

Industry Liaison & Innovation

## LICENCE AGREEMENT

This Agreement, effective this 20 day of April 2007, between

**DALHOUSIE UNIVERSITY**, a university incorporated under the laws of the Province of Nova Scotia, 6299 South Street, Halifax, Nova Scotia, B3H 4H6 ("Dalhousie")

-and-

**PACIFIC THERAPEUTICS LTD.**, a corporation incorporated under the laws of the Province of British Columbia, with a place of business at 1525 West 8<sup>th</sup> Ave., Suite 202, Vancouver, British Columbia, V6J 1T5 (the "Licensee")

(Each, a "Party" and, collectively, the "Parties")

### WHEREAS

- A. Dalhousie is the owner of the intellectual property in inventions relating to Pentoxifylline and certain functional derivatives/metabolites and certain assays, as more particularly described below.
- B. Dalhousie and the Licensee wish to set forth the terms and conditions of separate licenses for (i) a sole, revocable, personal, non-transferable licence for certain compounds, and (ii) a non-exclusive licence for certain assays, both licenses to be based upon the subject matter of described patents and patent applications owned by Dalhousie.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and agreements set forth herein contained, it is agreed as follows:

### Article One. Interpretation

#### 1.01 DEFINITIONS:

In this Agreement,

- (a) "Agreement" shall mean this Licence Agreement.
- (b) "Assays" means methods, or any part thereof, more particularly described in US patents #5,985,592, #6,025,151 and #6,294,350 and related Dalhousie Know-How.
- (c) "Calendar Quarter" shall mean the periods ending on March 31, June 30, September 30 and December 31 of each year.
- (d) "Compounds" shall mean Pentoxifylline and functional derivatives/metabolites thereof, and other compounds, all as more particularly described in US patents #5,985,592, #6,025,151 and #6,294,350.
- (e) "Confidential Information" shall mean any information disclosed by Dalhousie to the Licensee or by the Licensee to Dalhousie, either prior to or after the Effective Date in a context which would cause a reasonable person to believe the information is intended to be treated as confidential, including but not limited to documents expressly designated as confidential, the Dalhousie Know-How, information regarding Improvements disclosed under Section 2.05, trade secrets, any information relating to a Party's processes, products, employees, facilities, equipment, security systems, information systems, finances, marketing plans, suppliers, or distributors; provided, however that "Confidential Information" shall not include information that the Licensee can demonstrate by written documentation: (i) is now available or becomes available

to the public without breach of this Agreement; (ii) is explicitly approved for release by written authorization of the disclosing Party; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is disclosed to a third party by the disclosing Party without a duty of confidentiality; (v) is known to the receiving Party prior to disclosure; or (vi) is at any time developed by the receiving Party independently of any such disclosure(s);

(f) **"Dalhousie Know-How"** shall mean know-how possessed by Dalhousie relating to the development and use of the Compounds and the Assays;

(g) **"Dalhousie Patent Rights"** shall mean the patents and patent applications set out in Schedule A, any patents issuing from any patent applications identified in Schedule "A" and any corresponding patents or patent applications in any other countries, and any continuations, continuations-in-part, divisions, reissues, re-examinations or extensions thereof;

(h) **"Dalhousie Rights"** shall mean the Dalhousie Know-How and the Dalhousie Patent Rights;

(i) **"Effective Date"** shall mean the date first written above and shall be the Effective Date of this Agreement;

(j) **"Field of Use"** shall mean the research, development, manufacture and sale of human medical diagnostic and therapeutic applications incorporating the Dalhousie Rights solely for pulmonary diseases and Radiation Induced Fibrosis. Diseases specifically excluded from the Field of Use include, but are not limited to, human kidney disease, glomerular nephritis, nephritis associated with systemic lupus, liver fibrosis, grave's ophthalmopathy, drug induced ergotism, cancer, alzheimer's disease, myeloid leukemia, acute myelogenous leukemia or inflammatory bowel disease.

