wishes to develop, manufacture, perform, practice, use, and sell in the market products and/or processes with the use of said invention[s]; and</li> <li>T. Licensor wishes to grant such licence to Licensee in accordance with the terms of this agreement.</li> </ul>	<p>This part of the template provides the context to the Agreement. By explaining the intention of the parties, their background and aims, together with key considerations for the Parties, it sets the scene. Under Dutch law this facilitates the interpretation of the contract and helps determine what the intentions of each party was.</p>
	<p><b>Now therefore</b></p>	

	<b>I. Definitions</b>	The article offers a glossary of terms. In line with legal practice it does not attribute rights and obligations to the parties in the definition provided.
<b>1</b>	The following terms and expressions in this Agreement shall have the meaning defined below. In the event a term or expression is used solely in a single article, it is defined in the relevant article.	This list provides the definitions used in more than one article. Definitions which play a role in one article are defined in the relevant place to avoid adding definitions here, especially if those are related to optional clauses.
	<b>Academic Licence</b> means the right to practice the Licensed Patents [and Trade Secrets] for any Non-Profit Research, including research and teaching purposes and sponsored research and collaborations.	This definition should mirror the grant of Rights under III.
	<b>Affiliate</b> means - with respect to any individual or legal entity- any entity that controls, is controlled by or is under common control with such first entity. For purposes of this definition only, “control” means (a) to possess, directly or indirectly, the power to direct the management or policies of a entity, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or (b) to own, directly or indirectly, more than fifty percent (50%) of the outstanding voting securities or other ownership interest of such entity;	This definition ties in with the legal provisions of Book 2 of the Dutch Civil Code. As such it provides the most commonly used definition.
	<b>Agreement</b> refers to the present agreement concluded between Parties, including all annexes thereto;	
	<b>Annex</b> means any annex to this Agreement;	
	<b>Development Plan</b> means the plan detailing the research, development, commercialisation and other aspects, including but not limited to timelines and Milestones, required to ensure the effective availability of the Licensed Products and Processes, attached as Annex [...];	This definition provides the link to the plans which are the basis of licensee’s efforts to develop a product which is available to the public. Although the execution of the plan is based on a diligent effort, the plan itself should be sufficiently clear and solid. It is the document in which ambitions and aims concerning transparency, access and availability are laid down. Provided parties appreciate that it will need to be updated during the term of the Agreement as the development and commercialisation process cannot be set in stone up front.
	<b>Diligent Efforts</b> means, with respect to a Party’s obligation under this Agreement, the level of efforts and resources reasonably required (and which in no event shall be less than the level of effort and resources standard in the relevant industry for a company similar in size and scope to such party) to diligently develop, manufacture, and/or commercialize (as applicable) a product or process in a sustained manner. With respect to a particular task or obligation, Diligent Efforts requires that the applicable Party promptly assign responsibility for such task and consistently make and implement decisions and allocate resources designed to advance progress with respect to such task or obligation;	This definition is a key section as it defines the amount of effort expected from Licensee. The definition incorporates by reference the standards of a certain sector or industry.
	<b>Effective Date</b> is [...];	The effective date is the date from which the Agreement has effect. This date can differ from the date that the Agreement is signed by all Parties.
	<b>Exclusive</b> refers to the exclusivity of the granted licence only. An exclusive licence restricts the licensor in its own use;	This definition is included for the avoidance of doubt. Because the scope of the concept of ‘exclusivity’ is ambiguous under Dutch law, it is important not to get a misunderstanding about this.

	<b>Field of Use</b> are the fields of use as specified in Annex [...];	
	<b>Improvements</b> means any invention within the Field of Use that solely and directly concerns to the Licensed Patents made after the Effective Date by [Licensor / Licensor's research group, as currently headed by [head of research group], within Licensor's Department of [department] only];	This definition is important in the event the licence intends to cover the patent application of related research conducted by licensor outside the scope of other agreements by the Parties.
	<b>Licence</b> refers to the [Patent Licence] [and/or] [Trade Secrets Licence] granted to Licensee in this Agreement;	
	<b>Licensed Patents</b> means the patent families and all patents or applications thereto of any country or region, owned or controlled by Licensor at the Effective Date of this Agreement as listed in Annex [...] or added during the term of this Agreement, as well as any divisionals, continuations, continuations-in-part, extensions or reissues thereof, any patents granted on any of the foregoing and any foreign patents or applications, procedurally corresponding to any of the foregoing;	
	<b>Licensed Products and Processes</b> mean the products and/or processes which fall within the scope of a Valid Claim of the Licensed Patents;	
	<b>Material</b> means the material as specified in Annex [...];	
	<b>Milestones</b> mean the milestones as listed in section VII(6) and any other milestone agreed upon pursuant to any provision of this Agreement;	This definition is a key concept to measure progress and/or commercial success. Milestones mark specific points along a project timeline. These points signal important anchors in the development and sales process which reflect a value increase. However, not all milestones represent an event which generates income for the licensee, they should always represent a value inflection point for the patent and consequently the licensed products or services.
	<b>Public Research Organisation:</b> means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities) organised under public law, irrespective of its legal status or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer;	
	<b>Non-Profit Research</b> means use of patents and/or trade secrets for academic research or other not-for-profit scholarly purposes which are undertaken at a Public Research Organisation or governmental institution;	
	<b>Non-Royalty Sublicence Income</b> means all proceeds, other than Royalty Sublicence Income, received by Licensee under a granted sublicence with respect to Licensed Patents;	See the remarks on definition of Royalty Sublicence Income.
	<b>Parties</b> refer to the parties to this Agreement, Licensor and Licensee;	
	<b>Patent Licence</b> has the meaning given by section III(1);	

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	<b>Shares</b> means shares in the capital of Licensee;	
	<b>Royalty Sublicence Income</b> means all variable proceeds received by Licensee under a granted sublicence with respect to Licensed Patents;	Definition to be tailored on a case by case basis. Points to consider: to what technology does it relate (e.g. licensed patents, or also license processes?), carve-outs for proceeds relating to other, non-licensed items, further description on what qualifies as variable, and what not).
	<b>Territory</b> consist of the following countries or territories: [...];	
	<b>Trade Secrets</b> means information as referred to in Annex [...] and which information is not known by the public at large or by the experts of the sector in question;	The definition refers to the concept of trade secrets, as well as the protection of trade secrets have been harmonised at EU level. This definition seeks to align with EU regulations.
	<b>Valid Claim</b> means a claim of an issued and unexpired patent or patent application included within the Licensed Patents, which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise;	Since valid patent claims form the basis of this Agreement, and the patent claims in turn determine the scope of patent protection, some provisions in this Agreement refer to 'valid claims'. If there are no longer any valid claims, then in principle there is no longer a basis for this Agreement (unless there are also trade secrets).

	<b>II. Interpretation</b>	This article sets out the rules how to read the contract. Interpretation of the Agreement under Dutch law is not only based on the actual wording of the contract. It also relies on reasonable interpretation of the intention of the parties and their mutual expectations. These can be inferred from e.g. correspondence, drafts, common practices, etc.
<b>1</b>	Headings and titles in this Agreement are for convenience only and shall not influence the construction, performance and enforcement of its provisions.	This section has limited effect under Dutch law, however as it is common in many contracts under foreign law, it is included for convenience.
<b>2</b>	English language words used in this Agreement intend to describe Dutch legal concepts only and the consequences of the use of those words in English law or any other foreign law shall be disregarded.	This section clarifies that this contract uses the Dutch legal framework. Consequently it should be interpreted according to Dutch law even though it is drawn up in the English language.
<b>3</b>	This Agreement sets forth the understanding and agreement between the Parties as to the subject matter hereof and precedes all prior arrangements. In case of conflict between the provisions of this Agreement and any other arrangement, the provisions of this Agreement will prevail.	This section is included to clarify that this Agreement can be part of a wider collaboration (e.g. joint project, MTA, CDA, etc.). Prior arrangements made that conflict with this contract are hereby set aside. However, it also clarifies that earlier agreements which do not conflict with this contract are not set a side or otherwise affected.
<b>4</b>	In the event of any conflict or inconsistency between the provisions in the body of this Agreement and any Annex to this Agreement, the provisions in the body of this Agreement shall prevail.	This section structures the order of precedence between texts which may be drafted by different people or teams. Conflicts between the body of the contract and its annexes may occur and therefore it should be clear which text takes precedence.
<b>5</b>	A waiver by any Party of a breach or default of another Party under any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions. Nor shall any delay or omission on the part of any Party to exercise or avail itself of any right, power or privilege that it has or may have under this Agreement, operate as a waiver of any breach or default by another Party.	This section aims to ensure that a party does not lose its rights under the contract unless that party explicitly states that it desires to lose a certain right.
<b>6</b>	Should any part or provision of this Agreement be or become invalid or held unenforceable or in conflict with the law of any jurisdiction, such provision shall be severed and the remainder of this Agreement shall continue in full force and effect to the fullest extent permitted by law. The Parties agree to negotiate in good faith in order to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.	This section applies the principle that in the event part of the contract is deemed void, the parties commit to effect the underlying agreement between them in admissible way. This may include the unlikely event that part of the Agreement is in conflict with rules related to state aid.
<b>7</b>	This Agreement may be amended only by a written document signed by duly authorised representatives of the Parties.	This section is relevant because under Dutch law a contract and amendments thereto do not need to be in writing to be binding. As a non-written amendment is likely to create a challenging evidentiary situation.
<b>8</b>	Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, licence or other rights upon Licensee by implication, estoppel or otherwise as to any technology, intellectual property rights, products or biological material of Licensor, or any other entity, regardless of whether such technology, intellectual property rights, products or biological material are dominant, subordinate or otherwise related to any Licensed Patents [and/or Trade Secrets].	This section clarifies the intention of the parties, including the limitations. It should be clear that rights are only granted insofar explicit stipulated and that the contract partner cannot claim any other rights.
<b>9</b>	Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.	This section is standard in many international agreements, it is not mandatory under Dutch law, however it is included as its frequent use make it a clause people expect to see.



		III. Grant of Rights	This article details the most important part of what Licensor brings to the agreement, the right(s) to use the patents. This article creates the scope, which should be based on the development and business plans by Licensee. In addition, it adds a feature key for academic institutes, the clarity over their right to continue to use the invention for their (joint) research.
1		Licensor hereby grants to Licensee and Licensee hereby accepts a [Exclusive/non-Exclusive] licence to use the Licensed Patents in relation to the Licensed Products and Processes (the “ <b>Patent Licence</b> ”).	This section sets the scene as it links the patents to products and or services based on these patents. This clause defines the scope of the use licence to the invention and/or technology. An exclusive licence does not restrict the licensor in its own use, it does restrict the licensor from granting further licences. An non-exclusive licence allows licensor to grant further licence with the same or similar scope. Because the term ‘exclusivity’ can be understood in various ways, its meaning is explained in more detail in a Definition.
2		Licensor hereby grants to Licensee and Licensee hereby accepts a non-Exclusive licence to use the Trade Secrets in accordance with the Development Plan (the “ <b>Trade Secret Licence</b> ”).	This is optional section as Trade Secrets derive their value and protection from their secrecy which may conflict with the core task of a publicly funded Licensor to disseminate research results. However, it may be a useful clause in the event of a non-exclusive right when a substantial part of the knowledge shared falls outside of the scope of the licensed patents and this knowledge is not intended for dissemination. However, an exclusive Trade Secret licence will require the Licensor to keep the knowledge secret, potentially hindering the need and goal of academic research, its dissemination.
3		The Licence granted is restricted to the Field of Use in the Territory.	This section defines the scope of the licence. Indicate whether the licence is exclusive and to what extent, e.g. for a certain sector, territory or use. The Field of Use and Territory can also be unlimited. This is a separate section because it should also cover the scope of the Trade Secret Licence is applicable.
4		The Licence granted also extends to Licensee’s Affiliates, under the condition that Licensee shall be fully responsible for compliance by its Affiliates with this Agreement. Any act or omission by an Affiliate shall also be attributed to Licensee. Licensee hereby undertakes that it shall be fully liable for non-compliance by an Affiliate. Licensee shall be the central point of contact on behalf of itself and its Affiliates.	This optional section expands the licence granted to Affiliates of the Licensee. This avoids the need for intra group sub-licences, in line with commercial practices, however without creating a bundle of licensees that will individually act with licensor under the licence agreement. The alternative would be to make each affiliate a sublicensee. In that event, it should be clear whether sublicences to Affiliates are treated differently. Key point in this respect is that affiliates are under (indirect)control of licensee and can therefore determine pricing and manufacturing, while a third party sublicensee is independent. It is a separate section to easily remove this section if not relevant.
5	A	Licensor hereby grants Licensee, and Licensee hereby accepts from Licensor, the option to negotiate an Exclusive Licence (“ <b>Exclusivity Option</b> ”). This Exclusivity Option is valid for [...] ([...]) years after the Effective Date.	This optional section grants the licensee the option to negotiate an exclusive licence if it had agreed a non-exclusive licence or a licence with other restrictions.
	B	After Licensee exercises the Exclusivity Option, it will have [...] ([...]) months within which to negotiate in good faith the terms of an Exclusive licence which terms will be incorporated in this Agreement. Such Exclusive licence will include terms and conditions reflecting the exclusive nature of the Licence and the context of the industry and Licensor’s interests.	This section ensures that the exclusive licence is expected to follow the existing agreement and expand upon clauses that are unworkable or illogical for a non-exclusive licence, such as to Licensor’s right to grant rights to use the Licensed Patents [and Material] for Academic Purposes, commercially reasonable due diligence obligations for the development and commercialization of the Licensed Patents, conditions related to patent management, etc.
	C	If Parties fail to reach agreement on the terms of the Exclusive licence within said negotiation period, then Licensee’s rights under the Exclusivity Option shall lapse.	This section avoids the outcome of an ‘default licence’ in the event of an absence of agreement.

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6		<p>Licensor hereby grants Licensee, and Licensee hereby accepts from Licensor, the option to add one or more new fields of use to the Field of Use ("<b>Field Option</b>"). Licensee may exercise the Field Option by means of a notice to Licensor and only after Licensee meets the following conditions:</p> <ol style="list-style-type: none"> <li>[e.g. not in arrears of payments, successful funding, product or service development];</li> <li>[...];</li> <li>[...].</li> </ol>	<p>This optional section grants the licensee the option to negotiate an additional field to the licence if it had agreed to a field limited licence. The conditions which trigger this right should be clearly defined in this clause and based on the granted rights and industry. It is conceivable that a licensee has an option to add fields once a product has been launched in a specific field or when product development hits a dead end. It could also be related to the growth of Licensee, e.g. because of investments. This expansion requires no further negotiations if the conditions are met.</p>
7		<p>Licensor hereby grants Licensee, and Licensee hereby accepts from Licensor, the option to add new geographic territories to the Territory ("<b>Territory Option</b>"). Licensee may exercise the Territory Option by means of a notice to Licensor and only after Licensee meets the following conditions:</p> <ol style="list-style-type: none"> <li>[e.g. not in arrears of payments, successful funding, product or service development];</li> <li>[...];</li> <li>[...].</li> </ol>	<p>This optional section grants the licensee the option to negotiate an additional Territory to the licence if it had agreed to a territory limited licence. The conditions which trigger this right should be clearly defined in this clause and based on the granted rights and industry. It is conceivable that a licensee has an option to add fields once a product has been launched in a specific field or when product development hits a dead end. It could also be related to the growth of Licensee, e.g. because of investments. This expansion requires no further negotiations if the conditions are met.</p>
8		<p>Licensee shall be entitled, and is hereby authorised by Licensor to effect registration, at its own expense, in the relevant patent registers of the Patent Licence granted hereby or abstracts of this Agreement as may be required to appoint Licensee as a registered licensee to the Licensed Patents.</p>	<p>This optional section grants licensee the right to have the licence or an abstract registered. This right is granted by law and required to have a standing as licensee vs. third parties who are not aware of the existence of the licence. Commonly the existence of the licence is registered as such, not the entire licence or parts thereof.</p>
9	A	<p><b>[OPTION 1]</b> The Patent Licence granted hereby includes Improvements, insofar the Improvements were developed during the first <b>[[TERM]/[months]/[years]]</b> following the Effective Date. Licensor will notify Licensee of any Improvement which has been developed, within <b>3 (three) months</b> from development.</p>	<p>This optional section provides details about the rights of Licensee to use improvements made by Licensor to the Licensed Patents. Without such arrangements, the Licensee has in principle no rights to do so. Consequently, the licence should stipulate whether it also includes improvements of the licensed technology or not. In this option, the licensee can negotiate to add the improvement to this Agreement.</p>
	B	<p>In the event Improvements develop after the term specified in the previous section, Licensor hereby grants Licensee an exclusive right of first negotiation to include such Improvements under the Patent Licence. This right of first negotiation will be valid for a period of <b>3 (three) months</b> as from the day on which an Improvement is made known to Licensee, for the first time, by or on behalf of Licensor. During this <b>3 (three) months'</b> period the Parties will in good faith discuss and negotiate the commercial terms of a licence to such Improvement, on market conditions. If no agreement can be reached, either Party may submit the outcome of the negotiations, i.e. the last offers of both Parties, to an arbitrator, to be mutually agreed upon, who will then make a choice between the final offers of Parties. The arbitrator will choose one of the final offers made by Parties which in his opinion aligns best with relevant market standards and will not provide his own terms. The costs for this arbitration shall be borne by Licensee.</p>	<p>This section sets out the process to come to an agreement and include the new patent rights to the Agreement. As the scope and context of the Agreement remain the same (including existing elements around development and use) this process focusses on inclusion of the rights and the compensation therefore. Given that it aims to expand the existing relationship between the parties, it assumes good faith negotiations will lead to an acceptable solution. However, to avoid triggering the entire conflict resolution clauses in absence thereof, an arbitrator can be appointed to decide on value and compensation. That person should be an expert in the relevant industry and licensing.</p>
		<p><b>[OPTION 2]</b> The licence granted hereby does not include Improvements. However, Licensor will notify Licensee of any Improvement which has been developed, within 3 (three) months from development. Licensor hereby grants Licensee an exclusive right of first negotiation for a licence to such Improvement. This right of first negotiation will be valid for a period of <b>3 (three) months</b> as from the day on which the Improvement is made known to Licensee, for the first time, by or on behalf of Licensor. During this <b>3 (three) months'</b> period the Parties may in good faith discuss and negotiate the terms of</p>	<p>This section provides the Licensee the right to be notified about improvements and to negotiate for a limited time to access those as part of the licence Agreement. In absence of an agreement, parties remain in the same relationship as before. The notification and negotiation period serve to offer an opportunity to licensee and not a firm right to access.</p>

