

FUNDING AGREEMENT

PARTIES

- (1) The **UNIVERSITY OF AUCKLAND**, a university constituted under the University of Auckland Act 1961 and a tertiary education provider under the Education and Training Act 2020, of 22 Princes Street, Auckland, New Zealand (**University**)
- (2) **MINDBIO THERAPEUTICS NZ LIMITED 8259722, NZBN: 9429050057849**, of Level 4, 21 Queen Street, Auckland CBD, New Zealand (**Funder**)

INTRODUCTION

- A** University is a research institution. The University has completed an initial phase of research funded by the Health Research Council (20/845) under an agreement dated 27th May 2020 titled developing serotonergic 2A receptor agonists as treatments for mood disorders] (**Phase 1 Research**).
- B** The Funder has an interest in supporting the development of new and innovative ways for managing and treating mental disorders using psychedelic microdosing.
- C** The Funder wishes to fund the University, and the University agrees, to conduct certain further research within the above area of interest.
- D** The University vests its intellectual property interests in its wholly owned subsidiary Auckland UniServices Limited (**UniServices**). The parties and UniServices wish to provide an option for the Funder to license the outputs of the research, along with the outputs of the Phase 1 Research, for commercialisation.
- E** The University has also appointed UniServices as its exclusive agent to procure and enter into agreements on the University's behalf in relation to the performance of research.

AGREEMENT

The Funder engages the University to provide, and the University agrees to provide, the Research on the terms and conditions of this Agreement, as set out from time to time in further statements of work entered into under this Agreement.

CONTRACT DETAILS

Research	<p>"PSYCHEDELIC MICRODOSING THERAPY: RESEARCH AND IP PROGRAMME" a research study run by the Principal Investigator seeking to develop new and innovative ways for managing and responding to mental illness via the use of psychedelic microdosing, where psychedelic microdosing is a therapeutic use of psychedelic drugs characterised by an intended regimen of repeated microdoses taken by a patient.</p> <p>The University's project reference: TechID#43183</p> <p>Funder 's project reference: MindBio UOA</p>
Field	<p>Treatment of mental illness and medical conditions of the nervous system.</p>
Start Date	<p>The date on which both parties have executed this Agreement.</p>
Principal Investigator	<p>Associate Professor</p>
Contact details for notices	<p>University of Auckland:</p> <p>c/o Auckland UniServices Limited: Physical address: Level 10, 49 Symonds Street, Auckland 1142, New Zealand Postal address: Private Bag 92019, Victoria Street West, Auckland 1142, New Zealand</p> <p>For the attention of: Email: With a copy to: Email:</p> <p>Funder:</p> <p>Physical address: Email: Communications by email preferred. For the attention of:</p>
Dependencies	<p>On or before the earlier of:</p> <ul style="list-style-type: none"> (i) 1 July 2022; and (ii) within 5 Business Days of the Funder providing notice to the University that it has raised funds of no less than \$3,500,000 for the following, <ul style="list-style-type: none"> (a) (dependency 'a') Execution by the parties of the initial Statement(s) of Work for a total Funding Amount of \$2,000,000, and (b) (dependency 'b') receipt by the University of payment in full; and (c) (dependency 'c')The University and UniServices confirming that they have taken all necessary steps required (including providing any pre-approvals, passing of any resolutions and/or granting any powers of attorney) to allow MindBio Therapeutics to enter into this legally binding Funding Agreement and effective Commercialisation Agreement terms upon MindBio Therapeutics exercising the First Right and Option.

EXECUTED

SIGNED for and on behalf of the
UNIVERSITY OF AUCKLAND by its
authorised agent **AUCKLAND**

SIGNED for and on behalf of
**MINDBIO THERAPEUTICS PTY
LTD** by:

Signature of Authorised Signatory

Michael Andrew Shenk

Name of Authorised Signatory

JUSTIN HANKA

Name of Authorised Signatory

CEO

Title of Authorised Signatory

DIRECTOR

Title of Authorised Signatory

21 December 2021

Date

20 December 2021

Date

ACKNOWLEDGED AND AGREED

In consideration for the Funder undertaking to provide the Funding to the University, UniServices acknowledges and agrees to comply with clause 10 (Option to License) as if a direct party to the Funding Agreement.

SIGNED for and on behalf of
AUCKLAND UNISERVICES

Signature of Authorised Signatory

Michael Andrew Shenk

Name of Authorised Signatory

CEO

Title of Authorised Signatory

21 December 2021

Date

GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement:

Affiliate of a party means any entity that controls or is controlled by that party, or is under common control with that party, or a director, officer or member of personnel of that party.

Agreement means this funding agreement, including the Contract Details, these General Terms (as may be varied in the Contract Details), the Schedules and any Statements of Work.

Background IP of a party means intellectual property, know-how, information, materials and other items of that party (or its licensors) existing prior to the date of this Agreement or developed independently of this Agreement, and includes the specific Background IP of that party identified in the Contract Details (if any).

Business Day means:

- (a) in clause 14.3, a day on which registered banks are open for business in the location of the recipient, excluding Saturdays, Sundays and public holidays; or
- (b) in any other case, a day on which registered banks are open for business in Auckland, excluding Saturdays, Sundays and public holidays.

Commercialisation Agreement has the meaning given by clause 10.1.

Confidential Information of a party (**Disclosing Party**) means all information that is about the Disclosing Party, its Affiliates, or its or its Affiliates' affairs, or obtained by the other party (**Recipient**) directly or indirectly from the Disclosing Party or its Affiliates in connection with this Agreement, and includes the terms and conditions of this Agreement, but excludes information:

- (a) which is or becomes public knowledge, other than as a result of any fault of the Recipient or its permitted disclosees;
- (b) developed independently of this Agreement and any information of the Disclosing Party; or
- (c) received by the Recipient from a third party without restriction and without any breach of any obligation of confidentiality.

Contract Details means the agreement-specific details set out on the cover page of this Agreement.

Dependency means a dependency set out in the Contract Details.

Exercise Period has the meaning given by clause 10.2.

Field means the field stated in the Contract Details.

First Right and Option has the meaning given by clause 10.1.

Force Majeure Event means an event beyond the reasonable control of a party, including, to avoid doubt, an impact arising from Covid-19, (but excluding a lack of funds for any reason).

Funding Amounts means the amounts, including any costs and other expenses, set out in Statement(s) of Work, as applicable, in the form contained in Schedule 2 and as Attachments to this Agreement

Funding Dates means the date funding is intended be provided for each Funding Amount, set out in each Statement of Work.

GST means goods and services tax, value added tax, or similar tax in any applicable jurisdiction payable on taxable supplies.

Insolvency Event means, in relation to a party, that the party (other than for the purposes of a solvent restructuring) ceases or threatens to cease to carry on business, or (where the party is the Funder) is subject to any form of insolvency proceedings, commits an act of bankruptcy or has been adjudicated bankrupt, has any of its assets seized by a creditor, enters into any arrangement for the benefit of its creditors, has a receiver, liquidator, administrator, statutory manager or similar official appointed, becomes insolvent or is deemed by law to be so, or suffers any analogous event under the laws of any relevant jurisdiction.

Intellectual Property means any and all intellectual property and proprietary rights (whether registered or unregistered), including trade or service marks; business names; licences; and logos, designs, design rights, copyright (including copyright in any website or social media content), patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, know-how and similar industrial or intellectual property rights that may already be in existence or may come into existence in the future.

Medicinal IP means any Intellectual Property whatsoever developed by the University at any time pursuant to or as a result of the Research.

Principal Investigator means the person so named in the Contract Details, as may be updated in accordance with clause 3.3 from time to time.

Publications has the meaning given in clause 8.1.

Research means the research detailed in a Statement(s) of Work and falling within the general description of research referred to in the description in the Contract Details.