(k) **"Improvements"** shall mean any improvements, variations, updates, modifications and enhancements to the subject matter of the Dalhousie Patent Rights, the Dalhousie Know-How, the Licensed Products or the Confidential Information, made at any time after the Effective Date;

(l) **"Licensed Products"** shall mean any product/device, component, method or procedure, in the Field of Use, the manufacture, use, distribution, delivery or sale of which would infringe the Dalhousie Rights in the country of such manufacture, use, distribution, delivery or sale, but for the license granted in this Agreement;

(m) **"First Licence Year"** shall mean the period commencing on the Effective Date and ending on March 31 of the calendar year after the Effective Date. The second and all subsequent "Licence Years" shall commence on April 1 and end on March 31 of the following year;

(n) **"Major Market Country"** shall mean any of USA, Canada, England, France, Germany, Italy, China or Japan.

(o) **"Net Sales"** shall mean the gross billing price the Licensee and its sublicensees or their distributors charge to their customers for Licensed Products in any country of the Territory, less (i) customary trade and quantity discounts actually allowed and taken; (ii) value-added, sales tariff duties and/or use taxes included in the invoiced amount; (iii) freight and insurance costs, if separately itemized on the invoice paid by the customer; and (iv) credits actually given for rejected or returned Licensed Products. In the case of non-cash sales or other transfer the term "Net Sales" shall mean the fair market value of all equivalent or other consideration received by the Licensee or its sublicensees for the Licensed Products. In the case of a sale to a third-party for a value less than the fair market value, such sale or transfer shall be deemed to have occurred at fair market value and the royalty payable shall be determined on that basis;

(p) **"Territory"** shall mean worldwide.

## 1.02 INTERPRETATION AND CONSTRUCTION:

In this Agreement, unless the context otherwise requires:

- (a) any use of the word "including" shall be deemed and interpreted to mean "including without limitation";
- (b) any use of the masculine, feminine or neuter case shall be interpreted to include the other cases as may be required;
- (c) any use of the singular or plural shall be interpreted to include the other case as may be required;
- (d) a reference to any monetary amount is to lawful currency of Canada;
- (e) words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;
- (f) a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;
- (g) headings appear as a matter of convenience and do not affect the construction of this Agreement; and
- (h) a reference to a Party to this Agreement or any other document includes that Party's personal representatives, successors and permitted assigns.

## 1.03 SCHEDULES:

This Agreement contains the following schedule, which shall be deemed to be an integral part of this Agreement:

- (a) Schedule "A" – Dalhousie Patent Rights.

## Article Two. Grant of Licence

### 2.01 LICENCE GRANT:

Subject to the terms and conditions hereof, Dalhousie hereby grants to the Licensee:

- (a) a sole, revocable, non-transferable, royalty-bearing licence to make, use, and sell the Dalhousie Rights associated with the Compounds solely in the Field of Use, in the Territory. Upon the initiation of a Phase II or III human trial in pulmonary indications or Radiation Induced Fibrosis, Licensee shall have the option of expanding the Field of Use to include cardiac indications and scleroderma, scarring and all other skin fibrosis diseases, unless such fields have been licensed to a third party. This option shall be exercised by the Licensee by delivering written notice to Dalhousie specifying which specific diseases it wishes to include in the Field of Use;
- (b) a non-exclusive, worldwide, royalty bearing license to the Dalhousie Rights associated with the Assays.

Dalhousie agrees that the diseases specifically excluded from the Field Of Use may only be licensed by it to third parties on terms and conditions that are more favorable to Dalhousie than the terms and conditions set out in this Agreement.

The licenses granted herein may only be sublicensed or assigned in compliance with Sections 2.03 and 10.04.

**2.02 RESERVATION OF RIGHTS:**

Notwithstanding the rights granted in Section 2.01, Dalhousie expressly reserves (a) a royalty-free right to use the Dalhousie Rights itself, including use by its faculty, staff, students and researchers, for educational and research purposes only, (b) the right to grant an exclusive licence to a third party for rights outside of the Field of Use, and (c) the right to grant third parties a non-exclusive licence for the Assays.