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		a licence to such Improvement, on market conditions. If no agreement has been reached or if Licensee has not reacted to the notification by or on behalf of Licensor, Licensor will be free to enter into negotiations and/or agreement with any third party.	
<b>10</b>		At all times, Licensor retains an Academic Licence.	This section emphasizes the right of Licensor to practice the invention and clarifies the context in which Licensor will do so. It includes pure academic research and research with third parties, including commercial parties. The Licensor, as a publicly funded research institute must be able to further research the research results underlying the Licensed Patents. In the case of a non-exclusive licence, this provision need not be included, as there are no restrictions on use.
<b>11</b>		In the event that Licensor wishes to use the Licensed Patents in collaboration with any non-Public Research Organisation third party as part of research it jointly or separately carries out, Licensor may do so provided that Licensor prior informs Licensee.	This section is an option, it sets out that licensee is informed when Licensor engages in non-profit research. This may be relevant as commercial partners may collaborate in and contribute to the research. And it ensures that the Licensee is informed by the Licensor in the event a third party applies the Licensed Patents as part of a joint research activity.

	IV. Sublicence	This article sets out whether Licensee has the right to sub-license. In many cases such sublicenses are needed for development or commercialization of the licensed products or services. In the context of this toolkit Affiliates are not sub-licensees. This article sees to the situation where the Licensee grants the right to use to a third party who is not an Affiliate.
1	[OPTION 1:] Licensee is entitled to grant sublicenses to non-Affiliates in the Field of Use in the Territory [without the right to (further) sublicense] on no less strict conditions than this Agreement.	This section grants the Licensee the right to grant sub-licences to third parties. As Licensee's Affiliates rights are covered in the grant of rights, they are excluded to avoid conflicting arrangements.
	[OPTION 2:] Licensee is not entitled to grant sublicenses.	This section clarifies that the Licence does not include the right to sublicense. If sublicenses are not allowed, all further provisions are irrelevant and can be removed. Licensees who are granted non-exclusive licences generally do not receive the right to grant sublicenses, in part because the potential sub-licensee can obtain a direct licence from the licensor. However this will depend on the business model and structure of the grant, i.e. exclusive in a certain market or sector, although non-exclusive in the legal sense, will usually include the right to sublicense.
2	Any sublicense granted by Licensee to a sublicensee shall be set out in a written agreement and shall not conflict with the terms and conditions of this Agreement. Any sublicense which contains terms and conditions which are not in compliance with the terms of this Agreement shall require the prior written approval of Licensor. Licensee hereby undertakes that it shall be fully responsible and liable for sublicensee's actions and non-actions relevant to this Agreement and for diligently collecting all amounts due to Licensee from sublicensees. Licensee has the burden of proof that its sublicensees comply with all requirements that follow from this Agreement.	This section ensures that the sublicense remains within the bounds set by the Agreement and reinforces Licensee's responsibility for its sublicensees. To secure licensors interest, and considering the fact that licensor will not be a party to a sublicense agreement, is important that the sublicense agreement will contain no less strict provisions than as stipulated in this Agreement. In this respect, licensee should be fully responsible for the acts of its sub-licensee. Because an agreement can also be concluded orally under Dutch law, the requirement of writing is imposed.
3	Licensee shall within 30 (thirty) days of execution, submit to Licensor a copy of each sublicense agreement, any subsequent amendments. Licensee will report relevant parts of sublicensees' financial and progress reports in its own progress reports, as detailed in articles VII and VIII.	This section ensures that Licensor is appraised of the concluded sub-licences. Licensee should give full transparency with regard to its sub-licensees as they can have a material impact on the Licensor, e.g. to oversee the scope of the agreement but also to be aware of the party involved and plans and goals.
4	[OPTION 1:] Each sublicense will automatically terminate upon termination or expiration of this Agreement.	This section ensures that sub-licences follow the Agreement's fate. The law holds that you cannot give more than you have. With this in mind, the sublicense based on this Agreement should end, if this Agreement ends.
	[OPTION 2:] Upon termination of this Agreement by Licensor, each sublicensee can request to be offered a licence with a comparable scope to this Agreement, with the exception of sections which are irreconcilable, e.g. multiple sublicensees cannot receive an exclusive licence. Such a request will be granted unless this Agreement expires respectively terminates at the end of the agreed contract term, upon expiry of the last Valid Claim, due to a material breach by or attributable to the sublicensee making the request played a role in the termination, or upon or after the Licensed Patents have been assigned. Licensee hereby undertakes to conclude a statement to this effect in each sublicense. If Licensee failed to include the above statement in a sublicense concluded with a third party, Licensee will indemnify Licensor from and against any and all losses suffered or incurred by Licensor caused directly or indirectly by the breach of its obligations under this article IV.	This section offers the sublicensee the comfort that in the event the licensor terminates the Agreement, it will not be cut off from the licence. Provided the patent rights exist, are owned by Licensor and the sublicensee is itself not (part of) the cause of the termination.
5	Licensee shall be fully responsible for any breach of a sublicense agreement by any sublicensee [or sublicensee thereof] that results in a material breach of this Agreement. Licensee shall either (a) remedy	This section makes sure that the Licensee is responsible for acts and omissions by sub-licensees.

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	such breach (if capable of remedy) within <b>ninety (90) days</b> after having become aware of it, or (b) enforce its rights by terminating such sublicense agreement in accordance with the terms thereof.	
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	V. Material	This article is an option in the event that (biological) material is transferred, this Agreement also functions as a MTA. In that event, this Agreement should be clear as to the term of the transfer, how the materials may and may not be used, and other related issues, such as confidentiality. To the extent possible it aims to include the most common types of materials, i.e. chemical, biological. This article is not sufficient legal context to share human tissue, e.g. as part of a clinical trial.
1	[As soon as practicable after the Effective Date] [or] [Before [DATE]], Licensors shall deliver [the amount set out in Annex [...] of] [or] [a reasonable supply of] Material to Licensee. Licensee shall use the Material solely for activities within the scope of the Licence.	This section details the agreement on the provision of the material, especially when and how much. In practice the first of the two options is used, however, it may be useful to specify a date, e.g. when materials require time to prepare or produce.
2	Licensors retain ownership of the Material and Progeny & Unmodified Derivatives, including any Material contained or incorporated in Modifications. “Progeny & Unmodified Derivatives” shall mean any pure-bred descendants from the Material, and/or unmodified derivatives therefrom (i.e. parts which constitute an unmodified functional subunit or product expressed, e.g. RNA, DNA, cells). “Modifications” refer to substances created by the Licensee (or its Affiliates [or sublicensees]) which contain/incorporate the Material or were created using the Material and which are not Progeny & Unmodified Derivatives.	This section sets out which party owns the material and the results of its use. The materials provided are not sold, a sale creates a different legal context than intended under the licence. This clause includes a reference to ‘copies’ or off spring, in the event the materials consist of cells or self-replicating materials. By referring to the situation wherein the material becomes part of a larger construct (biological or otherwise) it aims to avoid a transfer of ownership, in practice the material is controlled by the Licensee after such incorporation.
3	[OPTION 1] Licensee retains ownership of Modifications (except that, the Licensors retain ownership rights to the Material included therein and Progeny & Unmodified Derivatives). If Modifications result from the collaborative efforts of Licensors and Licensee, joint ownership may be negotiated.	This section clarifies that the Licensee owns the results generated by using the material. It is an optional provision regarding ownership of modification and substances created, most likely applicable in case of biological material.
	[OPTION 2] Licensee retains ownership of substances created by Licensee through the use of the Material.	This section clarifies that the Licensee owns the results generated by using the material. Optional provision regarding ownership of modification and substances created, most likely applicable in case of chemical material or engineering products I.
	[OPTION 3] Licensee retains ownership of substances created by Licensee through the use of the Material. In light of the relationship between the Parties, they will enter into good faith discussions over the opportunity for Licensors to use such new or modified material in the course of research and teaching in line with core activities.	This section clarifies that the Licensee owns the results generated by using the material. Optional provision regarding ownership of modification and substances created, most likely applicable in case of chemical material or engineering products. In addition, it provides a basis to enter into discussions over access to such results by Licensee. As Licensee must be willing to share these modifications and relevant information, and such sharing can be detrimental to its legitimate business interests, a pre-agreed arrangement is not desirable.
4	Licensee agrees that the Material is not to be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the prior written consent of the Licensors.	This section restricts the use of materials. Even in the event of materials explicitly provided for such trials, the relevant arrangements should be part of a separate arrangement detailing the clinical trial. Given the complexity, risks and applicable legal frameworks, such an agreement should be part of the agreements covering a clinical trial.
5	Licensee shall not use or conduct research on the Material, including but not limited to sequencing, reverse engineering, disassembling and chemically analysing.	This section sets out restrictions on the use of the material. The restrictions to the use of Material should be clearly stipulated. This section is relevant in the event the Material is provided as a ‘tool’. If the material incorporates the invention and for understanding and/or using the invention the material should be disassembled, this This section needs to be removed.
6	Licensee agrees, warrants and represents that: <ul style="list-style-type: none"> <li>a. the use of the Material will be limited to the premises of Licensee;</li> <li>b. Licensee shall handle and where applicable dispose of the Material with the highest degree of care with regard to the</li> </ul>	This section makes sure that the Licensee ensures that the use of the material is in line with the aims and nature of the material, i.e. experimental. To ensure correct handling of the Material, Licensee should commit to certain basic generally accepted principles. Licensee must also warrant that it is in

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	<p>toxicological and environmental dangers associated therewith and in accordance with all applicable laws and regulations (national and international) including without limitation all health and safety at work requirements and applicable regulations relating to work with recombinant materials;</p> <p>c. proper procedures are in place and shall be observed in order to ensure such proper handling and disposal of the Material;</p> <p>d. it has obtained the required permits, approvals, and/or licences, in case such permits, approvals, and/or licences are legally required by the country from which the Material originates; and</p> <p>e. all Material shall be made available only to personnel that is fully trained in such procedures.</p>	possession of the relevant permits and approvals to handle, use, etc. the material.
<b>7</b>	<p>Licensor agrees, warrants and represents that:</p> <p>a. it is entitled to provide the Material; and</p> <p>b. it has the required permits, approvals, and/or licences, in case such permits, approvals, and/or licences are legally required by the country from which the Material originates.</p>	Given the nature of some Material, e.g. rare plants or animals, the provenance of the materials needs to be demonstrated, as does the approval of countries of origin, the licensor warrants that it is able to do so to ensure licensee can use the materials for the intended purpose.
<b>8</b>	Except as provided in this Agreement, no express or implied licences or other rights are provided to Licensee under any patents, patent applications, trade secrets or other proprietary rights of Licensor, including any altered forms of the Material made by Licensor.	This section makes sure that the limits of rights granted under this agreement apply to the use of the Material. The Material is provided under a licence to use; it is not a purchase. The right to use the Material should be clearly limited to the scope of this Agreement.
<b>9</b>	If Licensee desires to apply or in any way use Modifications, which are covered by any Licensed Patent [and/or Trade Secrets], outside the scope of this Agreement, Licensee agrees, in advance of such application or use, to negotiate in good faith with the Licensor to establish the terms of a licence for such use or application. It is understood by the Licensee that Licensor shall have no obligation to grant such a licence to Licensee.	This section emphasises that use of Modifications that fall within the scope of patent rights of Licensor is only allowed insofar covered by consent of Licensor. Such consent is not automatically granted.
<b>10</b>	Licensee is free to file patent application(s) claiming inventions made by the Licensee through the use of the Material but agrees to notify Licensor upon filing a patent application claiming Modifications or method(s) of manufacture or use(s) of the Material.	This section emphasises that new inventions by Licensee can be claimed by Licensee, in accordance with the system set out in law, but Licensee should keep Licensor informed of such developments. This to avoid conflicts and enable parties to share insights.
<b>11</b>	Under this Agreement [or a sublicense concluded under this Agreement], Licensee is entitled to give the Material to Affiliates [or sublicensees] under obligations no less restrictive than those set forth in this article V and provided that Licensor is then fully informed of the place and circumstances in which the use of the Material then takes place.	This section clarifies that Material can be shared. Although the Agreement also contains the general rule that the provisions in this Agreement must also apply to Affiliates and sublicensees, it is explicitly emphasised here to avoid any misunderstanding that Material can only be given to Affiliates or sublicensees if these rules continue to apply and Licensee is fully informed.