Research Period means the period beginning on the Start Date and ending on the SOW End Date (unless that date is extended pursuant to clause 4.4(b)).

Start Date means the date so stated in the Contract Details.

SOW End Date means the date so stated in the applicable Statement of Work.

SOW Start Date means the date so stated in the applicable Statement of Work.

Statement of Work means a statement of work entered into under this Agreement, substantially in the form set out in Schedule 1 and signed by both parties.

1.2. In this Agreement:

- (a) clause and other headings are for ease of reference only and do not affect its interpretation;
- (b) where the context permits, the singular includes the plural and vice versa;
- (c) references to legislation include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- (d) references to a **person** include an individual, firm, company, corporation or un-incorporated body of persons, any public, territorial or regional authority, or any government, and any agency of any such authority or government;
- (e) references to a party's **personnel** include that party's employees, contractors and agents, engaged in connection with this Agreement;
- (f) all monetary amounts are in New Zealand dollars unless stated otherwise; and
- (g) **including** and like terms mean **including, without limitation**.

2. RESEARCH

- 2.1. From time to time, the parties may agree on Research to be carried out under this Agreement, by entering a Statement of Work.
- 2.2. The University will carry out the Research during the Research Period, and in doing so must:
 - (a) exercise reasonable care and skill; and
 - (b) comply with current standards of professional research practice.
- 2.3. The Funder must promptly provide the University with all information and other assistance reasonably required by the University to enable the University to carry out the Research.
- 2.4. The University will provide the Funder with:

- (a) reports of the type and at the frequency and/or times set out in a Statement(s) of Work; and

- (b) a final report within 90 days of the completion of the Research Period summarising the work carried out and describing the research findings and achievements.

2.5. Nothing in this Agreement prevents:

- (a) the University from carrying out independent research (including for third parties) that is similar to the Research, provided that the University does not use any Confidential Information, Medicinal IP or resources of the Funder in the course of that other research, or grant rights (by way of a licence to University/UniServices background IP) to a third party to commercialise:

- a. any Medicinal IP; or
- b. other intellectual property which would conflict with the Licensee's First Right and Option; or

- (b) the third party from protecting any registrable rights arising from such independent research.

3. PRINCIPAL INVESTIGATOR

- 3.1. The University will ensure that the Research is carried out under the direction and supervision of the Principal Investigator for so long as he or she is available to perform the Research.
- 3.2. If the Principal Investigator ceases to be available to perform the Research, the University will notify the Funder as soon as practicable and the parties must discuss in good faith a replacement Principal Investigator.
- 3.3. If a replacement Principal Investigator is agreed under clause 3.2, that person is deemed to be the Principal Investigator from a date agreed between the parties.
- 3.4. The Funder acknowledges that if a replacement Principal Investigator cannot be found by the University, the University may request reasonable variations to agreed Statements of Work.

4. FUNDING AND PAYMENT

- 4.1. The Funder must pay the University the Funding Amounts in accordance with this clause 4.
- 4.2. The University will invoice the Funder for the applicable Funding Amounts, as set out in each SOW, on or after the execution of a Statement of Work.
- 4.3. Subject to the University completing, to the reasonable satisfaction of the Funder, each SOW deliverable by the relevant SOW End

Date, the Funder will provide each Funding Amount to the University on the relevant Funding Payment Date.

4.4. If the University believes that it may not be able to complete a certain SOW by the relevant SOW End Date, then it may request to the Funder in writing for an extension to that SOW End Date, setting out the reasons for the requested extension and the new proposed SOW End Date (**SOW Extension Notice**).

(a) Upon receipt of a SOW Extension Notice the Funder must give due consideration to the University's request, and provide a response in writing either accepting or rejecting (in the Funder's sole discretion) the request within 5 Business Days.

(b) If the Funder accepts the request for an extension for a particular SOW, then the Funder's notice of acceptance must specify the new SOW End Date for that SOW (which need not be the date requested by the University in the SOW Extension Notice) and that SOW End Date will be accordingly extended upon delivery of that notice by the Funder. For the avoidance of doubt, if an extension for a particular SOW End Date for a SOW is granted by the Funder, all other SOW End Dates remain as previously agreed and do not automatically extend.

4.5. Amendments to Statements of Work entered into under this Agreement can be amended as further Attachments to this Agreement, substantially in the form set out in Schedule 2 and signed by both parties.

4.6. The Funding Amounts:

(a) exclude GST which the Funder must pay in addition to the Funding Amount on any taxable supplies; and

(b) subject to the University providing a valid GST tax invoice, must be paid:

(i) electronically in cleared funds to a bank account nominated by the University;

(ii) without set-off or deduction of any kind; and

(iii) by the 20th of the month following the month of the invoice, unless agreed otherwise in a Statement of Work.

4.7. On early termination (including under clause 11.3), the University may retain:

(a) a portion of the applicable Funding Amount(s) for direct costs of the Research carried out prior to termination (whether or not completed), to be determined by the University (acting reasonably); and

(b) the reasonable costs of any non-cancellable obligations on commercial, arms-length terms entered into by the

University before termination in connection with the Research. For the avoidance of doubt, this includes any activities and salary commitments related to the safe winding up of research and clinical trials.

4.8. The University must repay any portion of the Funding Amount not retained under clause 4.7 to the Funder immediately upon request.

4.9. The University may charge interest on overdue amounts under this Agreement from the day following the due date for payment until payment in full (including interest). Interest will be at the rate of the University's overdraft rate applicable as at the due date for payment plus 2% per annum, and compounded monthly.

4.10. The Funder must pay on demand all costs and expenses on a full indemnity basis (including legal fees on a solicitor and own Funder basis) incurred by the University in recovering any amount payable by the Funder under this Agreement.

5. WARRANTIES

5.1. Each party warrants that it:

(a) is a body corporate duly organised, validly existing and in good standing, under the laws of its jurisdiction of incorporation; and

(b) has full power and authority to enter into and perform its obligations under this Agreement.

5.2. The University warrants that it will carry out the Research in accordance with:

(a) all applicable law; and

(b) any executed agreements, including relevant clinical trial research agreements, Medsafe and Health and Disability Ethics Committees (HDEC) guidelines.

(c) In accordance with clause 5.2(a),(b), The University and the Funder both agree;

i. The Funder acknowledges that the commencement and continuation of any Clinical Trials funded by any Statement of Work are subject to approvals from relevant regulatory authorities including but not limited to MedSafe and the HDEC. Should any approvals not be granted, or a Clinical Trial is suspended, the University will inform the Funder within 5 business days of receiving any such decision. The University and Funder will then discuss any necessary variations to Statements of Work.

5.3. To the extent permitted by law, the University's warranties are limited to those

expressly set out in clause 5.1 and 5.2 and all conditions, warranties (including any under Part 3 of the Contract and Commercial Law Act 2017 (NZ)) and guarantees are excluded.

5.4. The Funder acknowledges that the Research includes the carrying out of research the outcomes of which cannot be predicted. Without limiting clause 5.3, the University gives no warranties, representations or undertakings as to:

- (a) any outcome of the Research (including the registrability of any Medicinal IP);
- (b) the suitability of the Research for any purpose;
- (c) the timeframe within which any outcomes of Research may be achieved; or
- (d) the Research, the Medicinal IP or any Background Intellectual Property of the University not infringing any third party rights (including any Intellectual Property).

5.5. The Funder acknowledges and agrees that it is funding the Research for the purposes of a business and the Consumer Guarantees Act 1993 (NZ) does not apply to this Agreement or the Research.

5.6. The University does not provide, and no information provided to the Funder is to be taken as, any warranty or representation as to:

- (a) any person's entitlement to a research and development tax credit; or
- (b) the eligibility or otherwise of any activity, expenditure or loss to qualify for a research and development tax credit.