**2.03 SUBLICENSES:**

**(1) Right to Grant Sublicenses:**

The Licensee shall have the right to grant sublicenses to third parties of its rights in the Compounds. The Licensee shall also have the right to grant sublicenses of its rights in the Assays to third parties to which the Licensee has sublicensed its rights in the Compounds. All sublicenses required the prior written consent of Dalhousie, which shall not be unreasonably withheld or delayed. The Licensee shall provide Dalhousie with written notice of its intention to sublicense the Dalhousie Rights, which notice shall identify the proposed sublicensee. Dalhousie will have thirty (30) days from the date of receipt of such notice in which to provide its consent or refusal to the sublicense. If Dalhousie does not respond to the sublicense request within the thirty (30) day period it shall be deemed to have consented to the sublicense. Notwithstanding the fact that Dalhousie may have consented to the sublicense request, all sublicenses shall be in writing and expressly subject to the terms of this Agreement. The Licensee shall be responsible for enforcing the terms of this Agreement against its sublicensees and shall not grant any rights which are inconsistent with the rights granted to and the obligations of the Licensee hereunder. Any act or omission of the sublicensee which would be a breach of this Agreement if performed by the Licensee shall be deemed to be a breach by the Licensee of this Agreement.

**(2) Royalty Obligation:**

The Licensee shall be obligated to pay royalties on income generated from sublicenses of the Dalhousie Rights in accordance with this provision. Where the Licensee charges its sublicensees a running or ongoing royalty for use of the Dalhousie Rights, and the royalty rate is equal to or less than the corresponding royalty rates shown in Section 5.01(a), the entire amount charged by sublicensees to their customers shall be included in Net Sales for the purpose of calculating running royalties pursuant to Section 5.01(a). Where the royalty rate charged by the Licensee to its sublicensees exceeds the royalty rate shown in Section 5.01(a), the Licensee shall include in Net Sales an amount determined using the following formula:



In addition, any license fees or charges (other than running or ongoing royalties) charged by the Licensee to each of its sublicensees for the grant or maintenance of a sublicense (e.g. licence issue fees, licence maintenance fees, etc.) shall be included in Net Sales and, accordingly, shall be subject to the obligation to pay royalties to Dalhousie in accordance with Section 5.01.

**(3) Content of Sublicenses:**

Licensee shall ensure that all sublicenses provide that Dalhousie may, at its option, require any sublicensee to pay royalties directly to Dalhousie. Each sublicense agreement granted by the Licensee shall include an audit right by Dalhousie of the same scope as provided in Section 5.04 of this Agreement with respect to the Licensee. No such sublicense agreement shall contain any provision which would cause it to extend beyond the term of this Agreement. Dalhousie shall have the right to review such sublicenses to assure conformity with this Agreement and the Licensee shall provide Dalhousie with a copy of each proposed sublicense agreement prior to execution. In addition, the Licensee shall provide Dalhousie with a copy of each sublicense

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agreement promptly following its execution. Each sublicense agreement shall provide that, upon termination of this Agreement, any sublicenses granted by the Licensee will automatically be assigned from the Licensee to Dalhousie, which shall have the right to terminate or continue any such sublicense agreements, in its sole discretion.

#### **2.04 PATENTS:**

##### **(1) Patent Costs:**

Dalhousie shall be responsible for the filing, prosecution and maintenance of the Dalhousie Patent Rights but the Licensee shall reimburse Dalhousie for all expenses in connection with the filing, prosecution and maintenance of the Dalhousie Patent Rights incurred subsequent to the Effective Date (the "Patent Costs").

##### **(2) Validity of Patents:**

The Licensee shall not contest the validity of the Dalhousie Rights or the right or title of Dalhousie to the Dalhousie Rights, or to the Dalhousie Confidential Information, and further agrees not to aid others in doing so.