	<p>VI. Support Services</p>	<p>This optional article offers the opportunity to make ancillary services part of the Agreement. In most cases the Licensed Patents do not include all of the relevant information to apply the invention. Information can be un-patentable, be part of the skill of the inventors or of practices developed within a department. Nevertheless, the Licensee needs to be able to access that information to apply the invention disclosed in the Licensed Patents.</p>
<p><b>2</b></p>	<p>Licensor is prepared to render technical assistance services to Licensee. If Licensee wants to make use of such services, it shall notify Licensor thereof specifying the services wanted. Provided that Licensor can provide the desired services, Licensor will present to Licensee a proposal containing an estimate of the costs involved. Parties shall negotiate in good faith the terms and conditions of such services or collaborative efforts.</p>	<p>This section can provide Licensor with the option to call upon Licensor to support its development of the Licensed Patents Licensor provides support services against at a rate to be agreed upon. In most cases these rates are set by Licensor finance departments.</p>
<p><b>3</b></p>	<p>It is understood, that any technical assistance services will only be rendered if and to the extent that such rendering will not interfere with the normal operation and work of Licensor.</p>	<p>This optional section can be included in the event Licensor wishes to clarify that the expected support services have a disproportionate impact on its daily activities, e.g. when such services can only be rendered by a single key employee.</p>



	<h2>VII. Financial Compensation &amp; Payments</h2>	<p>This article details one of the key elements of a licence, the financial compensation from Licensee to Licensor for the granted rights. Consideration for the licence can be given in various ways. This Agreement provides the traditional consideration by payment, but also consideration by issuing stock. The latter is increasingly used in case of start-ups that often do not yet have a solid financial base. In addition, the value to Licensor of specific clauses related to societal impact can be considered a consideration as well. In a manner comparable to open source licences in software the licensor uses its IP rights to create value for itself. What amount, or form of compensation is best suited to the licence granted depends on the industry, development stage and market.</p>
<p>1</p>	<p>Licensee shall pay to Licensor the following amounts:</p> <ol style="list-style-type: none"> <li>a. signing fee: a signing fee of EUR [...] ([...] Euro). This signing fee will be paid <b>within 30 days</b> of the date of this Agreement;</li> <li>b. annual licence fee: an annual non-refundable licence fee of EUR [...] ([...] Euro) ("<b>Annual Licence Fee</b>"). This fee will be paid <b>yearly in January</b>. [...] % ([...] percent) of the Annual Licence Fee paid in a calendar year may be deducted by Licensee from the royalty amounts payable over the same year pursuant to article [...] .]</li> </ol>	<p>This section provides a number of examples of fixed compensations. A signing fee might be used to signal the value of the Licence itself to the Licensor. The annual fee as included here functions as a minimum annual royalty, to ensure that the Licensee and Licensor remain vigilant that the Licence adds value (or is terminated) and to stimulate the creation of value to offset the expense of maintaining it.</p>
<p>2</p>	<p>In consideration of the Licence granted, Licensee shall pay to Licensor as royalties, [...] % ([...] percent) of the Licensee's Net Sales. "<b>Net Sales</b>" shall mean the total gross receipts for sales, leases, and other transfers of Licensed Products and Processes billed, invoiced, or received by, or on behalf of, Licensee, its Affiliates, and sublicensees to third parties, less the following: a. customary trade, quantity, or cash discounts to the extent actually allowed and taken; b. amounts repaid or credited by reason of rejection or return; c. to the extent separately stated on purchase orders, invoices, or other documents of sale, any taxes or other governmental charges levied on the manufacture, sale, transportation, delivery, provision, practice, or use of Licensed Products and Processes; and d. outbound transportation costs prepaid or allowed and costs of insurance in transit.</p>	<p>This section provides the most basic form of compensation for use of the Licensed Patents. It assumes a product is on the market and redistributes part of the turnover of that product to Licensor, thereby sharing success. If there is no product or service the licensee is not obligated to pay for the right to use the Licensed Patents under this section. Note that the section refers to sales and not to profit. Sales can be determined by invoices which are a legal requirement for the Licensee to have and thus are more easily audited, moreover profit depends on the attribution of costs as determined by Licensee. Alternative structures can be agreed on a case-by-case basis. Note that the basis for calculating the royalties should be determined clearly. In general, gross sales are the simplest to calculate. If net sales are defined, it should be clear what costs and expenses are deducted from the gross sales. Note that, in principle, all amounts stated in this Agreement are exclusive of VAT, as made explicit in one of the below sections.</p>
<p>3</p>	<p>In [further] consideration of the Licence granted, Licensee shall pay to Licensor</p> <ol style="list-style-type: none"> <li>a) in case of Non-Royalty Sublicense Income, [...] % ([...] percent) of all Non-Royalty Sublicense Income received by Licensee and its Affiliates</li> <li>b) in case of Royalty Sublicense Income, [...] % ([...] percent) of all Net Sales generated by the sublicensees</li> </ol> <p><b>[OR]</b></p> <ol style="list-style-type: none"> <li>b) in case of sublicense income, [...] % ([...] percent) of all sublicense income received by Licensee and Affiliates.</li> </ol>	<p>This section details compensation paid by Licensee in the event of sub-licence income and should be included in the event Licensee is granted the right to sub-licence. The first condition sees to milestones and other payments, the second provides a basis for the royalties received by Licensee. The first of the two is a flat royalty, in this case Licensor receives a percentage of Licensee's receipts. The second alternative is a pass-through royalty. In this case the Licensor receives a royalty based on percentage of sublicensees sales.</p>
<p>4</p>	<p>In [further] consideration of the Licence granted, Licensee will grant to Licensor [number] Shares. Upon issuance, the Shares issued to Licensor will represent not less than [...] % ([...] percent) of the issued share capital of Licensee on a fully-diluted basis. Licensee agrees to provide Licensor with the capitalization table.</p>	<p>This optional section provides a general arrangement for situations in which shares are issued to the Licensor. Note that an issuance of shares is not necessary: in many situations, Licensor can be compensated otherwise. If shares are issued, then Licensor should carefully consider, among other things, what type of shares are issued to it, what other shares and other equity instruments have been issues (e.g. shares without voting rights, share certificates), and what options to acquire shares (or similar rights) have been granted by</p>

		<p>Licensee. Licensor/Licensor will also have to carefully consider (and possibly amend) the articles of association (<i>statuten</i>) of Licensee. The issuance of shares to Licensor/Licensor will necessitate an investment agreement and/or shareholders' agreement, in which the following topics are typically arranged (among other deal-specific topics):</p> <ul style="list-style-type: none"> <li>(i) Representations and warranties by Licensee re the Shares;</li> <li>(ii) Corporate governance of Licensee (e.g. composition of managing board/supervisory board/advisory board);</li> <li>(iii) Information rights of Licensor/Licensor;</li> <li>(iv) Approval rights (e.g. re important decisions, investments and/or divestments, annual business plans etc.);</li> <li>(v) Non-competition; and</li> <li>(vi) Exit arrangements.</li> </ul>
<p>5</p>	<p>In addition, Licensee will issue to Licensor, without further consideration, such amount of additional Shares of the class issued pursuant to the above section necessary to ensure that the total number of Shares issued to Licensor does not represent less than [...] % ([...] percent) of the Shares issued and outstanding on a fully diluted basis at any time through the completion of issuance of all shares to be issued in connection with the First Round of bona fide equity investment in Licensee from a single or group of investors which is both (i) at least EUR [...] ([...] Euro) in size and (ii) at a price per share which, when applied to stock actually outstanding immediately after such round, implies a post-financing equity valuation of Licensee of at least EUR [...] ([...] Euro) (provided that if more than EUR [...] ([...] Euro) is raised as of such time, the calculation of Licensor's percentage ownership shall be determined as if only EUR [...] ([...] Euro) was raised). For the purpose of this provision, a "First Round" is a bona fide round of equity, warrant, option or convertible equity investment which includes all the tranches prior to the completion of the financing. This right will expire upon the issuance of all Shares to be issued in connection with such First Round, but will apply to all Shares to be issued in or in connection with such First Round.</p>	<p>This section provides for a specific arrangement to avoid dilution of Licensor/Licensor as shareholder of Licensee. It should be reviewed on a case-by-case basis whether this arrangement is desirable (and if so, in what form). Dependent on the factual circumstances, a dilution of Licensor/Licensor's share interest could be logical and reasonable, e.g. if new shares are issued for cash, and on the basis of a valuation that is well in excess of the value attributed to the shares issued to Licensor.</p> <p>If so desired, the term 'Fully Diluted' or 'on a fully diluted basis' can be specifically defined. In general, the term "on a fully diluted basis" is used to reflect that, for the purpose of calculating shareholding ratios, it is assumed that that outstanding rights to acquire shares (e.g. warrants, share options, convertible loans) have been exercised.</p>
<p>6</p>	<p>In addition to the payments set out above, Licensee shall pay to Licensors the following amounts upon the following events, as further described in the Development Plan:</p> <ul style="list-style-type: none"> <li>a. [patent Milestone. a milestone fee of EUR [...] ([...] Euro) upon granting of the first patent within the Licensed Patents in the [United States of America] [or] [Europe] by the [US Patent Office] [or] [European Patent Office];]</li> <li>b. [CE-mark Milestone. a milestone fee of EUR [...] ([...] Euro) upon obtaining a CE mark for a Licensed Products and Processes for use, sale, and import in the European Union;]</li> <li>c. [IND/CTA Milestone. a milestone fee of EUR [...] ([...] Euro) upon approval of the first investigational drug application by the FDA or clinical trial approval by the EMA for a Licensed Product, fifty percent (50%) to be payable on first filing of the application of the IND or CTA and fifty percent (50%) on approval;]</li> <li>d. [Human clinical trial Milestone. a milestone fee of EUR [...] ([...] Euro) upon the first patient being included in the first human clinical trial in any country within the Territory;]</li> </ul>	<p>This section provides a list of milestones to be agreed upon between parties. The listed milestones are for example purposes only.</p> <p>To promote progress, it is preferable to link further payments to progress, both in development, as in expansion. Each milestone represents a significant step in the development. This step brings the product or service under development a step closer to the relevant market. Consequently, the Licensed Patents become more valuable and the milestone represents the stake of the Licensor in that increased value. However, other than royalty income, the milestones are in many cases not related to actual receipts by Licensee. The increased value of the Licensed Patents will add to the value of Licensee but does not necessarily result in receipts by Licensee. The provided list offers options for a wide variety of situations, it is unlikely all of them will be used in a licence.</p>

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	<ul style="list-style-type: none"> <li>e. [Phase II study Milestone. a milestone fee of EUR [...] ([...] Euro) upon the first dosing of the first Licensed Product in the first clinical phase II study (i.e. a pivotal human clinical trial in any country the results of which could be used to establish safety and efficacy of a Licensed Product as a basis for a biologics licence application to the FDA or that would otherwise satisfy requirements of 21 CFR 312.21(c) in the US, or its foreign equivalent;]</li> <li>f. [FDA/EMA approval Milestone. a milestone fee of EUR [...] ([...] Euro) upon receiving approval from the FDA of the first biologics licence application or equivalent thereof in the EU by the EMA for the first Licensed Products and Processes;]</li> <li>g. [Healthcare reimbursement Milestone. a milestone fee of EUR [...] ([...] Euro) upon validation of Licensed Products and Processes for reimbursement by a public or private health insurer;]</li> <li>h. [Marketing Milestone. a milestone fee of EUR [...] ([...] Euro) upon receiving first marketing approval authorisation from the EMA to commence marketing the first Licensed Product in the EU;]</li> <li>i. [First commercial sale Milestone. a milestone fee of EUR [...] ([...] Euro) upon the first sale of Licensed Products and Processes in any country;]</li> <li>j. [...]</li> </ul>	
7	<p>A fee-for-use of EUR [...]([...] Euro) per use of the Material (“Use Fee”), to be recorded and reported in accordance with section 14 of this article;</p>	<p>This section provides a basis for a payment upon use of Material. This can for example be relevant when Licensee uses Material for a production process which is not easily linked to sales.</p>
8	<p>All fixed amounts due under this Agreement will be adjusted every year ([20XX] shall be considered 100) for monetary value changes due to inflation, on the basis of the change in the Consumer Price Index (CPI) published by the Centraal Bureau voor de Statistiek (CBS) in The Netherlands.</p>	<p>This optional section provides an indexation of agreed upon amounts to compensate for inflation. It will, by definition, only impact set amounts. If it is used, care should be taken to check annual amounts and update accordingly.</p>
9	<p>In the event that Licensed Products and Processes are sold in combination with another product, component or service for which no royalty would be due hereunder if sold separately, Net Sales from such combination sales for purposes of calculating the amounts due under this article shall be calculated by multiplying the Net Sales of the combination product or service by the fraction <math>A/(A + B)</math>, where A is the average selling price during the preceding calendar quarter of the Licensed Products and Processes sold separately and B is the average selling price during the preceding calendar quarter of the other product(s), component(s) or service(s). In the event that separate sales of the Licensed Products and Processes and/or of the other product(s), component(s) or service(s) were not made during the preceding calendar quarter, then the sales on the combination product shall be reasonably allocated between such Licensed Products and Processes, and such other product(s), component(s) or service(s) based upon their relative importance and proprietary protection as mutually agreed upon by Licensor and Licensee.</p>	<p>This section clarifies how royalties are calculated in products which incorporate Licensed Patents and products which do not fall under those rights. Licensor only asks for compensation for the benefit that follows from the Licensed Patents.</p>
10	<p>Licensee may reduce the royalty amounts payable in the event that Licensee requires licences to intellectual property rights from third parties to obtain freedom to operate, to manufacture or sell the Licensed Products and Processes. In that event Licensee may deduct the amounts paid to such third parties from the royalty amounts payable for Licensed Products and Processes, up to a maximum deduction of [fifty percent (50%)] of the payable amounts, provided</p>	<p>This section details the situation that a Licensee is required to license intellectual property rights from third parties to develop or market a product based on the Licensed Patents.</p>

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	Licensee has informed Licensor of such required licences before applying the deduction.	
11	In the event Licensed Products and Processes are no longer covered by a Valid Claim in a country of the Territory, payment obligations shall be reduced by fifty percent (50%) with respect to sales of Licensed Products and Processes in said country.	This optional section links the payment of royalties over certain products to the existence of the Licensed Patents in the territories covering such products. Compensation is no longer requested once those exclusive rights do no longer exist in the relevant countries. As the patent management involves both Parties, neither will be left at the mercy of the other Party. Please ensure that this provision is linked to the right type(s) of payments.
12	As of the moment Licensee reports to Licensor that a competitor markets a process or product in a country that would infringe the Licensed Patents if these would exist in such country, Licensee may reduce the royalty amounts payable by [...]% ([...] percent) for those Licensed Products and Processes, affected by said market entry on a country-by-country-basis, provided, however, that the royalty amounts payable in any given calendar year will never be lower than [...]% ([...] percent) of the royalty amounts that would have been payable in that given calendar year if no reduction is applied pursuant to this section.	This optional section offers a royalty reduction when the Licensed Patents do not exist in a country and there is a competitive product in the market. The rationale is that it will obviate the need for overly broad coverage of Licensed Patents and at the same time share the (earlier) benefits granted to Licensee.
13	If Licensor is compelled to grant a compulsory licence to make, use or sell Licensed Products and Processes in any country for any particular Field of Use by any court or public regulatory body, the royalties payable by Licensee for that country and for that particular Field of Use shall be reduced to a rate which is no higher than that required to be paid by the holder of such compulsory licence, effective from the date of first sale by such compulsory licensee under the compulsory licence.	This section will ensure that a Licensee is only required to pay the royalty rate set by a government in the event it grants a compulsory licence to a third party in its territory.
14	Licensee shall submit to Licensor within <b>six (6) months</b> of the end of each calendar year a financial report setting forth for such reporting period: <ul style="list-style-type: none"> <li>a. the number of Licensed Products and Processes sold in each country;</li> <li>b. total billings for such Licensed Products and Processes;</li> <li>c. deductions applicable to determine the Net Sales thereof;</li> <li>d. [the amount of Non-Royalty Sublicence Income received;]</li> <li>e. the amount of royalties due, or, if no royalties are due for any reporting period, the statement that no royalties are due;</li> <li>f. [if applicable, deduction of the Annual Licence Fee from the royalties due, if any, to determine the actual amount of royalties due and payable to Licensors;]</li> <li>g. the number of Milestones successfully completed and the corresponding amounts of milestone payments due as a result thereof; and</li> <li>h. [the number of times Material was used and corresponding Use Fee.]</li> </ul>	This section must list the relevant information which must be reported, as such it should reflect only the financial conditions agreed upon as a basis for payments. Adequate reporting by licensee (including activities of Affiliates) is necessary to determine the royalty and other amounts due.
15	If multiple technologies are covered by the Licence, Licensee shall specify in a separate royalty report which of the Licensed Patents[, Trade Secrets] [and Material] are utilized for each Licensed Products and Processes.	This section identifies what parties are to report in the event the Licensed Patents cover multiple products.
16	This Agreement and the financial statements of Licensee list all amounts in euros and all amounts will be payable in Euro (EUR). The conversion of foreign currency to Euro will be made at the conversion rate of the European Central Bank in Frankfurt, Germany (i.e. Euro foreign exchange reference rates) on the last working day of each royalty period. No transfer, currency conversion, collection or other charges will be deducted from such payments.	This section details how to calculate the exchange rate when non EUR amounts, e.g. turnover based royalties outside of the EUR zone, are to be converted in EUR.
17	Licensor shall submit an invoice to Licensee for all amounts due hereunder with respect to the corresponding reporting period.	This section sets out the mechanism for royalty collection. Based on the report provided by Licensee the Licensor issues an invoice to the Licensee.