6. LIABILITY

6.1. Neither party will be liable for loss of data, profit, revenue, savings, business or goodwill, or for any consequential, indirect, incidental or special damage or loss of any kind.

6.2. The maximum aggregate liability of the University to the Funder under or in connection with this Agreement is limited to the total amount paid by the Funder to the University in the 12 months immediately preceding the event of liability.

7. CONFIDENTIALITY

7.1. Each party must keep Confidential Information of the other party secure and confidential and not:

- (a) use that Confidential Information for any purpose other than as required to perform its obligations or exercise its rights under this Agreement; or
- (b) disclose that Confidential Information to any person other than:
 - (i) as permitted under this Agreement;

(ii) with the prior written consent of the other party;

(iii) to its Affiliates and personnel who have a need-to-know for the purpose of giving effect to this Agreement, or to its professional advisors, provided that the recipient is subject to obligations of confidentiality equivalent to those in this clause 7; or

(iv) (in the case of the Funder) to a potential sublicensee or potential investor in the Funder, provided that the recipient is subject to obligations of confidentiality equivalent to those in this clause 7 and is further restricted to using the Confidential Information solely for the purpose of evaluating the potential sublicense or investment (as applicable).

7.2. The obligations of confidentiality do not apply to any information to the extent that it is required to be disclosed by law (including under the rules of any recognised stock exchange).

7.3. Neither party may use the names, logos or trade marks of the other party or its personnel in any publicity or marketing without the other party's prior written consent.

8. PUBLICATIONS

8.1. Subject to clause 8.2, the University and its personnel may include the results of the Research in any academic publication or presentation (including student thesis) (**Publication**).

8.2. The University must submit any proposed Publication to the Funder for review at least 60 days before the intended date for submission for publication. The University will, if notified by the Funder within 20 days of submission of the proposed Publication to the Funder:

(a) delay publication (and any other disclosure) for up to 90 days from receipt of the Funder's notice to enable the filing of patent application(s) to protect any patentable subject matter in which the Funder has an interest; and/or

(b) remove any commercially sensitive Confidential Information of the Funder from the Publication.

8.3. The Funder acknowledges that part or all of the Research may be carried out by students as part of the requirements to fulfil an academic course of study at the University. In the case of a proposed Publication which is a student thesis, clause 8.2(b) shall not apply, however the Funder may require that thesis to be:

(a) examined by examiners bound by obligations of confidentiality; and/or

- (b) embargoed from being publicly available in any library for up to 12 months, until all commercially sensitive Confidential Information of the Funder has been made available to the public.

9. INTELLECTUAL PROPERTY

- 9.1. Each party (or its licensors) retains ownership of all rights (including Intellectual Property) in its Background IP. Ownership of Publications and teaching materials authored by University personnel is retained by the relevant University personnel.
- 9.2. Subject to clause 9.1, all rights, title and interest (including Intellectual Property) in any Medicinal IP shall solely belong to the University (or UniServices, as its assignee), immediately on creation, regardless of inventorship or authorship.
- 9.3. The Funder will, at the Funder's cost, provide reasonable information and assistance and do or procure any further acts, including the execution of any document, where necessary to give effect to clause 9.2.
- 9.4. Except as expressly provided otherwise, this Agreement does not grant any licence or other rights to a party to use the other party's Background IP.
- 9.5. Irrespective of clause 10, the Funder grants the University and its personnel a non-exclusive, royalty-free, perpetual and irrevocable licence to use the results of the Research (including any Medicinal IP) for the purposes of teaching and academic research.

10. OPTION TO LICENSE

- 10.1. The Funder shall have an exclusive first right of refusal and option (**First Right and Option**) to enter into a legally binding licence agreement with UniServices to commercialise, sublicense and exploit the Medicinal IP anywhere throughout the world on an exclusive basis (**Commercialisation Agreement**) in accordance with this clause 10 and substantially on the terms and conditions set out in the sample agreement in Schedule 2.
- 10.2. To exercise the First Right and Option, the Funder must provide notice to UniServices within a period of 2 years commencing on the date of completion of Dependency (a) (**Exercise Period**) stating that it wishes to exercise the First Right and Option (**Exercise Notice**).
- 10.3. If no Exercise Notice is received within the Exercise Period, the Funder will be deemed to have not exercised its First Right and Option and the First Right and Option shall be deemed to be terminated.
- 10.4. The Commercialisation Agreement will be substantially in the form set out in Schedule 2.

11. TERM, TERMINATION AND SUSPENSION

- 11.1. This Agreement comes into effect on the Start Date and ends when the last of the SOWs has been completed by the University or the last of the Funding Amounts have been paid by the Funder, whichever occurs later, unless earlier terminated in accordance with the terms of this Agreement.
- 11.2. Each Statement of Work comes into effect on the SOW Start Date and automatically terminates on the SOW End Date.
- 11.3. Either party may terminate this Agreement (and the applicable Statements of Work) on 14 days' notice if a Dependency fails to materialise by the stated date by which that Dependency must have occurred.
- 11.4. A party (**first party**) may terminate this Agreement or a Statement of Work (as applicable) immediately on notice to the other party if the other party:
- (a) commits a material breach of this Agreement or that Statement of Work (respectively) and either the breach is incapable of remedy or the other party fails to remedy that breach within 30 days of the first party notifying it of the breach; or
 - (b) is subject to an Insolvency Event.
- 11.5. A failure by the Funder to pay any Funding Amount by the due date for payment is a material breach capable of remedy for the purposes of clause 11.4.
- 11.6. If the University has a right to terminate under clause 11.4(a), it may instead suspend the performance of the Research and/or any of its other obligations, and (at its discretion) recommence performance on remediation of the breach. If the University recommences performance, the date for performance of each party's further obligations shall be extended by a period equivalent to the period of suspension.
- 11.7. A party may terminate this Agreement on 3 months' notice to the other party provided that
- (a) no Statement of Work is currently in force; and
- 11.8. the earliest that the Funder may exercise this right is on expiry of two years from the Start Date.
- 11.9. Termination or expiry of this Agreement does not affect a party's rights or obligations that have accrued before termination or expiry.
- 11.10. On termination or expiry of this Agreement for any reason:
- (a) clauses 4.74.9 to 4.10, 6, 7, 11.9, 11.10, (c) 13, and any other clauses intended to survive termination or expiry, continue in force; and
 - (b) each party must promptly return to the other all documents, materials and other items belonging to the other party and in

its possession at the time of termination or expiry..

- (c) On termination or expiry of this Agreement for any reason other than termination by either party under clause 11.3 or by the University under clause 11.4, clause 10 survives for the remaining period of the Exercise Period.

12. FORCE MAJEURE

- 12.1. A party will not be liable for any failure or delay in the performance of its obligations under this Agreement to the extent such failure or delay is due to a Force Majeure Event.

13. DISPUTES

- 13.1. Each party must use all reasonable efforts to meet and discuss in good faith any dispute arising in connection with this Agreement. A party must not issue any legal proceedings (other than for urgent interlocutory and/or injunctive relief) in respect of any dispute in connection with this Agreement, unless it has complied with this clause 13.1.
- 13.2. In the event of a dispute as to any amount payable by the Funder, the Funder must continue to pay any undisputed portion of any invoice.

14. GENERAL

- 14.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.
- 14.2. This Agreement must not be assigned, subcontracted or otherwise delegated by the Funder (in whole or in part) without the prior written consent of the University.
- 14.3. Any notice given under this Agreement must be in writing in English and may be delivered in person (including courier), by pre-paid post or email (provided that in the case of email the sender does not receive any notice of non-delivery) to that party's address in the Contract Details (or as may be updated by that party by notice from time to time). Any notice sent by prepaid post is deemed received two Business Days from the date of posting (or seven Business Days from the date of posting if sent to or from a place outside New Zealand). Any notice delivered in person or by email after 5pm on a Business Day or a non-Business Day is deemed received on the next Business Day.
- 14.4. The rights and remedies of each party under this Agreement are cumulative and are not exclusive of any other rights and remedies under this Agreement or at law.