#### **2.05 IMPROVEMENTS:**

##### **(1) Dalhousie Improvements:**

Dalhousie shall promptly disclose to the Licensee any Improvement which it makes or acquires during the term of this Agreement, and shall make available to the Licensee all reasonable information relating thereto, including blueprints, sketches, drawings, designs and other data. If, in the sole discretion of Dalhousie, acting reasonably, the disclosed Improvement is a material improvement of any portion of the Dalhousie Rights, then it shall promptly provide written notice to the Licensee advising the Licensee that the Improvement shall be subject to the payment of an additional royalty.

Licensee shall have [REDACTED] following any disclosure by Dalhousie of any Improvement to give notice in writing that it desires to have such Improvement included in the Dalhousie Rights and, if applicable, to reach an agreement with Dalhousie regarding the additional royalty payable, which shall not exceed the royalty rate payable by the Licensee under Section 5.01(a) of this Agreement. Trivial or non-significant Dalhousie Improvements shall be licensed to Licensee under the terms of the License Agreement without any additional royalty or compensation payable to Dalhousie; however Dalhousie shall have the right to make such decisions in its sole discretion. If the Licensee delivers the required notice and if the Parties agree on the additional royalty payable then the Improvement shall be deemed to form part of the Dalhousie Rights and shall be thereafter subject to the terms of this Agreement. If Licensee shall fail to provide Dalhousie with the written notice referred to above within the prescribed period of time, Dalhousie shall be completely unrestricted in dealing with such Improvement in its absolute discretion, including the right to grant any licenses to any third party to the Improvement.

During the [REDACTED] period referred to in the previous paragraph Dalhousie will not publish or make a public disclosure of the Dalhousie Improvement disclosed to the Licensee under this Section 2.05 without first consulting with the Licensee about the appropriate means of protecting such Improvement.

##### **(2) Licensee Improvements:**

If the Licensee shall [REDACTED] of such discovery and invention, to disclose the same or cause the same to be disclosed to Dalhousie and furnish to Dalhousie all information pertaining

thereto, including blueprints, sketches, drawings, designs and other data. Dalhousie shall own any Improvements discovered or invented by the Licensee and the Licensee hereby assigns, sells and transfers all of its right, title and interest in any Improvements to Dalhousie. The Licensee shall execute any such further documents as may be requested by Dalhousie in order to evidence its ownership of any Improvements. At Dalhousie's request the Licensee agrees to assist Dalhousie, at the Licensee's expense, to secure patent protection covering the Improvements in any jurisdictions required by Dalhousie. In connection therewith, the Licensee shall furnish to Dalhousie all pertinent information and have executed any assignments or other instruments necessary or desirable, without expense to Dalhousie.

The Licensee shall have [REDACTED] following its disclosure of any Improvement to Dalhousie to give notice in writing that it desires to have such Improvement included in the Dalhousie Rights, in which case the Improvement shall be deemed to form part of the Dalhousie Rights and shall be thereafter subject to the terms of this Agreement but shall not be subject to any additional royalty or compensation to Dalhousie. If Licensee shall fail to provide Dalhousie with such written notice within the prescribed period of time, Dalhousie shall be completely unrestricted in dealing with such Improvement in its absolute discretion, including the right to grant any licenses to any third party to the Improvement.

The Licensee shall, to the best of its ability, cause its employees to disclose any Improvements made or developed by them during the term of this Agreement and falling within the terms of the preceding paragraph and to assign such Improvements to Dalhousie as provided.

#### **2.06 ACKNOWLEDGEMENT:**

The Licensee acknowledges that a significant portion of the value of this Agreement to it and the anticipated success of the commercialization of Licensed Products relates to the disclosure of the Confidential Information (including the Dalhousie Know How), the continued availability of assistance described in Section 6.01, the information to be disclosed to it pursuant to Section 3.01 and the potential rights arising under Section 2.05(1).

### **Article Three. Confidentiality**

#### **3.01 CONFIDENTIALITY:**

##### **(1) Confidential Information - General:**

The Parties acknowledge that any Confidential Information received by one of them (the "Receiving Party") from the other Party (the "Disclosing Party") is received in trust for the sole benefit of the Disclosing Party.