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	Licensee shall pay all amounts due under this Agreement within <b>thirty (30) days</b> of the date of the corresponding invoice from Licensor.	
<b>18</b>	All payments due hereunder will be deemed received by Licensor when the funds are credited to the bank account of Licensor with reference to relevant case number and invoice number.	This section details the payment of the invoice send by Licensor.
<b>19</b>	All amounts to be paid to Licensors pursuant to this Agreement will be without deduction of exchange, collection, or other charges, and, specifically, without deduction of withholding or similar taxes or other government-imposed fees or taxes.	This section limits the deductibles from payments. As payer, Licensee has control over the payment route and therefore, unless agreed otherwise, all amounts should be net amounts to prevent misunderstandings and discussions.
<b>20</b>	Any amount set out in this Agreement is exclusive of any value added tax (VAT). If any payment under this Agreement is subject to VAT, Licensor will charge such taxes to Licensee, which shall be paid by Licensee in addition to the payments pursuant to this Agreement.	This section makes sure that in the event invoices need to include VAT, parties understand that all amounts in the Agreement are exclusive of VAT.
<b>21</b>	Late payments will be subject to statutory interest for commercial agreements, as set out in article 6:119a of the Dutch Civil Code.	This section details the penalty for late payments.
<b>22</b>	<p>In the event of a material breach by the Licensor that can be remedied but that Licensor has failed to remedy within <b>ninety (90) days</b> of being notified thereof, as of the date of notification and for the duration of said breach Licensee has the right to:</p> <ol style="list-style-type: none"> <li>suspend payment of all amounts due under the Agreement, as set out in article 6:52 of the Dutch Civil Code;</li> <li>deduct from amounts stipulated as payable under sections <b>[one, two, three and seven]</b> of this article the amounts which can be attributed to the period of said breach; and</li> <li>reduce the amounts stipulated as payable under sections <b>[six]</b> by <b>[five percent ([5]%)]</b> for each <b>ninety (90) days</b> the breach continues and shall only become due after the breach is remedied.</li> </ol>	<p>This section offers a remedy to stimulate Licensor to faithfully execute the Agreement without forcing the Licensee to trigger termination. This is sometimes an issue when it comes to prosecution, a clause which is crucial for licensee and requires active management by Licensor. For most Licensee's termination is not a real option. Therefore there is a need for a step in between, similar to revoking the exclusivity as a middle ground between exclusive licence and termination. This section creates a penalty by making payments not becoming due during such a breach by Licensor. It sets out the right the licensee has under the law, a section under which royalties etc. do not become due, ever, over that period. Effectively providing discounts to prompt Licensor. This is explicit in the third subsection, which grants a discount as the milestone is a single event that represent a process over a longer period and thus cannot be easily attributed to a short time frame. In the most extreme scenario the outcome is that no payments are due at all. This is preferable over a penalty or fine which may result in payments being required to Licensee by Licensor.</p>

		VIII. Anti-shelving & Diligence	This article sets out one of the key obligations by Licensee. It is of great importance that the new technology is applied so that society benefits from the research results. For this reason, this Agreement contains provisions in this article to monitor progress and to promote effective application, as well as solutions in case licensee remains inactive. In this regard, licensee must keep licensor actively informed about developments and non-developments.
1		Licensee shall use Diligent Effort to research, develop, manufacture, market [or sublicense] to effect introduction of Licensed Products and Processes into the market as soon as reasonably practicable, consistent with sound and reasonable business practice and judgment, in accordance with the Development Plan, as may be amended from time to time. Thereafter, until the expiration of this Agreement, Licensee shall endeavour to keep the Licensed Products and Processes available to the public.	This section sets out a key obligation on Licensee. Considering the public interest, Licensor desires from Licensee that Licensee commits to use its best efforts to achieve that the market will be served with the new technology. The Development Plan sets out an agreed route to develop and successfully executing on them is there considered Diligent Effort.
2		Licensee shall submit to Licensor within six (6) months of the end of each calendar year a progress report considering the Development Plan setting forth for such reporting period: <ul style="list-style-type: none"> <li>a. the effort and outcome of the application of the Licensed Patents [and Trade Secrets] and the development of the Licensed Products and Processes by Licensee[, Affiliates] [and its sublicensee(s) if applicable];</li> <li>b. the achievement of Milestones;</li> <li>c. events with a material impact on the development of the Licensed Products and Processes;</li> <li>d. evolution of the Licensee and its Affiliates [and sublicensees] and their businesses with impact on the Licensed Products and Processes;</li> <li>e. other information relevant to Licensor to determine the likely success of the development of the Licensed Products and Processes;</li> <li>f. [...].</li> </ul>	This section details the need to report on the obligation to use best efforts to develop the products or services with the Licensed Patents. The list should reflect efforts by Affiliates or Sub-licensees when relevant.
3		Licensee will notify Licensor prior to commencing any clinical trials at Licensor or its Affiliates [or sublicensees].	This optional section ensures that Licensee is informed of clinical trials before they take place.
4	A	If Licensee discontinues its process to effect introduction of the Licensed Products and Processes into the commercial market as soon as reasonably practicable, without intent to resume, it shall notify Licensor in writing within 3 (three) months of such discontinuance, substantiating the reasons for the discontinuation.	This section details the option for Licensee to discontinue its effort to develop the Licensed Patents without terminating the Agreement, however resulting in the grant of rights becoming non-exclusive.
5		In the event Licensee is unable to achieve the goals or unable to meet the timelines set out in the Development Plan, it will inform Licensee within 3 (three) months becoming aware this inability and the reasons for it. Licensee shall include a proposed amended development plan to Licensor, if it so desires.	This section sets the chain of events in motion in the event the Development Plan is no longer feasible for Licensee. It creates the obligation to report its inability, provide reasons and an alternative. This alternative is not mandatory as there may be reasons why it cannot or does not want to achieve them. If the licence loses all relevance, it should be terminated, this section does not play a role in that context.
6		During this 3 (three) month period the Parties will in good faith discuss the reasons the Development Plan cannot be executed and negotiate in good faith about the proposed amended development plan, if provided by Licensor. If Parties reach agreement on an amended Development Plan, this will replace the existing Development Plan. If no agreement can be reached, either Party may submit the dispute to an arbitrator, to be mutually agreed upon. The arbiter will then make a choice between Licensee's proposed amended Development Plan and Licensor's arguments why it does not meet the standard of Diligent	This section lays down the process by which a new Development is agreed upon and what happens when no agreement can be reached.

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		Effort on the part of Licensee. The arbitrator will choose which views in his opinion align best with relevant market standards and will not provide his own terms. The costs for this arbitration shall be borne by Licensee.	
7		If Licensor fails to provide an amended Development Plan, or the arbitrator rules in favour of the Licensor, the Patent Licence shall become non-Exclusive upon <b>one (1) month</b> written notice by Licensor.	This section will enable Licensor to grant other partners the opportunity to develop products or services if Licensee is unable to do so. Instead of fully terminating the licence it offers an alternative solution. To balance the hardship parties can agree conditions under which Licensor can do so. The aim is to ensure application of the new technology in the event Licensee proves unable to bring products or services to the market as agreed upon. The parties should include this aspect in their negotiations under the section A.
8		In the event Licensee has not fulfilled its Diligent Effort obligations, as may be ruled by an arbitrator or by a competent court, Licensee will be in a material breach, which is subject to section XVI (Termination).	This section makes sure that the Diligent effort is recognized as a material condition of the agreement. However, to ensure that such a claim is not made lightly, it needs to be supported by a finding of an arbitrator or court.
9		Licensee has the burden of proof of due compliance with the provisions of this Article.	This section is included to ensure that the party best placed to offer proof of its efforts, does so. Licensee has the best position to proof the progress of its activities. For this reason licensee has the burden of proof to show that it has acted with sufficient effort and diligence. Thereby also avoiding the need for Licensor to prove absence of activity of Licensee.

			This below sections provide sections for a variety of topics which can be loosely group under the heading societal impact. Society reap the benefits of successful research results converted into products (e.g. medicaments) or services only if they reach the market and are effectively available to the public. This is one of the ways society is able to benefits from publicly funded research. The following clauses aim to stimulate that availability in a variety of contexts, e.g. the Netherlands and developing countries. They can be considered specific arrangements stemming from the ambitions of the parties to make products and services based on the research underlying the patent effectively available, in a manner of speaking, applied examples of commitment to use or have used.
		<i>Access for Humanitarian Purposes</i>	This article is intended to secure access for Humanitarian Purposes.
1	A	Licensee agrees to use Diligent Efforts to ensure effective and affordable access to Licensed Products and Processes in Developing Countries. <b>Developing Countries</b> shall mean the low-income [and lower-middle-income] countries as classified by the World Bank, or any country listed as eligible to receive support from the GAVI, the Vaccine Alliance, as such list may be updated from to time by the GAVI.	This optional section assumes the commitment by Licensee to develop products in developing countries. This is a voluntary obligation on the licensee.
	B	Regardless of the other provisions of this Agreement, in the event Licensee is unable or unwilling to distribute Licensed Products and Processes in Developing Countries, it shall either appoint a local distributor and/or donate product and/or provide a sublicense to a Qualified Humanitarian Organisation to enable it to do so solely for Humanitarian Purposes, provided that any such sublicense shall expressly exclude the right to export any Licensed Product from any Developing Country into any non-Developing Country or to distribute or otherwise use the Licensed Products and Processes in any non-Developing Country. <b>Humanitarian Purposes</b> means practice of	This section is included to ensure that the products will in any event also become available to Humanitarian Organisations for Humanitarian Purposes, irrespective of the intentions of licensee, as set out above. These sections can be relevant, with and without the commitment by Licensee to ensure access in Developing Countries.

		<p>Licensed Patents [and/or Trade Secrets] in the prevention or treatment of disease in humans by or on behalf of any Qualified Humanitarian Organisation (including, for clarity, practice of Licensed Patents [and/or Trade Secrets] by contractors, manufactures or distributors acting for or on behalf of such Qualified Humanitarian Organisations on a fee-for-service, fee for-product or charitable basis) (a) to manufacture Licensed Products and Processes anywhere in the world for the sole and express purposes of distribution and use of such products and/or processes in one or more Developing Countries, and (b) to sell or otherwise distribute Licensed Products and Processes for use solely in one or more Developing Countries; provided, however, that sales and distribution of Licensed Products and Processes shall not be deemed made for Humanitarian Purposes unless products are distributed at locally-affordable prices. <b>Qualified Humanitarian Organisations</b> means any governmental agency, nongovernmental agency or other not-for-profit organisation that has as one of its bona fide missions to address the public health needs of underserved populations on a not-for-profit basis, for example the Medicines Patent Pool. For clarity, Qualified Humanitarian Organisations do not include non-governmental agencies and non-for-profit organisations that are formed or established for the benefit of any for-profit entity.</p>	
	C	<p>With respect to Net Sales attributable to Licensed Products and Processes by Licensee (or any of its Affiliates or any sublicensee) in any Developing Country, solely for use in such Developing Country and not for further sale or use in any non-Developing Country, Licensee and Licensor will negotiate in good faith on a country-by-country basis a royalty percentage for such Developing Country, which percentage will generally be in the range of zero percent (0%) to [...] percent ([...]), keeping in mind anticipated and actual profits in such countries, as well as the degree to which Licensed Products and Processes are available on a locally-affordable basis on a Developing Country-by-Developing Country basis.</p>	<p>The section sets out that the licensor is willing to substantially reduce royalty rates to stimulate and reward Licensee to market products in developing countries, if reasonable in view of actual profits made by Licensee.</p>
		<p><i>Insurance for the benefit of end users</i></p>	<p>This articles ensures – in the general interest – that licensee is always able to meet his legal obligations, including any obligations to pay compensation where appropriate.</p>
2	A	<p>Unless Licensee demonstrates that damages suffered by consumers of a Licensed Products and Processes are covered by adequate mechanisms under law, regulation or standards, Licensee shall maintain, and shall cause its Affiliates [and sublicensees] to maintain an adequate general liability insurance, including coverage for product liability and contract liability to users and/or consumers of its products, for the duration of this Agreement and thereafter for as long as any Licensed Products and Processes are being commercially applied, distributed or sold by Licensee, its Affiliates [or sublicensees], which period will in no event be less than <b>three (3) years</b>.</p>	<p>This section emphasizes the need for a licensee to be able to meet claims for damages caused by the product or service to the (end) consumer. An insurance policy guarantees, or at least give more guarantee for, compliance on this point.</p>
	B	<p>Licensee shall provide Licensor with written evidence of (the appropriate details of) such coverage upon request of Licensor, as well as evidence that, if applicable, insurance premiums have been paid timely. Licensee shall provide Licensor with written notice at least <b>fifteen (15) days</b> prior to the cancellation, non-renewal or material change in such insurance. If Licensee does not obtain replacement insurance providing comparable coverage within such <b>fifteen (15) day</b> period, Licensor shall have the right to terminate this Agreement effective at the end of such <b>fifteen (15) day</b> period without any notice of default.</p>	<p>This section provides certainty that the insurance policy is in place.</p>



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		<i>Rewarding compliance, availability, transparency and/or local development</i>	This article provides a number of mechanisms to stimulate and reward the development and subsequent availability in a specific region or country. As these requirements on the part of licensor are additional burdens for the licensee, this may be compensated by offering discounts on the monetary compensation. This reflects the understanding that such choices come at a cost for the licensee, which is partially passed on to the licensor.
3	A	With respect to Net Sales attributable to Licensed Products and Processes in the European Union, solely for use in the European Union and not for further sale or use in any country outside the European Union, Licensee and Licensor will negotiate in good faith on a country-by-country basis a royalty percentage for each member country, which percentage will generally be in the range of zero percent (0%) to [...] percent ([...]%), in the event Licensee and its Affiliates [and sublicensees] [submits/adheres/.....] to the [FMO exclusion list ( <a href="https://www.fmo-im.nl/en/exclusion-list">https://www.fmo-im.nl/en/exclusion-list</a> ),] [OECD criteria,] [ILO Deceleration,] [UN Convention,] [registration with Dutch National Health Care Institute,] [...] and continues to do so.	This section provides the basis for a discount if the Licensee follows standards or shares specific information, e.g. pricing or other relevant information. The listed standards are intended as examples only. The underlying intention is to stimulate the desired behaviour and compensate for the additional burden requested by Licensor by offering discounts. In view of the free movement of goods within the EU (and hence the Community exhaustion principle), the local free market is in principle the EU.
	B	[OPTION 1] Following regulatory approvals, if required, Licensee will use Diligent Efforts to make effectively available within the European Union all the Licensed Products and Processes as set out in the Development Plan. Licensee shall be responsible for designing and conducting all commercialization activities necessary to fulfil its obligations under this section.	This section offers a broad basis to stimulate the effective availability of the products or services based on the Licensed Patents, provided such a discussion has taken place and is included in the development plan.
		[OPTION 2] Following the appropriate regulatory approvals, Licensee will use Diligent Efforts to make available within the European Union all the Licensed Products and Processes as set out in the Development Plan at prices that would allow appropriate reimbursement scheme and that would not constitute an obstacle for patients to have access to the therapy. Licensee shall be solely responsible for designing and conducting all commercialization activities necessary to fulfil its obligations under this section. [With respect to Net Sales attributable to Licensed Products sold in the European Union, solely for use in such European Union and not for further sale or use in any country outside European Union and solely for the treatment of [disease] set out in the Development Plan, Licensee and Licensor will negotiate in good faith on a country-by-country basis a royalty percentage for each country, which percentage will generally be in the range of zero percent (0%) to [...] percent ([...]%).]	This section offers a basis for medicinal products to be made available to patients or consumers in the European Union in exchange for a royalty reduction, provided such a discussion has taken place and is included in the development plan. This provided opportunity to reward the development of products for specific conditions which may be less attractive commercially. The optional discount offers an opportunity to balance the trade-off that is made between the licensee's interests and licensor's interests in the event the products or markets are not part of the initial plan and goal of licensee.
	C	In the event Licensee performs or has performed [the majority/all] of the work to develop and test the Licensed Products and Processes within the [European Union/Netherlands]. With respect to amount payable upon achieving a Milestones for development and/or testing, i.e. the Milestones as detailed in section VII(6), [...]. Licensee and Licensor hereby agree Milestone discount percentage as follows: [Milestone [...]: 30%, provided...] [Milestone [...]: 50%, provided...] [...]	This section offers a reward structure for developing and testing products within the European Union or the Netherlands by offering milestone discounts. If relevant such discounts can be linked to clinical trials or test batch production by Licensee. It is advisable to include the relevant milestones to which the discounts relate.
		<i>Ensuring active pursuing of new products</i>	This article contributes to the development of new products, proposed by third parties. It offers a mechanism in the event such a proposal is made whereby the Licensee has the opportunity to move on such an opportunity or leave it to the third party, e.g. as a sublicensee. What it cannot do, is lock-in the technology.
4	A	If a third party makes a bona fide proposal to Licensor for developing a Third Party Proposed Product and Licensor is interested in having such Third Party Proposed Product developed and commercialized, Licensor	This section offers a process to ensure the Licensed Patents do not get locked in when a third party wishes to use said patents for a different product.