- 14.5. This Agreement constitutes the entire understanding between the parties and supersedes any prior oral or written agreement or understanding between the parties. Both parties acknowledge and agree that sections 9, 12A and 13 of the Fair Trading Act 1986 (NZ) do not apply to the Research or this Agreement, and that these exclusions are fair and reasonable.
- 14.6. If any provision of this Agreement is or becomes invalid, unenforceable or illegal, the provision is deemed to be modified to the extent required to remedy the invalidity, unenforceability or illegality. If modification is not possible, the provision is deemed to be severed and will not affect the validity, enforceability or legality of the remainder of this Agreement.
- 14.7. No waiver of any right under this Agreement is effective unless in writing and signed by the waiving party. A waiver of a right under this Agreement does not limit or waive any other right of that party.
- 14.8. Except as set out otherwise in this Agreement, no variation to this Agreement (including a variation to the scope of the Research or Funding Amounts) is effective unless in writing and signed by an authorised signatory of each party.
- 14.9. The parties are independent contracting parties. No other relationship (including joint venture, employment, agency, trust or partnership) exists between the parties under this Agreement. Neither party is authorised to act as agent for or to bind the other party for any purpose and must not make any contrary representation to any person.
- 14.10. Except as otherwise expressly provided, each party must bear its own costs and expenses arising out of and in connection with the negotiation, preparation and execution of this Agreement.
- 14.11. This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement.
- 14.12. The parties to this Agreement give all necessary consents under the Electronic Transactions Act 1999 (Cth) or any equivalent legislation of any jurisdiction for:
- (a) the execution or exchange of this Agreement;
 - (b) the delivery of any notice under this Agreement; and
 - (c) any requirement for anything under this Agreement to be done in writing,
- to be done or satisfied by electronic means.

FUNDING AGREEMENT - SCHEDULE 1

Statement of Work (SOW) template

STATEMENT OF WORK

This Statement of Work is entered into under the *Funding Agreement* between the University of Auckland and MindBio Therapeutics NZ Limited, dated [*insert date*] (**Agreement**), and takes effect from the SOW Start Date stated below. Capitalised terms not otherwise defined in this Statement of Work have the meaning given to them in the Agreement.

STATEMENT OF WORK DETAILS

SOW Start Date	<i>[The date on which both parties have signed this SOW or [insert date]]</i>	
SOW End Date	<i>[Insert]</i>	
Research/Aim	The research described in Attachment 1 and to be carried out by or under the supervision of the Principal Investigator. The University’s project reference: <i>[Insert]</i> Funder’s project reference: <i>[Insert]</i>	
Reports, Activities, Deliverables and cumulative timelines	<i>[Insert type and frequency of delivery – e.g. table from SOW 1]</i>	
Description/Justification of Costs	<i>[Insert]</i>	
Budget Summary	<i>[Insert template form of budget summary here – can be lifted from example SOW 1]</i>	
Funding Amounts and due dates for payment	<i>[\$[insert Funding Amount for this SOW], plus GST</i>	<i>[The 20th of the month following the month of the delivery of the invoice in relation to Funding Amount]</i>
	<i>[\$[insert Funding Amount for this SOW] plus GST</i>	<i>[The 20th of the month following the month of the delivery of the invoice in relation to Funding Amount]</i>
Identified Risks/Mitigation		

EXECUTED

SIGNED for and on behalf of the
UNIVERSITY OF AUCKLAND by its
authorised agent **AUCKLAND**
UNISERVICES LIMITED:

SIGNED for and on behalf of
MINDBIO THERAPEUTICS Pty Ltd
by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Title of Authorised Signatory

Title of Authorised Signatory

Date

Date

FUNDING AGREEMENT - SCHEDULE 2

Statement of Work (SOW) Variation template

SOW Variation Number:	1.0
Auckland UniServices Representative:	
MindBio Therapeutics' Representative:	

PARTIES

- (1) The **UNIVERSITY OF AUCKLAND**, a university constituted under the University of Auckland Act 1961 and a tertiary education provider under the Education and Training Act 2020, of 22 Princes Street, Auckland, New Zealand (**University**), The University has appointed **UniServices** as its exclusive agent to procure and enter into agreements on the University's behalf in relation to the performance of research.
- (2) **MINDBIO THERAPEUTICS NZ Limited, 8259722**, NZBN 9429050057849 of Level 4, 21 Queen Street, Auckland CBD New Zealand (**Funder**)

BACKGROUND

- A The Parties have agreed to vary the Statement of Work dated [insert date] and record the variation by executing this Statement of Work Variation, and made as an Attachment to the Funding Agreement dated [insert date].
- B The detail of this variation is summarised below.

VARIATIONS TO THE AGREEMENT:	
Statement of Work No.	
In all other respects, the terms and conditions of the Agreement shall remain the same. This SOW Variation is executed on and effective from the later of the two dates appearing below:	
SIGNED for and on behalf of AUCKLAND UNISERVICES LTD:	SIGNED for and on behalf of MINDBIO THERAPEUTICS NZ LIMITED by:
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Name	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Name
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Title	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Title
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date

FUNDING AGREEMENT – SCHEDULE 3

ATTACHMENTS

Insert agreed and executed Statements of Work (SOW) as SOW Attachment 1, SOW Attachment 2, etc.

The Parties acknowledge that the nature of the Research involves a level of uncertainty, the following Risk Register identifies potential risks to the delivery of the research outlined in the Attached Statements of Work and the mitigation steps to be taken. Further details on each risk will be provided in the relevant SOWs.

Risk Register

No.	Risk Description	Potential	Mitigations
1	Failure to source key APIs in order to conduct the work	Low-Med	Contract in place. Alternatives being investigated
2	Failure to commission a GMP contract manufacturer to produce formulations for clinical trials	Low	Currently exploring NZ-based alternatives
3	Inability to produce an adequate formulation	Med	More of a risk for LSD than psilocybin, so psilocybin is a backup to continue the research. Regular reporting of project progress to provide advance warning of potential issues
4	An unforeseen regulatory barrier	Med	Previous discussions re Phase I study gave sufficient confidence for regulatory approval, albeit cautiously. Continued communication with regulators to address concerns.
5	PI not able to continue with project	Low	Knowledge sharing systems in place for project, with regular full team meetings and common document pool. Budgeted project manager to provide continuity
6	Delays caused by a combination of the above and/or external factors (e.g. Covid lockdowns)	Med-High	Regular meetings to provide early warning of potential delays and discuss course of action.

FUNDING AGREEMENT - ANNEXURE A

COMMERCIALISATION AGREEMENT

PARTIES

- 1 **AUCKLAND UNISERVICES LIMITED**, a New Zealand company, company number 373821, of Level 10, 49 Symonds Street, Auckland, New Zealand (**UniServices**)
- 2 **MINDBIO THERAPEUTICS NZ Limited**, 8259722, NZBN: 9429050057849 of Level 4, 21 Queen Street, Auckland CBD New Zealand (**Licensee**)

INTRODUCTION

- A** UniServices is the wholly-owned subsidiary of the University of Auckland (the **University**). The University vests its intellectual property interests in UniServices.
- B** The Licensee has an interest in the development of new and innovative ways for managing and treating mental disorders using medicinal psychedelics.
- C** The Licensee and the University are parties to a *Funding Agreement* dated 21/12/2021 (**Funding Agreement**), under which:
- (a) the Licensee agreed to fund the University, and the University agreed, to conduct certain research in the Funder's areas of interest; and
 - (b) the Licensee had an exclusive first right of refusal and option (**First Right and Option**) to enter into a legally binding licence agreement with UniServices for the Licensee to commercialise, sublicense and exploit Medicinal IP (as defined in the Funding Agreement) anywhere throughout the world on an exclusive basis.
- D** The Licensee has exercised its First Right and Option in respect of some or all of the Medicinal IP, in accordance with the Funding Agreement.