##### **(2) Limited Use of Confidential Information:**

The Receiving Party may only use the Confidential Information during the term of this Agreement and only for the purpose for which it was disclosed.

##### **(3) No Disclosure Without Authorization:**

The Receiving Party shall not disclose any Confidential Information to any third party except as is necessary to fulfill its obligations under this Agreement or if such disclosure is made pursuant to the terms of a confidentiality agreement between the Receiving Party and a third party, the form of which has been approved by the Disclosing Party.

##### **(4) Protection of Confidential Information:**

The Parties covenant and agree that they will each implement safeguards to protect against the disclosure or misuse of Confidential Information that is in their care or custody as a Receiving Party and will promptly inform the Disclosing Party if there is any breach or suspected breach of

security related to the Confidential Information. The Parties shall protect the Confidential Information they possess as the Receiving Party with the same degree of care that they use to protect and safeguard their own like information, but not less than the degree of care that would be exercised by a prudent person given the sensitivity and strategic value of such Confidential Information.

**(5) Retention of Confidential Information:**

The Receiving Party shall only retain Confidential Information for as long as is reasonably necessary for the purposes for which it is disclosed. Following such time, and upon the request of the Disclosing Party, the Receiving Party shall return or destroy any Confidential Information that it has received. At Disclosing Party's request, the Receiving Party shall forthwith provide the Disclosing Party with a statutory declaration, sworn by an officer or director of the Receiving Party, certifying that its obligations under this Section have been fulfilled.

**(6) Compelled Disclosure:**

In the event that the Receiving Party or anyone to whom it transmits the Confidential Information becomes legally required to disclose any such Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice so that Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information which is legally required to be furnished

**(7) Indemnity:**

The Parties covenant and agree that, as a separate and independent covenant, they shall each indemnify and hold each other harmless from and against any and all losses, costs, claims, legal fees and liabilities related to or derived from any breach of this Section 3.01 by the Parties or their employees, agents, officers, directors, sublicensees and others for whom they are in law responsible.

**Article Four. Representations and Disclaimers**

**4.01 LICENCE WARRANTY:**

Dalhousie warrants, to the best of its knowledge, that:

- (a) there is no outstanding licence granted by it covering the Licensed Products in the Field of Use in the Territory in conflict with the licence granted to the Licensee under this Agreement; and
- (b) it is the sole and lawful owner of the Dalhousie Patent Rights.

**4.02 CORPORATE ACTION:**

Dalhousie and the Licensee each represent and warrant to each other that they have full power and authority to enter into this Agreement and carry out the transactions contemplated hereby, and that all necessary corporate action has been duly taken in this regard.

**4.03 DISCLAIMER:**

Nothing contained in this Agreement shall be construed as:

- (a) a warranty or representation by Dalhousie as to the validity or scope of any of the Dalhousie Rights;
- (b) a warranty or representation that any Licensed Products manufactured, used or sold will be free from infringement of patents, copyrights, or any other rights of third parties, except that Dalhousie represents that, to the best of its knowledge, it has no actual knowledge of any existing issued patents which might be infringed; and

(c) except as provided in Section 8.01, an agreement to defend against actions or suits of any nature brought by any third parties.

DALHOUSIE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE DALHOUSIE RIGHTS, ITS CONFIDENTIAL INFORMATION, OR THE LICENSED PRODUCTS. FURTHERMORE, DALHOUSIE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, THAT THE LICENSED PRODUCTS WILL PERFORM ANY FUNCTIONS OR OPERATE IN ACCORDANCE WITH ANY STANDARDS.

Article Five. Royalty Payments, Records and Reports

5.01 PAYMENTS:

For the rights and privileges granted under this Agreement, the Licensee shall pay to Dalhousie in Canadian dollars:

(a) [REDACTED] by amounts charged by sublicensees of the Dalhousie Patent Rights to their customers for Licensed Products shall be included in the calculation of Net Sales in accordance with Section 2.03(2).