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		shall notify Licensee of the third party’s proposal, and shall include in such notification non-confidential information regarding the third party proposal. Within <b>sixty (60) days</b> after the receipt of such notification from Licensor, Licensee shall notify Licensor whether it is interested in developing such Third Party Proposed Product. <b>Third Party Proposed Product</b> means any actual or potential Licensed Products and Processes that are for an application or market segment for which Licensor reasonably believes Licensed Product and Processes are not being actively developed and commercialized by Licensee, its Affiliates or any sublicensee hereunder.	Such opportunities must always be taken into account and be pursued. These developments should not be blocked solely because of Licensee’s interests but licensee should be given the chance to implement plans to this extent.
	B	If Licensee notifies Licensor within such <b>sixty (60) day</b> period that it is interested in developing such Third Party Proposed Product, whether or not through an Affiliate [or a sublicensee], the Parties will negotiate in good faith and agree, during the <b>sixty (60) days</b> following such notification, upon an additional development plan with respect to such Third Party Proposed Product, which development plan will be similar to the Development Plan, and will form part of it, subject to necessary adjustments, and will include reasonable milestones. If the parties agree on such additional development plan and milestones within such <b>sixty (60) day</b> period, the Licence shall include such Third Party Proposed Product and the terms of this Agreement shall also apply to such Third Party Proposed Product (including but not limited to the agreed plan and milestones).	This section provides the details for the process to come to an agreement for a third party proposed product between Licensor and Licensee. The Licensee can also involve an Affiliate or sublicensee; the sublicensee can be the third party proposing the Third Party Proposed Product.
	C	If Licensee notifies Licensor within such <b>sixty (60) day</b> period that it is not interested in developing such Third Party Proposed Product, it will make a diligent effort to negotiate a sublicense agreement at reasonable commercial conditions with such a third party to enable it to develop and commercialise the Third Party Proposed Product.	This section details the steps to be taken in the event Licensor and Licensee cannot agree on an addition to the existing development plan to develop the third party proposed product. As the general interest in further developments must be taken into account and pursued the licensee is bound to make a diligent effort to reach agreement with such a third party.
		<i>Genetic Resources and Traditional Knowledge</i>	This article provides a legal framework about the manner in which parties deal with genetic resources and traditional knowledge. It may be relevant in the event biological materials or knowledge obtained from or through indigenous groups which operate outside the mainstream western legal framework.
5	A	The Parties recognise the value of genetic resources, traditional knowledge and folklore (“GRTK”), and recognise the rights of holders of GRTK to the effective protection over GRTK against misuse and misappropriation.	This section creates a third party right for the GRTK holders to protection and compensation.
	B	Both Parties shall protect GRTK against use that conflicts with this Agreement and misappropriation. “ <b>Misappropriation</b> ” means any acquisition, appropriation or utilization of GRTK by unfair or illicit means. Misappropriation may also include deriving commercial benefit from the acquisition, appropriation or utilisation of GRTK when the Party using that GRTK knows, or should know, that it was acquired or appropriated by unfair means and other activities contrary to honest practices that gain inequitable benefit from GRTK.	This section lays out what the commitment of each party entails. In short, it is not only compliance for itself but also the effort to protect against such misuse by others. This, obviously, to the extent a party can protect.
	C	Subject to compliance with its obligation referred to in section B of this article, each Party shall, in respect of the intellectual property protection of GRTK, accord, within its territory, (i) to individuals who are nationals of, or are domiciled in the territory of the other Party, and (ii) to legal entities which or individuals who, in the territory of the other Party have a real and effective establishment for the creation, production and transaction of GRTK, the same treatment that it accords to its own nationals.	This section ensures each party treats the two groups mentioned identically to parties under its own jurisdiction, effectively maintaining a level playing field.
	D	Any access to and use of GRTK by a Party under the implementation of this Agreement shall require a prior consent from the other Party. The	This section sets out the requirement for explicit approval for use of GRTK from the other party and

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		Parties shall ensure that the local communities concerned shall be informed beforehand of the access and be informed of the results of the cooperative and/or collaborative activities using such GRTK.	ensures that the GRTK holders, as a third party, are informed before and after the use of the GRTK
	E	The benefits of protection of GRTK to which its holders are entitled include the fair and equitable sharing of benefits arising out of the commercial or industrial use of that GRTK.	This section sets out the GRTK holders have a right to compensation.
	F	When Licensee utilises GRTK for commercial purpose, it shall, on behalf of local communities concerned, be entitled to use the intellectual property right(s), where appropriate, and sharing of the associated benefits.	This section ensures that Licensee is able to obtain intellectual property rights, however that it does so on behalf of local communities and provided that it shares benefits.
	G	[It is understood that such benefits are included in the compensation received by Licensor. Licensor shall ensure such benefits are shared, as part of its receipts under the Agreement] [OR] [It is understood that such benefits are not included in the compensation received by Licensor. Licensee shall ensure it shares reasonable benefits with the holders of the GRTK.]	This section sets out how the benefits are to be shared and by whom. If the Licensor has a long standing (research) relationship, it may act as a steward and include the compensation in the agreed returns and distributes them. Alternatively, the Licensee may set up such a system itself.

	<p>IX. Reports, records &amp; Audit</p>	<p>This article provides the key mechanism for Licensor to verify the veracity of the reports provided by Licensee. These reports see to the efforts related to development and commercialization.</p>
<p>1</p>	<p>Licensee shall keep and shall require its Affiliates [and sublicensees] to keep, accurate records together with supporting documentation of the use of the Licensed Patents [and Trade Secrets] and the development, production and/or use, including efforts thereto, of Licensed Products and Processes and/or sold under this Agreement, as well as achievement of Milestones and progress of the Development Plan, appropriate to determine the payments and the amounts due to Licensor under this Agreement. Such records and documentation shall be retained for at least <b>seven (7) years</b> following the end of the reporting period to which they relate.</p>	<p>This section sets out the core responsibility for Licensee to enable Licensor to monitor progress, licensee has the duty to maintain adequate records. These include records related to develop products and bring them to the market, and the payments related to milestones, royalties and the like.</p>
<p>2</p>	<p>Licensee shall make, and shall require its Affiliates [and sublicensees] to make, these records and documentation available during normal business hours for examination by a certified public accountant or other authorised auditor appointed by Licensor, for the sole purpose of verifying progress and/or financial reports and payments under this Agreement. In conducting examinations pursuant to this article, the accountant or auditor shall have access to all records which Licensor or the accountant or auditor reasonably believe to be relevant for these examinations. The accountant or auditor shall not disclose to Licensor any information other than information relating to the accuracy of reports and payments made under this Agreement. An examination by an accountant or auditor may take place once per calendar year.</p>	<p>This section sets out the principle that Licensor retains an accountant who will carry out the audit and report his conclusions to Licensor. Thus Licensor will have the right to an audit, i.e. to verify any statements under this Agreement by having the records checked by an independent accountant, and Licensee does not need to give Licensee access to its full records.</p>
<p>3</p>	<p>In the event any such examination discloses that Licensee has underpaid any amount due to Licensor under this Agreement, Licensee shall forthwith pay to Licensor all amounts that would have been payable to Licensor had Licensee reported correctly, plus interest at the statutory rate for commercial agreements, as set out in article 6:119a of the Dutch Civil Code.</p>	<p>If the reporting appears to be incorrect, then the previously owed amounts must still be paid, however plus interest. If the audit uncovers a material underrepresentation of the effort of Licensee to actually develop products the costs are also born by Licensee. Such an underrepresentation will likely constitute a breach of the Agreement.</p>
<p>4</p>	<p>Such examination by an accountant or auditor will be at the expense of Licensor, except that if such examination shows an underreporting or underpayment in excess of <b>five percent (5%)</b> for any 12 months' period or a material underrepresentation in the activity of Licensee to develop the Licensed Products and Processes, then Licensee shall pay the costs of such examination.</p>	<p>This section sets out the time honoured rule that Licensor will pay for the audit costs unless the audit shows that the statements of licensee are incorrect.</p>

		<b>X. Prosecution &amp; Maintenance</b>	This article sets out which Party is in the lead when it comes to the prosecution of the patent applications and the role each plays. In the event of a non-exclusive licence there is
<b>1</b>		Upon the expiry of <b>six (6) months</b> after the Effective Date, Licensee shall reimburse Licensor for <b>[all/(...) percent ([xx%]) of the]</b> reasonable and documented out-of-pocket expenses incurred by Licensor (excluding internal costs) before the Effective Date in connection with the filing, prosecution and maintenance of the Licensed Patents provided that upon <b>six (6) months</b> after the Effective Date: <ul style="list-style-type: none"> <li>a. this Agreement is in full force and effect;</li> <li>b. neither Party has sent a termination notice;</li> <li>c. no material breach of this Agreement by the Licensor has occurred; and</li> <li>d. Licensor has provided Licensee with a detailed invoice and upon request proof of payment of such expenses.</li> </ul>	This section sets out a basic principle for licenses granted by public research organisations, recovery of historic cost. In principle, licensee shall bear all prosecution and maintenance costs related to the licensed patents if the licence is exclusive, otherwise a reasonable percentage can be agreed. These costs are an investment for licensee, being a commercial company that aims to make a profit with the licensed technology whilst licensor is a non-profit-organisation that aims to use its resources as much as possible for research as such.
<b>2</b>		<b>[OPTION 1]</b> As from the Effective Date Licensee shall reimburse Licensor for <b>[all/(...) percent ([xx%]) of the]</b> reasonable and documented out-of-pocket expenses incurred by Licensor (excluding internal costs) after the Effective Date in connection with the filing, prosecution and maintenance of the Licensed Patents. Licensor shall consult Licensee as to any material steps in the preparation, filing, and maintenance of the Licensed Patents and shall furnish to Licensee copies of all material documents relevant thereto. If required, Licensee shall cooperate fully in the preparation, filing, and maintenance of the Licensed Patents, executing all papers and instruments so as to enable Licensor to apply for, to prosecute, and to maintain the Licensed Patents. Each Party shall promptly notify the other Party of all matters which come to its attention and which may affect the preparation, filing, or maintenance of any Licensed Patent.	This section places Licensor in control but gives Licensee opportunity to provide input. In the event of a non-exclusive licence, this is in practice the only viable route to manage the prosecution. In an exclusive licence, depending on how much control licensor would like to have, option 1 or 2 can be chosen.
	<b>A</b>	<b>[OPTION 2]</b> As from the Effective Date Licensee shall prepare, file, and maintain at its expense the Licensed Patents in Licensor’s name. Licensee shall consult with Licensor as to any material steps in the preparation, filing, and maintenance of the Licensed Patents and shall furnish to Licensor copies of material documents relevant thereto. If required, Licensor shall cooperate fully in the preparation, filing, and maintenance of the Licensed Patents, executing all papers and instruments so as to enable Licensee to apply for, to prosecute, and to maintain the Licensed Patents in Licensor’s name in any country. Each Party shall promptly notify the other Party of all matters which come to its attention and which may affect the preparation, filing, or maintenance of any Licensed Patent.	This section places Licensee in control but gives Licensor opportunity to provide input. As the Licensed Patents are owned by Licensor, the prosecution is by Licensee in Licensor’s name. It remains crucial that Licensee informs Licensor. This will only workable if the licence granted is an exclusive licence.
	<b>B</b>	<b>[Provided the Licensed Patents have not been assigned to Licensee,]</b> upon termination or expiration of this Agreement, for whatever reason, the responsibility for the preparation, filing, and maintenance of all Licensed Patents reassigns to Licensor. Licensee shall cooperate fully in such reassignment, executing all papers and instruments necessary to enable Licensor to regain full control of the prosecution of all Licensed Patents anywhere in the world.	This section makes sure that the Licensor can effectively exercise its right as owner if the Agreement is terminated.
	<b>C</b>	If the Exclusive Patent Licence is converted in a non-Exclusive Patent License, the Licensor shall prepare, file and maintain the Licensed Patents.	This optional section details what happens in the event of conversion when the Licensee manages the patent applications to avoid the situation that the licence becomes non-exclusive but the licensee manages the applications.
<b>3</b>		In the event Licensee wishes to reduce the scope of the claims of Licensed Patents, for specific countries if relevant, it shall submit a written proposal to that effect to Licensor detailing the amendments and arguments to do so, on a country by country basis if relevant. The Licensor shall respond within <b>sixty (60) days’</b> to the proposed	This section offers the Licensee the opportunity to limit the scope by restricting the patent claims, however as this may materially affect the position of Licensor, it can only do so with consent of Licensor or by Licensor itself. If parties do not agree on said scope restriction, the patent rights are

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	<p>amendment(s) and indicate whether it approves them or not. Such approval shall not be withheld unreasonable. In the event such amendments are not accepted by Licensor, the Patent Right(s) will be excluded from the scope of this Agreement with regard to the countries concerned as of the end of the mentioned period.</p>	<p>excluded, on country by country basis. Although Licensor can confront Licensee with infringement for such excluded countries, it stands to reasons Licensee is fully aware of limitations of the licensed patents.</p>
4	<p>Licensee may elect to limit the territorial scope of the Licence (including related maintenance obligations) by removing countries from the Territory, for specific Licensed Patents if relevant. The Licensee may do so upon <b>sixty (60) days'</b> written notice to Licensor. Such limitation will not relieve Licensee from its [obligation to reimburse Licensor] [payment obligations] for costs and expenses incurred in relation to the excluded countries prior to the expiration of said notice period. Following limitation, Licensor may continue such Licensed Patents in such country after expiration of said notice period in its own name and at its own risk and expense. In case of such limitation, (a) Licensee shall cooperate fully in the cancellation of all registrations concerning the Licence to the excluded Licensed Patents in the applicable patent registers, and (ii) such Licensed Patents in such country will be excluded from the scope of this Agreement as of the expiration date of said notice period, all so as to enable Licensor to retain all rights to the surrendered Licensed Patents in the countries concerned.</p>	<p>This section gives the Licensee the opportunity to limit the scope of the licence if there are countries that are no longer of interest to Licensee. For the avoidance of doubt, when the rights are surrendered the country in question is excluded from the Agreement and any commercial activity covered by the Licensed Patents by Licensee constitutes infringement of said rights.</p>
5	<p>Licensee will provide written notice to Licensor at least <b>fourteen (14) days</b> prior to bringing an action seeking to invalidate any Licensed Patent or a declaration of non-infringement. Licensee declares and accepts that this obligation also applies with regard to intended actions of any of its Affiliates [and sublicensees].</p>	<p>This section arranges that Licensee is obligated to inform Licensor if it seeks to invalidate a Licensed Patent. Such an action cannot contractually be prohibited under European and Dutch competition law.</p>
6	<p>Notwithstanding the above, should Licensee, any of its Affiliates [and/or] [sublicensees] bring an action seeking to invalidate any Licensed Patent, Licensee remains bound by all obligations under the agreement, including payment obligations, during the pendency of such action. Moreover, should the outcome of such action determine that any claim of a patent challenged is not valid and/or not infringed by any Licensed Products and Processes, then this shall not affect payments that were already due at an earlier date.</p>	<p>This section makes sure that Parties understand that an action by Licensee to invalidate the Licensed Patents does not impact the obligations for the duration of such an action. Such legal action should not give Licensee grounds to discontinue payments while the Licensed Patents exist.</p>