EXECUTED

SIGNED for and on behalf of
AUCKLAND UNISERVICES LIMITED:

SIGNED for and on behalf of **MINDBIO THERAPEUTICS NZ LIMITED** by:

"signed"

Signature of Authorised Signatory

"signed"

Signatory Signatory Signatory

Michael Andrew Shenk

Name of Authorised Signatory

JUSTIN HANKA

Name of Authorised Signatory

CEO

Title of Authorised Signatory

DIRECTOR

Title of Authorised Signatory

21 December 2021

Date

20 December 2021

Date

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions:** In this Agreement:

Affiliate means, in respect of an entity, a person that directly or indirectly controls, is controlled by or is under common control with, that entity.

Agreement means this commercialisation agreement, including any Schedules.

AU Improvements means any and all improvements to the Medicinal IP made or developed solely by the University in connection with the Research.

Business Day means:

- (a) in clause 21.2, a day on which registered banks are open for business in the location of the recipient, excluding Saturdays, Sundays and public holidays; or
- (b) in any other case, a day on which registered banks are open for business in Auckland, excluding Saturdays, Sundays and public holidays.

Confidential Information of a party (**Disclosing Party**) means all information that is about the Disclosing Party, its Affiliates, or its or its Affiliates' affairs, or obtained by the other party (**Recipient**) directly or indirectly from the Disclosing Party or its Affiliates in connection with this Agreement, and includes the terms and conditions of this Agreement, but excludes information:

- (a) which is or becomes public knowledge, other than as a result of any fault of the Recipient or its permitted disclosees;
- (b) developed independently of this Agreement and any information of the Disclosing Party; or
- (c) received by the Recipient from a third party without restriction and without any breach of any obligation of confidentiality.

Exercise Notice has the meaning given in the Funding Agreement.

Field means Treatment of mental illness and medical conditions of the nervous system

Force Majeure Event means an event beyond the reasonable control of a party (but excluding a lack of funds for any reason).

Funding Agreement has the meaning given in paragraph C in the *Introduction* section on the cover page.

GST means goods and services tax, value added tax, or similar tax in any applicable jurisdiction payable on taxable supplies.

Independent Auditor means an auditor jointly agreed by the parties, or failing agreement within 5 Business Days, chosen by the Resolution Institute, provided that the auditor is not an Affiliate of either party.

Insolvency Event means, in relation to a party, that the party (other than for the purposes of a solvent restructuring) ceases or threatens to cease to carry on business, or is subject to any form of insolvency proceedings, commits an act of bankruptcy or has been adjudicated bankrupt, has any of its assets seized by a creditor, enters into any arrangement for the benefit of its creditors, has a receiver, liquidator, administrator, statutory manager or similar official appointed, becomes insolvent or is deemed by law to be so, or suffers any analogous event under the laws of any relevant jurisdiction.

Intellectual Property Rights means any and all intellectual property and proprietary rights (whether registered or unregistered), including trade or service marks; business names; licences; and logos, designs, design rights, copyright (including copyright in any website or social media content), patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, know-how and similar industrial or intellectual property rights that may already be in existence or may come into existence in the future.

Licensed Intellectual Property Rights means:

- (a) the Medicinal IP that is the subject of the Exercise Notice dated 20/12/21; and
- (b) from the date of creation, any AU Improvements arising during the Research Period; and

includes:

- (d) from the date of filing, the Licensed Patents; and
- (e) all Intellectual Property Rights subsisting in the Licensed Know-How.

Licensed Know-How means the technical information, which relates to the Research and/or the Licensed Patents and is not generally publicly known, including pre-clinical, clinical, chemical, biochemical, toxicological, manufacturing, formulation and scientific research information, whether or not capable of precise separate description.

Licensed Patents means the patents and other registrations, and applications, made under clause 9.1, and includes those added to Schedule 1 from time to time.

Licensed Product means any product the making, disposition, use, import or keeping of which would, but for the licence granted under this Agreement, infringe any of the Licensed Intellectual Property Rights licensed under this Agreement.

Medicinal IP has the meaning given in the Funding Agreement.

Publication has the meaning given in clause 12.1.

Report has the meaning given in clause 7.1.

Research has the meaning given in the Funding Agreement.

Research Period has the meaning given in the Funding Agreement.

Sale means the sale, hire or other disposition of a Licensed Product to an end user of the Licensed Product.

Start Date means the date on which both parties have executed this Agreement.

Sublicence means any transaction (other than a Sale) under which, or in connection with which, a person (**Sublicensee**) is granted any right (including an option) to evaluate, have, make, have made, sell, distribute, import or use a Licensed Product or to evaluate or use any Licensed Intellectual Property Rights, or otherwise commercially exploit the Licensed Intellectual Property Rights.

Sublicensing Income means all consideration payable under or on account of a Sublicence (including the monetary equivalent of the fair value of any non-monetary consideration).

Territory means worldwide.

University means the University of Auckland, a body corporate established under the University of Auckland Act 1961 and the Education Act 1989, of 22 Princes Street, Auckland, New Zealand.

1.2. **Interpretation:** In this Agreement:

- (a) clause and other headings are for ease of reference only and do not affect its interpretation;
- (b) where the context permits, the singular includes the plural and vice versa;
- (c) references to legislation include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- (d) references to a **person** include an individual, firm, company, corporation or un-incorporated body of persons, any public, territorial or regional authority, or any government, and any agency of any such authority or government;
- (e) references to a **party** mean a party to this Agreement and their successors and permitted assignees;
- (f) references to a party's **personnel** include that party's employees, contractors and agents;
- (g) references to **control** of an entity mean beneficial ownership of more than 50% of the outstanding shares or the ability otherwise to elect a majority of the board of directors or other managing authority;
- (h) no provision shall be construed against a party merely because that party was responsible for its drafting or inclusion;
- (i) all monetary amounts are in New Zealand dollars unless stated otherwise, and exclude GST, which the Licensee must pay in addition in respect of any taxable supplies under this Agreement; and
- (j) **including** and like terms mean **including, without limitation**.

2. GRANT OF LICENCE

- 2.1. **Grant:** With effect from the Start Date, UniServices grants to the Licensee an exclusive licence to commercialise, sublicense and otherwise commercially exploit the Licensed Intellectual Property Rights, including the rights to make, hire, sell, otherwise dispose of, offer to make, hire, sell or

otherwise dispose of, use, import or keep for the purpose of doing any of the foregoing, Licensed Products in the Field in the Territory for the term of this Agreement.

- 2.2. **Academic licence:** Despite this clause 2, UniServices retains the right (including the right to permit the University and its personnel) to do any act under the Licensed Intellectual Property Rights for academic research (including non-commercially funded research) and teaching purposes.

3. SUBLICENSING

3.1. **Sublicensing:**

The Licensee may Sublicense some or all of the rights granted to the Licensee under this Agreement to an Affiliate of the Licensee or to any other person.

- (a) Where the Licensee enters into a Sublicense with a person other than a person who was an Affiliate of the Licensee at the Start Date, the Licensee must, on request, provide UniServices with an unredacted copy of the Sublicense.
- 3.2. **No further sublicensing:** Any Sublicense under clause 3.1 must not permit the Sublicensee to further sublicense without UniServices' prior written consent (such consent not to be unreasonably withheld).
- 3.3. **Liability:** The Licensee remains liable for the performance of its obligations under this Agreement despite any permitted Sublicensing.