If, during the Term, the Licensee is required to take a royalty-bearing licence under intellectual property rights owned by a third party in order to make, use and sell the Licensed Products, the Licensee may deduct from the royalties payable under this Section fifty percent (50%) of royalties actually paid by the Licensee to such third party, but in no event will the royalties paid to Dalhousie be less than fifty percent (50%) of the amount due under this Section. No credit will be allowed for lump sum licence fees, for milestone payments, for minimum annual royalties in excess of accrued royalties, for any amounts paid for past infringement of any third party's rights not required to permit the Licensee to make, use and sell the Licensed Products;

(b) [REDACTED]

(c) [REDACTED] The licence maintenance fee is payable at the end of the First Licence Year and at the end of each and every subsequent Licence Year;

(d) [REDACTED] after the first sale of a Licensed Product by the Licensee or its sublicensees. With the prior written consent of Dalhousie, which shall not be unreasonably withheld, the Licensee may assign this obligation to any affiliate, associate, director or employee of the Licensee;

(e) [REDACTED] Market

(f) [REDACTED] a M

*NEA*



(g) [REDACTED] the [REDACTED] or [REDACTED]

(h) any of the amounts relating to damages or in settlement of infringement claims, as calculated pursuant to Section 8.01.

**5.02 MILESTONES:**

The Licensee has represented to Dalhousie, to induce Dalhousie to issue this licence that it will commit itself to a diligent program of exploiting the Dalhousie Patent Rights to develop, manufacture and sell Licensed Products so that public utilization will result therefrom. As evidence thereof, the Licensee shall adhere to the following milestones:

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]

**5.03 REPORTS:**

The Licensee shall render to Dalhousie:

(a) within [REDACTED] after the end of each Calendar Quarter a written account of all quantities of Licensed Products sold by the Licensee and any sublicensee during such Calendar Quarter, the calculation of royalty thereon, and sufficient data for Dalhousie to verify the calculation, including gross sales and allowable deductions to derive to Net Sales figures. Such report shall be certified as correct by a duly authorized senior officer of the Licensee. If no Licensed Products subject to royalty hereunder have been sold by the Licensee and its sublicensees during any such Calendar Quarter, the Licensee shall so report in writing. In addition to reporting on sale of Licensed Products, each report under this paragraph shall include a written account of any license fees or charges (other than running royalties) charged by the Licensee to each of its sublicensees under Section 2.03(2). Each quarterly report shall be accompanied by a cheque or bank draft payable to Dalhousie for all royalties due and outstanding as of the end of the particular Calendar Quarter;

(b) [REDACTED] and each subsequent Licence Year written annual reports which shall include but are not limited to: reports of progress on development of Licensed Products, regulatory approvals, manufacturing, sublicensing, marketing and sales during preceding License Year as well as plans for coming License Year. The Licensee shall also provide any reasonable additional data Dalhousie requires to evaluate the Licensee's performance; and

(c) within [REDACTED] end of each fiscal year of the Licensee, audited financial statements prepared by external auditors reasonably acceptable to Dalhousie.

**5.04 BOOKS OF ACCOUNTS AND AUDIT:**

In order that the royalties payable under this Agreement may be determined, and the reports provided for herein be verified, the Licensee and its sublicensees shall keep full, true and accurate books of accounts and other records containing all particulars which may be necessary for the purpose of ascertaining and verifying the royalties payable to Dalhousie by the Licensee hereunder. Upon Dalhousie's request, the Licensee and its sublicensees shall permit Dalhousie or

its authorized representatives, no more than once each Licence Year, to have access during ordinary business hours to such records of the Licensee and its sublicensees as may be necessary to determine, for any Calendar Quarter or License Year, the correctness of any report and/or payment made under this Agreement. Dalhousie or its representatives shall be entitled to make notes and copies of any information contained in the records and accounts applicable to the royalty obligation.