		<b>XI. Enforcement &amp; Litigation</b>	This article sets the framework and in section 3 it assigns roles in the event of litigation, either initiated by Licensee or by Licensor, and with or without active participation by the other party. In all scenario's the other party is obliged to render the necessary assistance.
<b>1</b>		Each Party shall immediately notify the other Party of any act or omission by any third party that it becomes aware of and that can reasonably be regarded as an infringement or a potential infringement of any Licensed Patent [and/or Trade Secret] under this Agreement.	This section sets out the basic obligation to inform the other Party of relevant events. Considering possible consequences, parties have to keep each informed so that any necessary action can be taken timely.
<b>2</b>		Nothing in this Agreement shall be construed as an obligation for Licensor or Licensee to take legal action against infringement or potential infringement of the Licensed Patents.	This section sets out the core rule that initiating litigation is not mandatory. The parties must be free to consider whether they want to take action. In view of the costs, none of the parties should be obliged to take this obligation at all times.
<b>3</b>	<b>A</b>	[OPTION 1] Licensee is entitled to prosecute in its own name and at its own expense all infringements of Licensed Patents [and/or Trade Secrets]. Commencement of an action by Licensee with respect to any infringement is subject to prior written permission by Licensor. Licensor shall not unreasonably withhold such permission.	This section operates from the basic principle that licensee is responsible, also financially, for enforcement. Enforcement is in its interest in particular. Since legal action can reflect on licensor, prior permission is required and licensor should be able to join actions.
	<b>B</b>	If Licensee commences an action as described above, Licensor shall render any reasonable assistance to assist Licensee in such infringement proceedings, shall lend its name to such proceedings, and grant a power of attorney to Licensee to act on behalf of Licensor in any such proceedings, provided Licensee reimburses Licensor all reasonable out of pocket costs it incurs in doing so.	This section sets out the two possible roles of Licensor if Licensee leads the action. The first is a more passive role. Essentially obligation of Licensor to assists Licensee in a litigation, provided it gets compensation for the costs it incurs.
		[OR] If Licensee elects to commence an action as described above, Licensor may, to the extent permitted by law, elect to join as a party in that action. When Licensor elects to join as a party, Licensor shall cooperate fully in and jointly control with Licensee any such action. If Licensor elects not to join, Licensor shall render any reasonable other assistance to assist Licensee in such infringement proceedings, shall lend its name to such proceedings, and grant a power of attorney to Licensee to act on behalf of Licensor in any such proceedings, provided Licensee reimburses Licensor all reasonable out of pocket costs it incurs in doing so.	The second is a more active role. This option provides the opportunity for Licensor to join a legal action as a full partner. If it decides not to do so, the first option will apply to enable Licensee to take action.
	<b>C</b>	In the event the Licensor joins the action, Licensee and Licensor shall each bear their own costs incurred during the course of the action and related thereto.	This section clarifies which party bears the costs for the action in the event the Licensor joins the action as a full partner. In this option each party bears its own costs.
		[OR] In the event the Licensor joins the action, Licensee shall reimburse Licensor for any costs it incurs, including reasonable attorneys' fees.	The option safeguards the licensor against costs. However, the risks are then fully borne by Licensee.
	<b>D</b>	No settlement, consent judgment or other voluntary final disposition of legal proceedings may be entered into without the prior written consent of Licensor, which consent shall not be unreasonably withheld by Licensor.	This section emphasizes that no matter the division of roles, Licensor as right holder should always retains have a final say.
	<b>E</b>	Subject to the above arrangements between the Parties who bear the costs, recoveries or reimbursements from actions commenced will first be applied to reimburse Parties for out-of-pocket costs incurred in the action. Any remaining recoveries or reimbursements will be shared equally by Parties.	This section optionally gives an arrangement to distribute receipts after incurred costs are reimbursed. Without this provision, in principle, the attribution of payments is arranged for in the court judgment.
	<b>F</b>	In case Licensee has not commenced such action within a <b>thirty (30) day</b> period established by Licensor upon notice to Licensee, Licensor may do so at its own expense, controlling such action and retaining all recoveries therefrom. At the request of Licensor, Licensee shall cooperate fully with Licensor and render any reasonable assistance to assist Licensor in such infringement proceedings, provided Licensor reimburses Licensee all reasonable out of pocket costs it incurs.	This section offers a route forward if Licensee reconsiders its earlier decision to litigate. If licensee decides not to take action, licensor as right holder should always retain the right to take legal action itself.
	<b>A</b>	[OPTION 2] Licensor remains exclusively entitled to prosecute in its own name and at its own expense all infringements of Licensed Patents	This section provides the variant wherein the licensor retains full control over legal defence of its IP rights.

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		[and/or Trade Secrets]. Licensor shall give careful consideration to potential effects on the public interest in making its decision whether or not to sue.	
	B	At the request of Licensor, Licensee shall cooperate fully with Licensor and render any reasonable assistance to assist Licensor in such action, provided Licensor reimburses Licensee all reasonable out of pocket costs it incurs.	This section sets out the obligation of Licensor to assist Licensee in a litigation, provided it gets compensation for the costs it incurs.
	C	If Licensor elects to commence an action as described above, Licensee may, to the extent permitted by law, elect to join as a party in that action at its own costs. When Licensee elects to join as a party, Licensee shall cooperate fully in and jointly control with Licensor any such action.	This section gives the option, considering the interests of licensee, that licensee can decide to join legal action.
	D	No settlement, consent judgment or other voluntary final disposition of legal proceedings may be entered into without the prior written consent of Licensee, which consent shall not be unreasonably withheld by Licensee.	This section emphasizes that no matter the division of roles the interests of licensee, and the effect of a settlement for licensee, licensee will have a say in (the outcome of) settlement negotiations.
	E	Recoveries or reimbursements from actions commenced will first be applied to reimburse Licensor for out-of-pocket costs incurred in the action[, and then Licensee insofar Licensee has joined the actions]. Any remaining recoveries or reimbursements will thereafter be shared equally by Parties.	This section optionally gives an arrangement to distribute receipts after incurred costs are reimbursed. Without this provision, in principle, the attribution of payments is arranged for in the court judgment.
	F	In case Licensor has not commenced such action within a <b>thirty (30) days'</b> period established by Licensee upon notice to Licensor, Licensee may do so at its own expense, controlling such action and retaining all recoveries therefrom. At the request of Licensee, Licensor shall cooperate fully with Licensee and render any reasonable assistance to assist Licensee in such infringement proceedings, provided Licensee reimburses Licensor all reasonable out of pocket costs it incurs.	Considering the interests of licensee, licensee will have to right to take action itself if licensor decides not to do so.
<b>4</b>		If a declaratory judgment action is brought naming Licensee as a defendant and alleging invalidity of any Licensed Patents, Licensor may at all times elect to take over the sole defence of the action at its own expense. Licensee shall cooperate fully with Licensor and render any reasonable assistance to assist Licensor in connection with any such action, provided Licensor reimburses Licensee all reasonable out of pocket costs it incurs in doing so.	This section provides a division of tasks if a third party initiates invalidity proceedings against the Licensed Patents. Licensor as right holder, entitled to defend the allegedly invalid IP rights, hence always retains to right to take over the defence of its rights.



		XII. Purchase option	This article sets out if the Licensed Patents can be assigned to Licensee and, if so, how. This article offers both the option to terminate all payments upon assignment (provided a one-off sum is paid), or to continue the existing payment arrangements after assignment. In addition, it grants the Licensor a perpetual fully paid-up licence to use the Licensed Patents. This article should not be included in non-exclusive licences.
1		Upon the assignment of Licensed Patents rights to Licensee, Licensee hereby grants Licensor a fully paid-up perpetual Academic Licence identical to the retained rights set out above, including the right to use the Licensed Patents for any non-profit purpose, including research and teaching purposes, which Academic Licence is hereby accepted by Licensor. Licensee shall, at first request of Licensor, perform all such acts that Licensor may deem desirable or necessary to demonstrate or establish the existence of this Academic Licence, including but not limited to, the signing of additional documents.	This section arranges the granting back of a licence upon assignment, as Licensor and Licensee change places a licence is required to enable Licensor to use the Licensed Patents. Licensor should always have the right to use the technology for its research, even if the patent rights that cover the technology are assigned. The commitment to deliver documents can play a role to fully execute on the agreement set out here in certain patent jurisdictions.
2	A	<b>[OPTION 1]</b> [In case the License is Exclusive,] Licensor hereby grants to Licensee, and Licensee hereby accepts, an option to take an assignment of the Licensed Patents (" <b>Purchase Option</b> "). Licensee may exercise the Purchase Option by written notice to Licensor only simultaneously with or after an Exit and provided that, in respect of the total proceeds that have actually been received by the shareholders of Licensee (in the case of an Exit by means of a sale of Shares or by means of a listing), or by Licensee (in the case of an Exit by means of a sale of assets), the Exit Fee (as defined hereafter) has been paid to Licensor. Upon exercise of the Purchase Option, Licensor shall assign to Licensee, for no additional consideration, the Licensed Patents, together with rights pertaining to the Licensed Patents, including the right to sue for, and to recover any damages and other remedies in respect of any infringement of any such Licensed Patents. Licensee shall report the Exit Fee (including a breakdown its calculation), if such an event occurred in accordance with the reporting requirements set out above.	This section offers the Licensee the option to acquire the Licensed Patents, and offers a method to calculate the price for acquiring the Licensed Patents and redeem all future payments under the Agreement. It does so by using the valuation attributed to the Licensee by an investor. This aligns the interests of Licensee and Licensor, optimal value of the technology and ensures that the future opportunity of the Licensed Product is included in those calculations.
	B	In the event that any patent applications regarding Improvements are filed at any time <b>within [... (xx)] years</b> after the exercise of the Purchase Option, immediately after filing such patent application, Licensor shall assign to Licensee, for no additional consideration, with the exception of the out-of-pocket assignment costs, the relevant patent application, together with all rights pertaining to such patent application.	This optional section ensures that the Purchase option does not render the rights to Improvements ineffective. Care should however be taken to the selection of the period for which these rights are granted.
	C	Following the first Exit, Licensee will pay to Licensor an exit fee (" <b>Exit Fee</b> ") equal to [...] % ([...] percent) of all proceeds actually received by shareholders of Licensee (in the case of an Exit by means of a sale of Shares or by means of a listing) or Licensee (in the case of an Exit by means of a sale of assets). No further Exit Fee shall be due for any subsequent transactions qualifying as an Exit. The payment of the Exit Fee shall serve as final discharge ( <i>'finale kwijting'</i> ) of all present of future payment obligations of the Licensee to the Licensor under and related to the Agreement. " <b>Exit</b> " means, directly or indirectly, (i) a sale (whether through a single transaction or a series of transactions), and whether by means of single or multiple transactions) of Shares resulting in a Change of Control or (ii) a sale (whether through a single transaction or a series of transactions) to a third party of more than <b>[50]</b> % of the market value of the assets of the Licensee and its Affiliates, as jointly determined by the valuation by the parties directly involved at the time of such transaction or transactions or (iii) a listing of the Licensee or any of its Affiliates on a generally recognised stock	This optional section relates to payment under an Exit clause which is triggered under certain conditions, mostly in the event Licensee receives a significant investment and (part of) the existing shareholders receive a payment. The exit fee replaces all future payments under the agreement with the one-time fee based on the transaction value, as such it uses the valuation of the company at the time of the transaction as a measure of the potential market value of the product, as this is also the interest of the existing shareholders at the time of the transaction, it aligns parties' interests. This arrangement places the Licensor in a position which is partially similar to a shareholder without having shares. Of course, the licensee must pay the exit fee, not the shareholders. However, the party or parties acquiring licensee can make the calculations and plan for the impact. It is important to make sure that the scope of companies (licensee and some or all of the affiliates) is set correctly.

	<p>exchange; <b>Change of Control</b> means any person or group of persons acting in concert gains direct or indirect control of the Licensee. For the purposes of this definition:</p> <p>"control" of the Licensee means: the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:</p> <ul style="list-style-type: none"> <li>i. cast, or control the casting of, more than [50]% of the maximum number of votes that might be cast at a general meeting of the Licensee; or</li> <li>ii. appoint or remove all, or the majority, of the directors or other equivalent officers of the Licensee; or</li> <li>iii. give directions with respect to the operating and financial policies of the Licensee with which the directors or other equivalent officers of the Licensee are obliged to comply;</li> </ul> <p>"acting in concert" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of Shares by any of them, either directly or indirectly, to obtain or consolidate control of the Licensee.</p>	
A	<p><b>[OPTION 2]</b> [In case the License is Exclusive,] Licensors hereby grants Licensee, and Licensee hereby accepts from Licensors an option to take an assignment of the Licensed Patents ("<b>Purchase Option</b>"). Licensee may exercise the Purchase Option [as from [...] years after the Effective Date] by means of a notice to Licensors and only after Licensee meets the following conditions:</p> <ul style="list-style-type: none"> <li>a. [as from the Effective Date,] Licensee has raised a minimum of EUR [...] ([...] Euro) in [equity or long term debt] funding [and/or] generating total Net Sales of at least EUR [...] ([...] Euro); or</li> <li>b. [in Licensors' reasonable judgement, Licensee has sufficient financial means to continue its business and product development activities for a period of at least [...] years; or]</li> <li>c. [in case of a Change of Control, Licensee has obtained prior written approval from Licensors].</li> </ul> <p><b>Change of Control</b> means any person or group of persons acting in concert gains direct or indirect control of the Licensee. For the purposes of this definition:</p> <p>"control" of the Licensee means: the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:</p> <ul style="list-style-type: none"> <li>i. cast, or control the casting of, more than [fifty percent ([50]%) of the maximum number of votes that might be cast at a general meeting of the Licensee; or</li> <li>ii. appoint or remove all, or the majority, of the directors or other equivalent officers of the Licensee; or</li> <li>iii. give directions with respect to the operating and financial policies of the Licensee with which the directors or other equivalent officers of the Licensee are obliged to comply;</li> </ul> <p>"acting in concert" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of Shares by any of them, either directly or indirectly, to obtain or consolidate control of the Licensee.</p>	<p>This section details the rights of Licensors to have the Licensed Patents assigned to it if it has demonstrated viability. It aims to make the Licensee owner while retaining the existing Agreement, thereby enabling the Licensee to have the benefit of ownership when maintaining the patents and acquiring investments.</p>

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	<p>B</p> <p>Following assignment of the Licensed Patents, Licensee may require Licensors to negotiate in good faith for a maximum period of six months the terms and conditions pursuant to which Licensee can redeem all present of future payment obligations of the Licensee to the Licensor under and related to the Agreement by payment of a single fee (“Redemption Fee”).</p> <p>[OR]</p> <p>Licensor hereby grants Licensee, and Licensee hereby accepts from Licensor, the option to redeem all future payments under this agreement and – if Licensee has exercised the Purchase Option – subsequently terminate this Agreement by payment of a single fee (“Redemption Fee”). The Redeem Fee is equal to [...] percent ([...])% of [...], with a minimum of EUR [...] ([...] Euro) / EUR [...] ([...] Euro)].</p>	<p>This optional section provides an alternative to continuing the Agreement once the Licensed Patents have been assigned. To prevent long-term reimbursements after assignment, Licensee is granted the option to negotiate on the buy out the remaining obligations.</p>
<p>3</p>	<p>Exercise of the Purchase Option will not affect or limit the provisions of this Agreement, including without limitation the reporting and payment obligations set out above. Upon assignment of the Licensed Patents, Licensee shall become responsible for all maintenance, prosecution and defence of the Licensed Patents, including any associated costs.</p>	<p>This section aims to ensure that the relationship between the Parties remains largely unchanged. As long as the Agreement is in effect, stipulated considerations are due even if the IP rights are acquired by licensee. However, prosecution and maintenance of the Licensed Patents rests with Licensee as the owner.</p>
<p>4</p>	<p>Licensor shall provide all cooperation, execute any assignment documentation, and perform all acts necessary to effect the assignment of the Licensed Patents to Licensee. Licensee shall at first request provide all cooperation and perform all acts necessary to have the Academic Licence registered with the registration of the assignment of the Licensed Patents in the applicable intellectual property registers.</p>	<p>This section aims to secure and optimize the legal position of Licensee and Licensor by registering the assignment and the Academic Licence.</p>
<p>5</p>	<p>Following assignment of the Licensed Patents [and as long as Licensee has not redeemed all future payments under this Agreement by payment of the Redemption Fee], the following provisions will apply:</p> <ul style="list-style-type: none"> <li>a. Licensee shall not sell, transfer, assign, pledge, or otherwise encumber its rights to the Licensed Patents without prior written consent of Licensor. Licensor may grant such consent under additional conditions (e.g. extra payments or increased royalty rates);</li> <li>b. Licensee shall not be entitled to terminate the Agreement for convenience, unless it has assigned the Licensed Patents back to Licensor;</li> <li>c. in case Licensee decides to cease maintaining or prosecuting any Licensed Patents, Licensor has the option to have such right assigned to Licensor at its sole discretion and without any further reimbursement other than payment of all costs for such assignment. As from the moment such right is assigned to Licensor, it will be excluded from the scope of the Licence and no longer be licensed to Licensee;</li> <li>d. Licensee shall continue to use Diligent Effort to make the Licensed Products and Processes effectively available into the market, as set out in article VIII, and to honour the provisions set out in article IX, insofar applicable; [and]</li> <li>e. at the first request of Licensor, Licensee shall grant Licensor a first rank right of pledge (<i>‘eersterang pandrecht’</i>) on the Licensed Patents as security for the performance of its payment obligations under this Agreement.]</li> </ul>	<p>This optional section provides grounds for Licensor to reclaim Licensed Patents after assignment to Licensee. Considering that this Agreement pursues the public interest by making the technology available to the public, Licensor would like to secure the patent rights in these cases so that the technology can be provided to the public by another party. However, it should be noted that this clause will not guarantee that such reverse assignment is successful.</p>
<p>6</p>	<p>In the event any research by Licensor results in a patent that is dependent on the Licensed Patents, and the Licensed Patents have been assigned to Licensee the Licensee shall grant Licensor a non-exclusive licence, including the right to sub-license, solely to the extent necessary to use the Licensed Patents insofar as they are required to</p>	<p>This section ensures that future patents which require access to the Licensed Patents to enable the development of products or services can do so. In the event the Licensed.</p>