4. COMMERCIALISATION

- 4.1. **Obligation to commercialise:** The Licensee must, and must use reasonable efforts to procure that any Sublicensees, use commercially reasonable efforts to develop and commercialise the technology under the Licensed Intellectual Property Rights, within the scope of the terms of this Agreement.

5. ROYALTIES AND OTHER LICENCE FEES

- 5.1. **Royalties and Sublicensing Income:** In consideration of the rights granted to the Licensee under this Agreement, the Licensee must within 30 days of the end of each calendar month, pay to UniServices:

- (a) royalties of 2% on Sales revenue received by the Licensee and its Sublicensees in that month as a direct result of exploitation of the rights granted to the Licensee under this Agreement;
- (b) 2% of Sublicensing Income payable by Sublicensees (being, in the case of multiple tiers of Sublicensee, that payable by the ultimate Sublicensee) as a direct result of exploitation of the rights granted under this Agreement,

in each case subject to the prior deduction from the gross revenue of expenses reasonably incurred by MindBio Therapeutics in connection with:

- (c) the drafting, negotiation and administration of any Sublicense; and
- (d) any action taken by the Licensee in relation to any unauthorised use of the Medicinal IP.
- 5.2. **Arm's length basis:** For the purposes of clause 5.1, the Sales revenue or Sublicensing Income payable is assessed as the gross invoiced amount or (where greater in respect of a Sale or Sublicense between Affiliates) the amount which would have been so invoiced had the transaction been on an arm's length basis.
- 5.3. **Business model:** The parties acknowledge that:
- (a) the royalties on Sales revenue and Sublicensing Income set out in this Agreement presuppose that the Licensee is Selling Licensed Products; and
- (b) if this model changes to one where the Licensee is predominantly Sublicensing, the parties will negotiate in good faith a new (higher) royalty on Sublicensing Income.

6. PAYMENTS

- 6.1. **Payment:** The Licensee must pay all amounts payable under this Agreement:

- (a) by direct deposit or otherwise an electronic funds transfer in cleared funds, without set-off or deduction, to a bank account nominated by UniServices in writing; and

- (b) in New Zealand dollars, with any base amount in a currency other than New Zealand dollars converted to New Zealand dollars as at the date for delivery of the applicable Report.

6.2. **Withholding tax:**

- (a) If the Licensee is required by applicable law to withhold any payment from that made to UniServices under this Agreement, the Licensee must:
 - i. pay to UniServices an additional amount necessary to ensure receipt by UniServices of the full amount which UniServices would have otherwise received;
 - ii. ensure any withholding payment is paid to the relevant taxation authority in full by the date for payment before penalties attach; and
 - iii. promptly transmit to UniServices a receipt from the taxation authority evidencing such payment.
- (b) If UniServices is able to take advantage of any tax credit or similar benefit by reason of any withholding made by the Licensee under clause 6.2(a), UniServices will, on receiving that benefit, offset against any future amount payable by the Licensee to UniServices an amount that UniServices considers (acting reasonably) reflects the value to it of that benefit.

6.3. **Interest:** UniServices may charge interest on overdue amounts under this Agreement from the day following the due date for payment until payment in full (including interest). Interest will be at the rate of UniServices' overdraft rate applicable as at the due date for payment plus 2% per annum, and compounded monthly.

6.4. **Recovery:** The Licensee must pay on demand all costs and expenses on a full indemnity basis (including legal fees on a solicitor and own client basis) incurred by UniServices in recovering any amount payable by the Licensee under this Agreement.

7. **REPORTING, RECORDS AND AUDITS**

7.1. **Reporting:** Within three Business Days of the end of each calendar month, the Licensee must provide to UniServices a written report and statement of amounts payable by the Licensee to UniServices in respect of that Quarter, along with sufficient supporting details to enable UniServices to verify the calculation of those amounts (including details of Sales, Sales revenue, Sublicensing Income and deductions) (**Report**).

7.2. **Records:** The Licensee must maintain, and must procure that each Affiliate and Sublicensee maintains, complete and accurate written records of all information relating to their respective obligations in connection with this Agreement or applicable Sublicence, including records reasonably required to verify the calculation of any amounts payable by any of them to the Licensee or UniServices (collectively, **Records**).

7.3. **Audit:**

- (a) On request, the Licensee must make available to an Independent Auditor the Records for the purpose of enabling UniServices to verify the Licensee's compliance with its payment obligations under this Agreement.
- (b) If the audit determines that the Licensee has underpaid UniServices, the Licensee must immediately pay to UniServices the unpaid amount owing.
- (c) UniServices must pay the costs of any audit under clause 7.3(a) unless that audit determines that the Licensee has underpaid UniServices by an amount of 5% or more for the period being audited, in which case the Licensee must pay the costs of the audit.

8. **INTELLECTUAL PROPERTY**

8.1. **UniServices ownership:** UniServices (or its licensors) owns all rights, title and interest (including Intellectual Property Rights) in:

- (a) the Licensed Intellectual Property Rights; and
- (b) AU Improvements, from the date of creation.

8.2. **Licensee ownership:** Subject to clause 8.1, the Licensee owns all rights, title and interest (including Intellectual Property Rights) in any and all improvements to any Intellectual Property (including the Medicinal IP) made or developed by the Licensee from the date of creation.

8.3. **Further assurance:** The parties must take all steps required to give effect to the provisions of this clause 8, including, entering into any documentation required (such as assignment or transfer deeds), passing any corporate approvals or otherwise submitting or lodging any forms or documents with any relevant governmental body as may be required from time to time.

9. PROTECTION OF LICENSED PATENTS

- 9.1. **Patent filing, prosecution, maintenance:** UniServices is responsible, acting reasonably and in consultation with the Licensee, for filing, prosecuting and maintaining any registrable Medicinal IP, including submitting any application or lodging any forms and documentations with IP Australia or any other similar body or governmental agency (**Registration Obligation**). Costs and expenses incurred by UniServices in meeting the Registration Obligations will be met by the Licensee.
- 9.2. **Obligation to inform:** UniServices must, in respect of the Registration Obligations:
- (a) keep the Licensee fully and promptly informed;
 - (b) consult with the Licensee on all material respects, including the countries in which patent protection will be sought, reviews of applications, reviews of substantive examination and search reports, and proposed responses; and
 - (c) take into account all reasonable representations made by the Licensee to UniServices in relation to clause 9.2(b).

10. INFRINGEMENT OF LICENSED INTELLECTUAL PROPERTY RIGHTS

- 10.1. **Notice:** Each party must notify the other party promptly on becoming aware of any suspected infringement of the Licensed Intellectual Property Rights by a third party.
- 10.2. **Within the licensed rights:** The Licensee is responsible, in its discretion and cost, for enforcing the Licensed Intellectual Property Rights against persons infringing any of the rights licensed to the Licensee under this Agreement, provided that the Licensee must not:
- (a) take any action against another licensee of UniServices, where UniServices is named as a party to the proceedings; or
 - (b) otherwise enforce, settle or compromise any action that reduces the scope of protection of the Licensed Intellectual Property Rights,
- without UniServices' prior written consent.
- 10.3. **Obligation to inform:** The Licensee must, in respect of the enforcement of the Licensed Intellectual Property Rights:
- (a) keep UniServices fully and promptly informed of the status of any action or other steps taken;
 - (b) consult with UniServices on all material respects; and
 - (c) take into account all reasonable representations made by UniServices to the Licensee in relation to clauses 10.3(a) and 10.3(b).
- 10.4. **Election by Licensee not to enforce:** If the Licensee elects not to enforce any of the Licensed Intellectual Property Rights pursuant to clause 10.2, UniServices may at its discretion and cost, by notice in writing to the Licensee, take control of any such enforcement without further consultation with the Licensee.
- 10.5. **Monies recovered:** The party responsible for the enforcement under clause 10.2 or 10.4 will retain any monies recovered in any judgment or settlement of the relevant action.
- 10.6 **Licensee challenge:** If the Licensee intends to commence (or to assist any other person to commence) any action to invalidate, or challenge UniServices' ownership of, any of the Licensed Intellectual Property Rights, it must notify UniServices at least one month before commencing that action, including full details of all prior art or other relevant circumstances that it believes supports the claim of invalidity or no ownership.