## **Article Six. Technical Assistance and Commercial Development**

### **6.01 TECHNICAL ASSISTANCE:**

Throughout the term of the Agreement, the Licensee and its authorized representatives may, with the consent of the Industry Liaison and Innovation office at Dalhousie, consult with Dalhousie's faculty and staff regarding developments and enhancements made subsequent to the Effective Date relating to the Licensed Products, at such times and places as may be mutually agreed upon; provided that all assistance that involves travel shall be conducted in accordance with the Dalhousie Travel Policy then in effect and all faculty and/or staff shall be compensated by the Licensee.

### **6.02 COMMERCIAL DEVELOPMENT:**

During the term of this Agreement, the Licensee will use commercially reasonable efforts to effectively manufacture, market and sell the Licensed Products. Such efforts will include sublicensing, development of promotional literature, mailings, and journal advertisements, and other activities deemed commercially reasonable by Licensee from time to time.

### **6.03 NAME:**

Neither Party shall use and nor permit to be used by any other person or entity the name of the other Party nor any adaptation thereof, or the name of the other Party's employees, in any advertising, promotional or sales literature, or for any other purpose without prior written permission of the other Party, except that the Licensee may state that it is licensed by Dalhousie under Dalhousie Patent Rights and that Dalhousie shall be permitted to state that it has licensed the Dalhousie Patent Rights to the Licensee.

### **6.04 COMPLIANCE WITH LAWS:**

The Licensee shall comply with all applicable laws, regulations and accepted industry practices and shall obtain all necessary licenses, permits and approvals required in connection with the production, use, transport, export, and sale of Licensed Products and the performance of its obligations hereunder and Dalhousie shall provide the Licensee with reasonable assistance and documentation when and if required by the Licensee for the purpose of obtaining such licenses, permits and approvals.

## **Article Seven. Indemnity and Insurance**

### **7.01 INDEMNITY:**

The Licensee shall defend and indemnify and hold Dalhousie and its governors, officers, faculty members, researchers, agents and employees (collectively the "Indemnified Parties") harmless from any and all liabilities, fines, suits, losses, damages, expenses (including legal costs), claims, demands and actions (collectively the "Claims") based upon claims or causes of action against the Indemnified Parties which arise out of a breach of this Agreement, alleged negligence in the design, development, manufacture or sale of Licensed Products by the Licensee and its

sublicensees, or from the use by the end users of Licensed Products, except to the extent that the Claims arise in whole or in part from the negligence or wilful misconduct of any of the Indemnified Parties. If any such claims or causes of action are made, Dalhousie shall be defended by counsel to the Licensee, subject to Dalhousie's approval, which shall not be unreasonably withheld. Dalhousie reserves the right to be represented by its own counsel at its own expense. Dalhousie shall be entitled to recover the Claims as soon as the expense is incurred and the Licensee shall reimburse Dalhousie for the [REDACTED] of an invoice from Dalhousie.

#### **7.02 INSURANCE:**

At such time as any Licensed Product is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by the Licensee or by a sublicensee or agent of the Licensee, the Licensee shall at its sole cost and expense, procure and maintain comprehensive general liability insurance, with commercially reasonable limits under the circumstances and naming the Indemnified Parties as additional insureds. Such comprehensive general liability insurance shall provide (i) product liability coverage and (ii) broad form contractual liability coverage for the Licensee's indemnification under this Agreement. The minimum amounts of insurance coverage required shall not be construed to create a limit of the Licensee's liability with respect to its indemnification under this Agreement.

The Licensee shall provide Dalhousie with written evidence of such insurance and/ or copies of the Licensee's policies of insurance upon request of Dalhousie. The Licensee shall provide Dalhousie with written notice at least thirty (30) days prior to the cancellation, non-renewal or material change in such insurance. Dalhousie shall have the right to terminate this Agreement immediately and without notice if, at any time, the Licensee does not have insurance providing the coverage described in this section.

The Licensee shall maintain such comprehensive general liability insurance beyond the expiration or termination of this Agreement during (i) the period that any Licensed Product is being commercially distributed or sold by the Licensee or by a sublicensee or agent of the Licensee and (ii) a reasonable period after the period referred to in (i) above.