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	develop, use and apply the technology described in the dependent patent. Such a licence shall be negotiated in good faith by the Parties.	
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	<p>XIII. Confidentiality &amp; Publications</p>	<p>This article sets out confidentiality of information received from the other party and the rights of Licensor to publish its own research results. To protect any possible future patent rights and existing trade secret rights, it is of great importance that parties observe confidentiality. In many cases parties will have concluded a non-disclosure agreement at an earlier stage. These provisions seek to align with usual confidentiality provisions.</p>
<p>1</p>	<p>In relation to the subject matter of this Agreement, Parties shall exchange Confidential Information. “<b>Confidential Information</b>” is all oral, written or otherwise recorded information received from the Party of which the receiving Party knows or should know that it is confidential by nature, including [Trade Secrets,] books and records and (other) information of the business of the other Party..</p>	<p>This section defines what kind of information of the other party is to be regarded as confidential. The clause does not use the requirement to mark information as confidential, this may be done a party to emphasize or place its nature beyond reasonable doubt. The requirement to mark has not been included as in practice it is seldom honoured and under Dutch law marking does not offer the absolute certainty about what information is to be kept confidential and what not. Such an assessment will be up to each Party, possibly by verifying the status with the other party.</p>
<p>2</p>	<p>Each Party shall, both during the term of this Agreement and for a period of <b>five (5) years</b> thereafter:</p> <ol style="list-style-type: none"> <li>a. keep secret and confidential all Confidential Information;</li> <li>b. use the same degree of care in relation to the Confidential Information as it normally uses to avoid unauthorised disclosure of its own Confidential Information;</li> <li>c. only disclose to its officers, employees, representatives, [students] and contractors, and Affiliates [and] [sublicensees] Confidential Information that is reasonably required for the performance of the Party’s obligations or the exercise of its rights under this Agreement, inform them of the confidential nature of the Confidential Information and only after imposing confidentiality obligations no less restrictive than those set forth in this Agreement; and</li> <li>d. promptly notify the other of any suspected or actual unauthorised disclosure of the Confidential Information, and take all reasonable steps to prevent, limit or remedy the disclosure.</li> </ol>	<p>This section sets out how long confidential information is to be kept confidential, what measures are to be taken and to what degree of care the recipient needs to take. This section also restricts the use information can be put to. Any confidentiality obligation contains both the commitment to keep secret and the restrictions on use. The latter condition to avoid the recipient’s use of the information for other goals than for which it was shared.</p>
<p>3</p>	<p>The obligation to keep secret and confidential shall not apply to any part of Confidential Information that:</p> <ol style="list-style-type: none"> <li>a. is or becomes published or otherwise part of the public domain other than by acts of the receiving Party or its Affiliates [or sublicensees] in contravention of this Agreement;</li> <li>b. is disclosed to the receiving Party or its Affiliates [or sublicensees] by a third party, provided such information was not obtained by such third party directly or indirectly under an obligation to keep such information confidential;</li> <li>c. prior to disclosure under this Agreement, can be shown by written documents to have already been in the possession of the receiving Party or its Affiliates [or sublicensees], provided such information was not obtained directly or indirectly under an obligation to keep such information confidential;</li> <li>d. can be shown by written documents to have been independently developed by the receiving Party or its Affiliates [or sublicensees] without breach of any of the provisions of this Agreement or any agreement with the other Party; or</li> <li>e. is disclosed by the receiving Party pursuant to an order or demand issued by a court or governmental agency or as</li> </ol>	<p>This section details under what circumstances information received from the other party does not fall within the scope of the obligation to keep that information secret.</p>

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		otherwise required by law or regulations, provided that, the receiving Party notifies the disclosing Party prior to disclosure, giving the disclosing Party sufficient advance notice to permit it to seek a protective order or other similar order with respect to such information and provided further that the receiving Party furnishes only that portion of the information which it is legally required.	
5		Licensee recognises the wishes of Licensor to disseminate research results. Licensor undertakes and agrees not to engage in any dissemination, without first submitting such an intended publication to Licensee. For the avoidance of doubt, Parties recognise that a publication in the meaning of this article may be both written and oral. Licensee shall respond within a period of <b>thirty (30) days</b> from the receipt of Licensor's written notice which includes the intended publication. In case Licensee has not responded to such request within the above mentioned term, Licensor will be free to proceed with the publication without further delay.	This section details a core principle for the Licensor, a public Licensor. As such, it needs to be able to conduct its research and publish outcomes. If the licensor wishes to publish, a period must be observed so that any possible protective measures can be taken first. It may be the case the publication is written by employees of both parties. In that case it will still need to be checked by licensee given that as a company it has different aims and in most cases the company board is not involved as authors of the publication.
6	A	Without prejudice to the previous section, Licensee shall have the right to delay the publication in the event it 1) contains information that may be subject of a patent application, in respect of which no patent application has yet been filed, or 2) contains Confidential Information originating from Licensee or its Affiliates.	This section details under what conditions publications may be delayed. In essence there are two ways, the first is by obtaining protection for the information as part of a patent application, the second is by deleting the information at issue. The clause emphasizes that Licensor needs to inform Licensee but the burden to provide a timely and relevant response is with Licensee. This set up avoids either Party becoming locked-in by the response of the other (or lack thereof). Amending and editing the proposed publication remains part of the responsibility of the licensor.
	B	In the event of information that may be subject of a patent application, Licensee will inform Licensor within the period of <b>thirty (30) days</b> of receiving the proposed publication of its findings and Parties will work in good faith in order for Licensor to be able to draft a patent and submit a patent application. In the event Parties are unable to do so in <b>three (3) months</b> after notification by the Licensee, Licensor will be free to proceed with the publication without further delay.	This section details the actions of parties when the grounds for the delay are the desire to file a patent application before disseminating the results. It assumes parties will collaborate, as the Licensee was the party who identified the opportunity, it is likely the one with a clear idea about potential application and a patent application. It stands to reason that such a patent is an improvement but does necessarily needs to be an improvement.
	C	In the event of Confidential Information originating from Licensee, or its Affiliates, Licensee will inform Licensor within the period of <b>thirty (30) days</b> of receiving the proposed publication of its findings and indicate which parts of the proposed publication contain the Confidential Information. Licensor will then adapt the proposed publication in such a way, that it will not publish the information that Licensee identified as such. After doing so, Licensor will be free to proceed with the publication without further delay.	This section details the steps needed upon the claim by Licensee that the proposed publication contains information that should be kept secret. In the event Licensor disagrees, parties need to sit down and discuss the specific of the confidential information Licensee shared or the Trade Secrets Licensor licensed.
7		If Parties have previously concluded an Confidentiality Agreement that agreement shall remain in force in addition to this Agreement. In the event of any inconsistency between that agreement and this Agreement, this Agreement shall prevail.	This section provides for the situation wherein parties entered into an earlier confidentiality agreement with a wider scope. To guarantee confidentiality as well as possible, further-reaching earlier previous confidentiality agreements should take precedence. Parties wish to avoid the suggestion that later agreements automatically set aside earlier confidentiality agreements concerning the same or related matters.
8		Upon termination or expiry of this Agreement, each Party will at the first request of the disclosing Party return or destroy, at the election of the disclosing Party, any and all of the disclosing Party's Confidential Information, except for one copy for its legal files to determine the extent of its obligations hereunder or otherwise required by law. The aforementioned obligations do not apply to Confidential Information which is electronically stored in computer system backups in so far as such Confidential Information cannot reasonably be isolated for	This section is the standard arrangement when parties end their agreement. In order to safeguard confidentiality and non-use, the receiving party should no longer be in possession of confidential information of the other party after termination, to which it is also no longer entitled.

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	deletion from such backup, provided that access to such backup is protected and such Confidential Information shall be immediately destroyed or returned should such backup be restored.	
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XIV. Liability & Indemnity		
<b>1</b>	<p>Licensor will indemnify Licensee for any loss suffered by Licensee arising from any claims against Licensee by third parties related to</p> <ol style="list-style-type: none"> <li>a. breach by Licensor of any provisions, representations or warranties under this Agreement;</li> <li>b. gross negligence or wilful misconduct of Licensor, whether by action or inaction; and</li> <li>c. any violations by Licensor of applicable law or standards;</li> </ol> <p>in each case, except to the extent related to breach by Licensee of this Agreement.</p> <p>Licensee shall provide prompt written notice to Licensor of the initiation of any action or proceeding that may reasonably lead to a claim from Licensee to Licensor for indemnification as the consequence of a third party claim to Licensee. Upon such notice, Licensor shall have the right to assume the defence and settlement of such action or proceeding. Licensee shall cooperate with Licensor in the defence of such claim and provide assistance as it may reasonably be required.</p>	<p>The section sets out that Licensor can be expected to ensure certain rights and obligations. Licensor is responsible for given guarantees and therefore an indemnification on this point is appropriate. Indemnification is also appropriate (and a court will likely not accept exclusion under Dutch law) if claims against licensee are the result of wilful conduct, gross negligence or violation of the law by licensor.</p>
<b>2</b>	<p>To the extent permitted by law and except as set out in this Agreement, Licensor shall in no event be liable for any direct, indirect, or consequential loss, damage, claim, demand and/or expense - of whatever nature - whether arising by way of a third party claim or otherwise - resulting from or in connection with the use and/or the exploitation of the Licensed Patents [and/or Trade Secrets] [and/or Material] by Licensee, its Affiliates [and/or its sub-licensees] under this Agreement. Notwithstanding the foregoing, this section does not exclude Licensor's liability for damages through wilful conduct or gross negligence and liability for breach of any warranty given in this Agreement.</p>	<p>This section details the limitation of liability of Licensor. Given that licensor is a non-profit institution, it cannot and will not accept any liabilities or risks other than that which cannot be excluded under Dutch law. Licensor provides the technology 'as is'. If licensee applies the technology with a view to a commercial advantage, then it must accept all risks. Damages through wilful conduct or gross negligence cannot be excluded under Dutch law.</p>
<b>3</b>	<p>Licensor's aggregate liability for all damages of any kind arising out of or relating to this Agreement or its subject matter under any contract, negligence, strict liability or other legal ground shall not exceed the amounts paid to Licensor under this Agreement.</p>	<p>This section sets a liability cap for Licensor. Even in case licensor is held liable, for whatever reason, the liability should be limited so that the risks (and therefore the possible claim to public funds) under this Agreement remain limited for licensor. This section follows a wide observed principle linking the liability to the total contract value, i.e. payments received under the Agreement.</p>
<b>4</b>	<p>Licensee will indemnify Licensor and its officers, employees, representatives, [students] and contractors for any loss suffered by Licensor arising from any claims against Licensor by third parties related to</p> <ol style="list-style-type: none"> <li>a. breach by Licensee, its Affiliates [and/or its sub-licensees] of any provisions, representations or warranties under this Agreement;</li> <li>b. gross negligence or wilful misconduct of Licensee, its Affiliates [and/or its sub-licensees], whether by action or inaction;</li> <li>c. any violations by Licensee, its Affiliates [and/or its sub-licensees] of applicable law or standards; and</li> <li>d. the use and/or the exploitation of the Licensed Patents, [Trade Secrets], Licensed Products and Processes, [and/or Material], by Licensee, its Affiliates [and/or] [its sub- licensees];</li> </ol> <p>in each case, except to the extent related to breach by Licensor of this Agreement.</p> <p>Licensor shall provide prompt written notice to Licensee of the initiation of any action or proceeding that may reasonably lead to a claim for indemnification. Upon such notice, Licensee shall have the right to assume the defence and settlement of such action or</p>	<p>This section provides the indemnifications by Licensee. Licensee is responsible for given guarantees and therefore an indemnification on this point is appropriate. Indemnification is also appropriate (and a court will likely not accept exclusion under Dutch law) if claims against licensor are the result of wilful conduct, gross negligence or violation of the law by licensee. Moreover, Licensor provides the technology 'as is' and licensee takes full responsibility and liability with regard to any use of the technology by licensee, sub-licensees and their personnel etc.</p>



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	<p>proceeding. Licensor shall cooperate with Licensee in the defence of such claim and provide assistance as it may reasonably be required.</p>	
<p><b>5</b></p>	<p>It is understood that Licensee, as direct or indirect supplier, of Licensed Products and Processes will be fully responsible vis à vis third parties for any damages, injuries and losses that might be caused by any defect in any Licensed Products and Processes manufactured or produced with application of the Licensed Patents, [Trade Secrets] [and/or] [Material].</p>	<p>This section emphasizes for the sake of clarity and to prevent misunderstandings that Licensee bears all the risks of developing, producing and marketing products or services using the Licensed Patents.</p>

XV. Representations & Warranties		
1	Other than the representations set out in this article, Licensor makes no representations and extends no warranties of any kind, either expressed or implied, in relation to the Licensed Patents, [Trade Secrets], [Material], Licensed Products and Processes, the uses to which they may be put or their suitability for any particular purpose.	This section emphasizes that the Licensed Patents cover early stage technology and that it is provided 'as is'. Licensor only wishes to enter into this Agreement with parties that accept to use the technology at its own risk.
2	The Material is being supplied "as is", is experimental in nature, and will be used with prudence and appropriate caution, since not all of its characteristics are known.	This optional section adds further emphasis to the limits of the representation. Biological materials are provided 'as is'. Licensor gives no guarantee whatsoever with regard to the characteristics and applicability of these materials.
3	<p>Licensor represents and warrants to Licensee that, at the Effective Date:</p> <ol style="list-style-type: none"> <li>all Licensed Patents are in full force and effect, and, to the best of Licensor's knowledge the Licensed Patents exist and are not invalid or unenforceable, in whole or in part;</li> <li>Licensor has the full right, power and authority to enter into this Agreement, to perform the activities hereunder, and to grant the Licence granted hereunder;</li> <li>Licensor has not prior to the Effective Date assigned, transferred, conveyed or otherwise encumbered its right, title and interest in the Licensed Patents [and/or Trade Secrets], or otherwise granted any rights to any third parties that would conflict with the rights granted to Licensee hereunder;</li> <li>it is the owner of the Licensed Patents, all of which are free and clear of any liens, charges and encumbrances, and to the best of Licensor's knowledge no other person, corporate or other private entity, or governmental entity or subdivision thereof, has or shall have any claim of ownership whatsoever with respect to the Licensed Patents;</li> <li>to the best of Licensor's knowledge, the exercise of the Licence granted to Licensee does not interfere with or infringe any intellectual property rights owned or possessed by any third party; and</li> <li>there are no claims, judgments or settlements against or owed by Licensor and no pending to the best of Licensor's knowledge threatened claims or litigation relating to the Licensed Patents [and/or Trade Secrets].</li> </ol>	This section details what Licensor can be sure of and therefore represents. Other than risks that relate to the technology as such, Licensor will guarantee that the patent rights that are subject to this Agreement are in full force and effect at the execution of this Agreement and that the licensor has the right to enter into this Agreement. The representation under e) can be impacted by conditions of grants or awards and requires verification by the Licensor, relevant information is commonly part of the invention disclosure form.
4	Nothing contained in this agreement is deemed to be a guarantee by Licensor that regulatory approvals can or will be obtained for any Licensed Products and Processes (e.g. CE mark or FDA approval) and/or that any applications for intellectual property rights under this Agreement will result in the granting of these rights.	This section adds further emphasis to the limits of the representation. Under Dutch law it will have a limited impact as it re-iterates the earlier statement that technology is licensed 'as is'.
5	<p>Licensee warrants and represents that it</p> <ol style="list-style-type: none"> <li>is entitled to enter into this Agreement;</li> <li>is able to perform any and all of the obligations that may arise on its part out of this Agreement</li> <li>shall inform Licensor of any shares, options or shares certificates held by employee(s) of Licensor or their spouses;</li> <li>[shall comply with the [Nagoya Protocol Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity];</li> <li>[has sufficient funding for [twelve (12) months to initiate] the execution of the commitment to develop the products or services in accordance with the Agreement;]</li> <li>[is, at the Effective Date, not in arrears in filing audits;]</li> </ol>	This section offers licensor additional certainty that the Licensee, on which it also depends for compliance of Affiliates and potential sublicensees, will honour its obligations. This section enables the reference to relevant standards or guidelines for the relevant context in which the licence is granted This would include relevant matters related to the product, company or management, for example ongoing litigation, partnerships or investors with which the licensee is working.