11. CONFIDENTIALITY

- 11.1. **Confidentiality:** Each party must keep Confidential Information of the other party secure and confidential and not:
- (a) use that information for any purpose other than as required to perform its obligations or exercise its rights under this Agreement; or
 - (b) disclose that information to any person other than:
 - i. as permitted under this Agreement;
 - ii. with the prior written consent of the other party;
 - iii. to its Affiliates and personnel who have a need-to-know for the purpose of giving effect to this Agreement, or to its professional advisors, provided that the recipient is subject to obligations of confidentiality equivalent to those in this clause 11; or

- iv. (in the case of the Licensee) to a potential Sublicensee or potential investor in the Licensee, provided that the recipient is subject to obligations of confidentiality equivalent to those in this clause 11 and is further restricted to using the Confidential Information solely for the purpose of evaluating the potential Sublicensee or investment (as applicable).
- 11.2. **Exclusion:** The obligations of confidentiality in this clause 11 do not apply to any information to the extent that it is required by law to be disclosed (including under the rules of any recognised stock exchange).
- 11.3. **Publicity:** Neither party may use the names, logos or trade marks of the other party or its personnel, or make any statement regarding the termination of this Agreement, in any publicity, marketing or news release without the other party's prior written consent.

12. PUBLICATIONS

- 12.1. **Publications:** UniServices may, and may permit the University to, include information relating to the Licensed Intellectual Property Rights (including the Licensed Know-How) in any academic publication or presentation (including student thesis) (**Publication**) provided that where any such information has not previously been publicly disclosed, UniServices must submit the proposed Publication to the Licensee for review at least 60 days before the intended date for submission for publication. UniServices will, if notified by the Licensee within 20 days of submission of the proposed Publication to the Licensee:
- (a) delay publication (and any other disclosure) for up to 90 days from receipt of the Licensee's notice to enable the filing of patent application(s) to protect any patentable subject matter in which the Licensee has an interest; and/or
 - (b) remove any commercially sensitive Confidential Information of the Licensee from the Publication.
- 12.2. **Theses:** The Licensee acknowledges that in respect of any proposed Publication that is a student thesis, clause 12.1(b) will not apply, however the Licensee may require that thesis to be:
- (a) examined by examiners bound by obligations of confidentiality; and/or
 - (b) embargoed from being publicly available in any library for up to 12 months, until all commercially sensitive Confidential Information of the Licensee has been made available to the public.

13. WARRANTIES AND REPRESENTATIONS

- 13.1. **Mutual warranties:** Each party warrants that it:
- (a) is a body corporate duly organised, validly existing and in good standing, under the laws of its jurisdiction of incorporation;
 - (b) has full power and authority to enter into and perform its obligations under this Agreement.
- 13.2. **General exclusions:** To the extent permitted by law, UniServices' warranties are limited to those expressly set out in clause 13.1 and all other conditions, warranties (including any under Part 3 of the Contract and Commercial Law Act 2017 (NZ)) and guarantees are excluded.
- 13.3. **Specific exclusions:** Without limiting clause 13.2, UniServices excludes all warranties that:
- (a) any patent will issue from any application included within the Licensed Intellectual Property Rights;
 - (b) any Licensed Patent will be valid; and
 - (c) the use of the Licensed Intellectual Property Rights, including the exercise by the Licensee of any of the rights granted under this Agreement, will not infringe the rights (including Intellectual Property Rights) of any other person.

14. INDEMNITIES

- 14.1. **Licensee indemnity:** The Licensee shall indemnify and hold harmless UniServices, its directors, officers, employees, agents and Affiliates against all claims, proceedings and demands (including those brought by third parties), liabilities, damages, losses, costs and expenses (**Claim**) arising from:
- (a) the making, hiring, selling, other disposition of, offering to make, hire, sell or otherwise dispose of, using, importing or keeping for the purpose of doing any of the foregoing, Licensed Products by the Licensee, its Affiliates or Sublicensees;

- (b) the exercise of any of the Licensee's other rights under this Agreement; and
 - (c) any breach by the Licensee of this Agreement (including any warranty).
- 14.2. **UniServices indemnity:** UniServices shall indemnify and hold the Licensee, its directors, officers, employees, agents and Affiliates harmless against all claims, proceedings and demands (including those brought by third parties), liabilities, damages, losses, costs and expenses (also, a **Claim**) arising from a breach by UniServices of this Agreement (including any warranty).
- 14.3. **Procedure:** An indemnified party must:
- (a) give prompt written notice to the indemnifying party of the Claim, but failure to so notify will not relieve the indemnifying party of its obligation under this clause 14 except and to the extent that the failure materially impacts on the ability of the indemnifying party to defend the Claim;
 - (b) not make any admission of liability and not otherwise prejudice or settle the Claim without the indemnifying party's prior written consent (not to be unreasonably withheld); and
 - (c) give the indemnifying party complete authority and information required for the indemnifying party to conduct and/or settle the Claim (at the indemnifying party's cost), provided that:
 - i. the indemnified party is entitled to be represented by its own counsel at its own cost; and
 - ii. if the indemnifying party declines to assume control of the Claim, the indemnified party is entitled to assume the control of the Claim (at the indemnifying party's cost).
- 14.4. **Negligence:** Neither party will be liable under this clause 14 to the extent that the liability arises from the other party's failure to comply with its obligations under this Agreement, or from the negligence or misconduct of any indemnified party or its personnel.

15. INSURANCE

- 15.1. **Insurance:** The Licensee must take out and maintain insurance policies with a reputable insurer for general liability and product liability to levels appropriate for a prudent person in the business of the Licensee for the term of this Agreement and a further period of two years following the termination or expiry of this Agreement.

16. LIABILITY

- 16.1. **Exclusion of indirect losses, etc:** UniServices will not be liable to the Licensee under or in connection with this Agreement for any loss of data, profit, revenue, savings, business or goodwill, or for any consequential, indirect, incidental or special damage or loss of any kind.
- 16.2. **Maximum liability:**
- (a) The maximum aggregate liability of UniServices to the Licensee under or in connection with this Agreement, together with any related liability of the University to the Licensee under or in connection with the Funding Agreement, is limited to an amount equal to the total amounts paid by the Licensee to UniServices and/or the University in the 12 month period immediately preceding the event of liability.
 - (b) The maximum aggregate liability of the Licensee to UniServices under or in connection with this Agreement, together with any related liability of the Licensee to the University under or in connection with the Funding Agreement, is limited to an amount equal to the total amount payable by the Licensee to the University under the Funding Agreement.

17. TERM

- 17.1. **Term:** This Agreement starts on the Start Date and, unless terminated earlier in accordance with its provisions, expires automatically on the expiry of the last Licensed Patent or the date on which the last of the Licensed Know-How enters into the public domain other than as a result of a breach of an obligation of confidence owed to a party, whichever occurs last.

18. TERMINATION AND OTHER REMEDIES

- 18.1. **Termination by UniServices:** UniServices may terminate this Agreement:
- (a) on immediate notice to the Licensee if the Licensee fails on request to demonstrate its compliance with clauses 4.1 and 5 to the satisfaction of UniServices (acting reasonably), provided that the earliest time at which termination may take effect under this provision is the date that is five years from the Start Date; or

- (b) on immediate notice to the Licensee if the Licensee notifies UniServices it does not wish to retain all of the rights licensed to it under this Agreement.

18.2. **Breach, etc.:**

- (a) A party (**first party**) may terminate this Agreement immediately on notice to the other party if the other party:
 - i. commits a material breach of this Agreement and either the breach is incapable of remedy or the other party fails to remedy that breach within 30 days of the first party notifying it of the breach; or
 - ii. is subject to an Insolvency Event.
- (b) A failure by the Licensee to pay any amount to UniServices by the due date for payment is deemed to be a material breach capable of remedy for the purposes of clause 18.2(a).

18.3. **Alternative remedies:** UniServices may at its discretion, on notice to the Licensee, instead of exercising any right it has to terminate this Agreement:

- (a) convert a territory within the Territory to non-exclusive; and/or
- (b) reduce the scope of the field of the Licensed Intellectual Property Rights or the Licensed Products.

18.4. **Accrued rights:** Termination or expiry of this Agreement does not affect a party's rights or obligations that have accrued before termination or expiry.

18.5. **Consequences of termination:** On termination or expiry of this Agreement for any reason:

- (a) all rights of the Licensee under the Licensed Intellectual Property Rights cease;
- (b) each party must promptly return to the other all documents, materials and other items belonging to the other party and in its possession at the time of termination or expiry;
- (c) the Licensee must transfer to UniServices:
 - i. all technical information (and any subsisting Intellectual Property Rights) relating to the Licensed Products and which is not generally publicly known, including pre-clinical, clinical, chemical, biochemical, toxicological, manufacturing, formulation and scientific research information, whether or not capable of precise separate description; and
 - ii. all rights and responsibility in respect of any Licensed Products, including transferring or destroying (at UniServices' option) any stocks of Licensed Products in existence as at the date of termination or expiry.
- (d) clauses 6, 7 (for a period of one year from the date of termination or expiry), 8.3, 11, 14, 15, 16, 18.4, 18.5 and 20, and any other clauses intended to survive, continue in force.

19. **FORCE MAJEURE**

19.1. A party will not be liable for any failure or delay in the performance of its obligations under this Agreement to the extent such failure or delay is due to a Force Majeure Event, provided that it:

- (a) notifies the other party as soon as practicable of the nature and expected duration of the Force Majeure Event;
- (b) uses all reasonable efforts to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement to the extent practicable; and
- (c) resumes full performance as soon as practicable.

20. **DISPUTES**

20.1. **Proceedings deferred:** A party must not issue any legal proceedings (other than for urgent interlocutory and/or injunctive relief) in respect of any dispute in connection with this Agreement, unless it has first complied with this clause 20.

20.2. **Notice of dispute:** A party claiming a dispute has arisen under or in connection with this Agreement must notify the other party of the dispute (**Dispute**), along with reasonable detail of the Dispute.

20.3. **Negotiation:** Each party must use all reasonable efforts to resolve the Dispute through an authorised representative with authority to settle the Dispute on its behalf.

20.4. **Alternative dispute resolution:** If the Dispute remains unresolved after a period of 20 Business Days from the receipt of the notice under clause 20.2 (or such longer period as the parties'

authorised representatives agree), the parties must use all reasonable efforts to agree on a process for resolving the Dispute through means other than litigation, including:

- (a) a procedure and timetable for any exchange of documents and other information relevant to the Dispute;
- (b) procedural rules and timetable for the conduct of the selected mode of proceedings; and
- (c) a procedure for the selection of any person to be engaged to determine or help resolve the Dispute.

20.5. **Termination:** A party may, on notice to the other party, commence any legal proceedings in respect of the Dispute where the other party fails to comply with any procedures or timetables agreed pursuant to clause 20.4, provided the first party has to date complied with those procedures and timetables.

20.6. **Licensee challenge:** UniServices is not required to comply with this clause 20 if the Licensee commences (or assists) any other person to commence) any action to invalidate, or to challenge UniServices' ownership of, any of the Licensed Intellectual Property Rights, or notifies UniServices of its intention to do so.

21. GENERAL

21.1. **Governing law and jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

21.2. **Notices:** Any notice given under this Agreement must be in writing in English and may be delivered in person (including courier), by pre-paid post or by email (provided that in the case of email the sender does not receive any notice of non-delivery) to that party's address in Schedule 2 (or as may be updated by that party by notice from time to time). Any notice sent by prepaid post is deemed received two Business Days from the date of posting (or seven Business Days from the date of posting if sent to or from a place outside New Zealand). Any notice delivered in person or by email after 5pm on a Business Day or a non-Business Day is deemed received on the next Business Day.

21.3. **Contract privity:** No person other than a party to this Agreement has any right to a benefit under, or to enforce, any provision of this Agreement.

21.4. **Rights and remedies:** Except as expressly provided otherwise in this Agreement, the rights and remedies of each party under this Agreement are cumulative and not exclusive of any other rights or remedies under this Agreement or at law.

21.5. **Entire agreement:** This Agreement constitutes the entire understanding between the parties and supersedes any prior oral or written agreement or understanding between the parties, in relation to its subject matter. Both parties acknowledge and agree that sections 9, 12A and 13 of the Fair Trading Act 1986 (NZ) do not apply to this Agreement or its subject matter, and that these exclusions are fair and reasonable.

21.6. **Severability:** If any provision of this Agreement is or becomes invalid, unenforceable or illegal, the provision is deemed to be modified to the extent required to remedy the invalidity, unenforceability or illegality. If modification is not possible, the provision is deemed to be severed and will not affect the validity, enforceability or legality of the remainder of this Agreement.

21.7. **Waiver:** No waiver of any right under this Agreement is effective unless in writing and signed by the waiving party. A waiver of a right under this Agreement does not limit or waive any other right of that party.

21.8. **Variation:** Except as set out otherwise in this Agreement, no variation to this Agreement is effective unless in writing and signed by an authorised signatory of each party.

21.9. **Relationship:** The parties are independent contracting parties. No other relationship (including that of joint venture, employment, agency, trust or partnership) exists between the parties under this Agreement. Neither party is authorised to act as agent for or to bind the other party for any purpose and must not make any contrary representation to any person.

21.10. **Costs:** Except as otherwise expressly provided, each party must bear its own costs and expenses arising out of and in connection with the negotiation, preparation and execution of this Agreement.

21.11. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter this Agreement by signing (including electronically) and sending (including by email) a counterpart copy to the other party.

- 21.12. **Electronic transactions:** The parties to this Agreement give all necessary consents under the Electronic Transactions Act 1999 (Cth) or any equivalent legislation of any jurisdiction for:
- (a) the execution or exchange of this Agreement;
 - (b) the delivery of any notice under this Agreement; and
 - (c) any requirement for anything under this Agreement to be done in writing,
- to be done or satisfied by electronic means.

COMMERCIALISATION AGREEMENT - SCHEDULE 1

LICENSED PATENTS

Part A – Licensed Patents including other registered IP/applications

[insert details of filings and applications]

COMMERCIALISATION AGREEMENT- SCHEDULE 2

ADDRESSES FOR NOTICES

<p>Contact details for notices</p>	<p>University of Auckland:</p> <p>c/o Auckland UniServices Limited:</p> <p>Physical address: Level 10, 49 Symonds Street, Auckland 1142, New Zealand</p> <p>Postal address: Private Bag 92019, Victoria Street West, Auckland 1142, New Zealand</p> <p>For the attention of: Evelyn Body</p> <p>Email:</p> <p>Licensee:</p> <p>Physical address: Level 4, 21 Queen Street Auckland CBD New Zealand. Postal address: As Above</p> <p>Email</p> <p>For the attention of: Justin Hanka CO/Jayesh Kumar</p>
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