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	<p>g. [shall comply with all environmental laws, obtain, maintain and ensure compliance with all requisite permits and implement procedures to monitor compliance with and to prevent liability under any such law;]</p> <p>h. Shall conduct its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws;]</p> <p>i. [...]</p>	
6	<p>Licensee shall be responsible for the compliance of Licensed Products and Processes used, manufactured, offered for sale, sold, leased, imported or otherwise disposed of hereunder with all applicable laws and regulations, including all applicable laws and regulations in connection with product liability. For as long as this Agreement is in full force and effect, and without limiting the foregoing, Licensee shall include appropriate markings, including patent markings, [on all Licensed Products used, manufactured, offered for sale, sold, leased, imported or otherwise disposed of by Licensee hereunder] to the extent that the inclusion of such markings is requested by Licensor, mandatory or advised by applicable laws.</p>	<p>This section provides representations by Licensee about the product and its compliance with relevant legal standards. Not only must licensee bear said risks but also ensure that the technology will be used in accordance with applicable rules and regulations and that it will make every effort to obtain the necessary approvals so that technology also becomes available to the public.</p>
7	<p>Licensor has made available to Licensee all relevant information in Licensor's possession at the Effective Date to put Licensee in a position to use and apply the Licensed Patents [and Trade Secrets] within the scope of this Agreement.</p>	<p>This section ensures that parties agree that Licensee is put in a position where it can apply the Licence Patents. This includes ancillary knowledge not patentable or not included in the licensed patents but may also include settings of equipment or protocols used when applying the Licensed Patents.</p>

	XVI. Term & Termination	
1	<p>[OPTION 1] This Agreement enters into force on the Effective Date and will terminate upon expiry of the last Valid Claim unless terminated earlier in accordance with this article.</p>	<p>This section sets out the norm for a patent licence. The exclusive rights exist as long as patent rights are in force and this Agreement relates to that exclusive position only.</p>
	<p>[OPTION 2] This Agreement enters into force on the Effective Date and will have a term of [YEARS] years. [OR] remain in force until [DATE].</p>	<p>This section allows for a fixed term agreement unrelated to the life of the Licensed Patents. Although less common than option 1, this may be relevant when material or trade secrets are licensed, the benefits of access to material or trade secrets can last for a longer time as there is no expiry date involved.</p>
2	<p>This Agreement may be terminated:</p> <ol style="list-style-type: none"> <li>a. if so explicitly stipulated in any provision in this Agreement;</li> <li>b. upon mutual written agreement between the Parties;</li> <li>c. for convenience at any time by Licensee by giving <b>twelve (12) months'</b> written notice;</li> <li>d. with immediate effect by Licensor on written notice in the event Licensee fails to pay any sums due under this Agreement by the due date and Licensee has failed to remedy that breach within <b>ninety (90) days</b> of being given written notice thereof, without prejudice to any other rights that Parties may have relating to late payment;</li> <li>e. with immediate effect by Licensor on written notice in the event Licensee or one of its Affiliates, or one or more of their key employees, is convicted by a court of actions which conflict with the nature of Licensor's role or negatively impact its good standing (including but not limited to bribery, unethical behaviour, endangering the health or lives of people, criminal carelessness, criminal offenses by itself or key employees, working with parties who can reasonably be assumed to wish to undermine society, or taking money from such parties);</li> <li>f. with immediate effect by Licensor on written notice in the event Licensee is found by an arbitrator or competent court to not have made Diligent Effort, and Licensee has failed to remedy that breach within <b>ninety (90) days</b> of being given written notice thereof, without prejudice to any other rights that Parties may have relating to this non-achievement;</li> <li>g. with immediate effect by each Party on written notice in the event of a material breach of the other under this Agreement and that the breaching Party has failed to remedy that breach (if capable of remedy) within <b>ninety (90) days</b> of being given written notice thereof;</li> <li>h. with immediate effect by each Party on written notice in the event that the other Party becomes insolvent, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts; or</li> <li>i. [with immediate effect by each Party following completion of assignment of the Licensed Patents in the event of exercise of the rights under article XIII (Purchase Option) and receipt of the [Exit Fee / Redemption Fee] by Licensor.]</li> </ol>	<p>This section provides the situation when the Agreement can be terminated for convenience or for cause. Upon mutual agreement, parties can always end the Agreement. Convenience is the right granted to a party to terminate because it wishes to do so. This clause give licensee the possibility to end the licence provided that licensor is given sufficient time in advance to determine how to proceed with the technology and, if desire, find a new licensee. Cause refers to the situation that conflicts with the Agreement and thereby gives a cause for termination. The provision contains common termination provisions in the event of non-performance. In addition, it is important to licensor that it retains the image of an institution that pursues the public interest and health. If licensee acts in such a way that this image suffers or may suffer, then the licensor has the right to terminate the cooperation. Finally, the Agreement can be terminated if the patent rights cease to exist. This section lists a number of termination grounds, grounds can be added or removed depending on the context of the Agreement.</p>

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3	On termination or expiry of this Agreement, for whatever reason, Licensee shall immediately discontinue any use of the Licensed Patents [and Trade Secrets] [and Material].	This section clarifies that Licensee will not be granted a sell off period after termination as the termination is either with mutual agreement, by the Licensees own volition or because the Licensee was in breach of the Agreement.
4	Expiration or termination of this Agreement will not release Parties of obligations which have accrued prior to such expiration or termination.	This section ensures that the termination does not affect obligations predating the termination.
5	Upon termination all sums become immediately due and payable.	This section ensures that an termination of the Agreement makes all sums immediately payable, irrespective of the payment term. Thereby ensuring that all remaining financial obligations can be dealt with simultaneously.
6	Provisions of this Agreement which, by their very nature, are intended to continue notwithstanding an expiration or termination of this Agreement, will survive an expiration or termination including but not limited to [articles .....].	This section allows certain elements of the Agreement to remain in force when the Agreement ends. This is usually related to confidentiality, liability and other subjects which remain relevant after the Agreement ends. It will require reference to the relevant articles, in any event the one's parties consider to be key.
7	To the extent permitted by law Parties hereby waive their rights under articles 6:265 to 6:272 inclusive of the Dutch Civil Code to rescind ( <i>ontbinden</i> ), or demand in legal proceedings the rescission ( <i>ontbinding</i> ), of the Agreement.	This optional section excludes the right to rescind the Agreement. This is not the same as termination. Rescinding the agreement is one of the legal remedies under Dutch law in the event of a shortcoming in the performance of an agreement, as an alternative to relying on compliance with that agreement. Rescinding the agreement results in obligations on both parties to create the status quo, i.e. as if the agreement was never entered into. This may be very complex and cumbersome when it comes to granted rights. Because it can be difficult to give the necessary legal consequence to rescind the agreement, this option is excluded insofar permitted under Dutch law.
8	Within <b>three (3) months</b> after the Effective Date, Licensee shall provide evidence to Licensor of having received at least EUR [...] ([...] euros) of funding commitment[of which at least EUR [...] ([...] euros has been received [in cash] by Licensee and the remainder is due to the Licensee upon the achievement of milestone events set out in the aforementioned evidence and which are reasonably acceptable to Licensor].	This section offers the Licensee the certainty of having concluded a Licence when negotiating with investors, while Licensor is certain it can terminate the Licence if Licensee is unable to secure sufficient funding to start out on a credible development route.

XVII. Miscellaneous		
1	Parties may make public statements regarding the [existence / subject matter] of this Agreement without disclosing the terms and conditions, except to the extent such disclosure is required by law, provided that, the disclosing Party notifies the non-disclosing Party prior to disclosure, giving the non-disclosing Party sufficient advance notice to permit it to seek a protective order or other similar order with respect to such information and provided further that the disclosing Party furnishes only that portion of the information which it is legally required.	This section clarifies that general statements about the cooperation should be allowed. Both Parties will have reasonable interests to share the existence of the licence. However, the specific terms and specific information should be regarded as confidential. However, given the special nature of the licensor, i.e. a public entity, it is subject to legislation regarding freedom of information. In the event that such requests impact this commitment, licensee is informed and involved.
2	Neither Party shall use the names, logos, insignias or trademarks of the other Party, officers and employees, nor any adaptation of them, without prior written approval.	This section is included for clarity. Other IP rights, e.g. trademark and trade name rights, should be observed at all times.
3	No press release regarding this Agreement or its terms shall be made by any Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.	This section ensures that press releases are agreed upon before being made. In view of the effect that press releases may have, the parties will first submit such texts to the other party in order to prevent disagreement about the text afterwards.
4	Any notice or other communication required or permitted under this Agreement will be sufficiently given through an email, send by registered mail ( <i>aangetekende post</i> ), or by courier to the addresses as stated in Annex [X], or to any substitute addresses as each Party may notify to the other Party.	This section details what written messages are considered relevant notices. To be in line with common practices, emails should also be allowed as a way to send notifications, besides post or delivered by courier. Under Dutch law a message is deemed to have been received if its receipt can be
5	Without prior written consent of Licensor in each instance, neither this Agreement nor the rights granted hereunder will be transferred, assigned, encumbered, or pledged in whole or in part by Licensee to any person or entity whether voluntarily or involuntarily, by operation of law, or otherwise. Licensor may grant such consent to Licensee under additional conditions (e.g. extra payments or increased royalty rates). This Agreement shall be binding upon the respective successors, legal representatives and assignees of Licensors and Licensee.	This section restricts how the Agreement can be transferred or offered as a collateral. Assignment and pledging is only allowed with permission of licensor, as these acts may weaken the position of licensor and Licensor sees itself confronted with a new partner. This will impact the prospect of successful development and commercialisation and affect the nature of the party can impact the Licensors interests. Licensor should be free to impose conditions before giving its consent.
6	Without prior written consent of Licensor in each instance, a Change of Control at Licensee, may not take place. Licensor shall not withhold such consent upon unreasonable grounds. Upon being notified by Licensee of an intended Change of Control, such notice to include the identities of the party or parties which are to take control, Licensor shall respond to Licensee within <b>ten (10) days</b> . "Change of Control" means any person or group of persons acting in concert gains direct or indirect control of the Licensee. For the purposes of this definition: "control" of the Licensee means: the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to: i) cast, or control the casting of, more than [fifty percent ([50]%) of the maximum number of votes that might be cast at a general meeting of the Licensee; or ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Licensee; or iii) give directions with respect to the operating and financial policies of the Licensee with which the directors or other equivalent officers of the Licensee are obliged to comply; "acting in concert" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares by any of them, either directly or indirectly, to obtain or consolidate control of the Licensee.	This section is a parallel to section 5. Where in section 5 the Licensor is confronted with a new contractual party, in this section Licensor is confronted with new shareholders, a change with similar impact. However, given the nature of start-ups, a change of control is often desirable. Therefore, this section does not introduce a termination ground for such a change of control but provides a clause similar to the assignment arrangement. As this is vital for any transaction to move forward, the section provides a division of roles and a deadline. Nevertheless, such a clause will be a key concern for licensee and investors and should not be considered lightly.
7	"Force Majeure" shall mean any unforeseeable and exceptional event ( <i>niet toerekenbare tekortkoming</i> ) as referred to in article 6:75 of the Dutch Civil Code. Without prejudice to any rights or remedies under this Agreement or the law, a Party prevented to fulfil its obligations duly and timely because of an event of Force Majeure shall inform the other Party promptly, both orally and in writing, specifying the cause of Force Majeure and how it may affect its performance, including a good	This section refers to Force majeure within the Dutch legal framework. Under Dutch law it refers to a situation where the performance of a contractual obligation has become impossible for a party due to an event which was beyond their control. Hence contrary to some common law jurisdictions, under Dutch law, the terms do not have to spelled out. Under Dutch law the statutory force majeure

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	<p>faith best estimate of the likely scope and duration of interference with its obligations, and shall make best efforts to terminate or remove as soon as practicable the Force Majeure circumstances. Both Parties shall consult each other in order to minimize all damages, costs and possible other negative effects.</p>	<p>provisions apply automatically to all contracts. Parties can nevertheless include an express provision on force majeure if they wish to override or deviate from the statutory provisions. E.g. to avoid discussion whether a certain situation qualifies as a force majeure it can be prudent to explicitly name such events. Also it can be stipulated after how many days the other party will have the right to set aside the Agreement (instead of an the legally applicable reasonable term).</p>
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XVIII. Law & Forum		
1	This Agreement shall be governed by Dutch law, excluding its conflict of law provisions.	This section determines the applicable law to interpret the Agreement. The Licensed Patents are based on research carried out in the Netherlands by Dutch non-profit organisations under Dutch Public law. Given the nature of the Agreement its key elements are linked to the Dutch legal sphere. Selecting a different jurisdiction can have far reaching effects on the scope and enforceability of the Agreement.
2	In the event of any claim or dispute between the Parties arising out of or in connection with this Agreement, the Parties shall use their best efforts to seek an amicable settlement for said claim or dispute.	This section is the guiding principle in the event of a claim or dispute between the Parties. An amicable settlement is always preferable, in view of the unpredictability and costs of legal proceedings and the harm such proceedings will cause the relationship. Parties must endeavour to reach this amicable solution.
3	To this end the both Parties will attempt to find a mutually acceptable solution to the claim or dispute <b>within thirty (30) days</b> of the notification by one Party to the other Party of said claim or dispute. In the event Parties are not able to settle the claim or dispute within the time set out above, each Party shall designate a member of the senior management who is duly empowered to settle the claim or dispute. The designated managers shall endeavour to settle the claim or dispute <b>within sixty (60) days</b> . After the expiry of said period, and in absence of an amicable solution, each Party shall be at liberty to submit the claim or dispute to the competent [court / tribunal].	This optional section sets out the steps to be taken in the event of a claim or dispute, it provides detail to the manner in which the amicable solution is to be found and who is to be involved. In many cases it is desirable to escalate an issue to a more senior level, as that can provide a fresh and broader perspective.
4	<b>[OPTION 1]</b> Any dispute or difference arising in connection with this Agreement which cannot be amicably settled between the Parties, shall, in first instance or in summary proceedings ( <i>kort geding</i> ), be submitted to the competent court of The Hague (Den Haag), the Netherlands. To this end, Parties waive all defences of lack of personal jurisdiction and forum non conveniens.	This section sets out which court is appointed by the Parties to resolve conflicts. The court of The Hague has exclusive jurisdiction with respect to patent cases (validity and infringement cases) and has also an specialized IP chamber. For that reason, the The Hague court is preferred. By reference, the competent Court of Appeal and Supreme Court are included as they also reside in The Hague.
	<b>[OPTION 2]</b> Any dispute, controversy or claim arising under, out of or relating to this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [a sole arbitrator]/[three arbitrators]. The place of arbitration shall be [SPECIFY PLACE]. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the law of the Netherlands.	This section provides an alternative forum to resolve disputes between the parties. Given that court judgments outside the EU are often legally unenforceable, arbitration is preferable. Arbitration can also be preferable if confidentiality is of utmost importance. However, other can judges, arbiters are compensated by the parties and fees and other expenses (e.g. travel expenses) can be substantial. For the avoidance of doubt, such a court of arbitration will apply Dutch law.