### **Article Eight. Infringement and Impeachment**

#### **8.01 INFRINGEMENT BY THIRD PARTIES:**

Dalhousie and the Licensee shall give each other prompt notice of any incident of possible infringement of the Dalhousie Rights coming to its attention. The Parties shall thereupon confer together as to what steps are to be taken to stop or prevent such infringement. Dalhousie agrees to use reasonable efforts to stop any such infringement, but it shall not be obliged to commence proceedings against the infringer. However, subject to a subsequent agreement between the Parties, if Dalhousie decides to commence proceedings, Dalhousie shall be responsible for any legal costs incurred subject to reimbursement from any amounts recovered from such claims. Should Dalhousie decide not to commence proceedings, the Licensee shall be entitled to do so (if permitted by law) in its own name against the infringer, in which event, subject to a subsequent agreement between the Parties, the Licensee shall be responsible for all legal costs incurred, without recourse to Dalhousie. The distribution of any financial recoveries from any such claims will be agreed to in advance by the Parties prior to the commencement of any litigation (to the greatest extent possible) and otherwise, in the absence of such an agreement, shall first be applied to reimburse each Party for litigation expenditures incurred by that Party, with any balance to be payable to the Licensee and included in the calculation of Net Sales and subject to the royalty payable in accordance with Section 5.01(a). In any action to enforce the

Dalhousie Rights, either Party, at the request and expense of the other Party, shall cooperate to the fullest extent reasonably possible including lending its name to any action. Notwithstanding the foregoing, the Licensee may not make any submissions or respond to any submissions relating to the validity or scope of the Dalhousie Rights unless such submissions or responses have been approved, in writing, by Dalhousie.

**8.02 IMPEACHMENT:**

Dalhousie shall be entitled to but not bound to defend, at its own cost, every action, suit or proceeding instituted for the impeachment or a declaration of invalidity or non-infringement of any of the Dalhousie Rights; provided that, if Dalhousie shall decide not to defend any action, suit or proceeding it shall so advise the Licensee who shall be entitled (where permitted by law) but shall not be bound to defend, at its own cost, the action, suit or proceeding and Dalhousie agrees to permit Licensee bringing the action in Dalhousie's name if Licensee is not permitted by law to bring the action in its own name. In any action under this Section, either Party, at the request and expense of the other Party, shall cooperate to the fullest extent reasonably possible. Notwithstanding the foregoing, the Licensee may not make any submissions or respond to any submissions relating to the validity or scope of the Dalhousie Rights unless such submissions or responses have been approved, in writing, by Dalhousie.

**Article Nine. Duration and Termination**

**9.01 TERM:**

This Agreement shall become effective on the Effective Date, and unless sooner terminated in accordance with any of the provisions herein, shall remain in full force until the later of (i) six (6) years from the first commercial sale of a Licensed Product and (ii) the date of the expiry of the last to expire patents under the Dalhousie Patent Rights.

**9.02 TERMINATION FOR DEFAULT:**

This Agreement shall be subject to termination by Dalhousie in the following circumstances:

- (a) if the Licensee fails to make any payment when due and in the manner stated; and
- (b) if the Licensee materially breaches any of the terms of this Agreement;

provided, however, that if Dalhousie terminates this Agreement, it shall give the Licensee forty-five (45) days notice in writing of the Licensee's default or omission constituting grounds for cancellation, and of its election to terminate this Agreement. If within forty-five (45) days after the receipt of the notice the Licensee shall cure the deficiency or omission fully, and makes good its default or omission, the cancellation notice shall be without force or effect. If the omission or default specified in the notice is not cured within the forty-five (45) day period, this Agreement and the rights under it shall become finally terminated at the end of the forty-five (45) day period. In the event of termination, the Licensee shall not be relieved of its obligations, nor of its duty to make royalty payments for all Licensed Products made, on hand, in stock or anywhere under the control of the Licensee, and the Licensee shall have the right to sell such Licensed Products and shall account and make payments as required.

**9.03 TERMINATION:**

Dalhousie shall have the right to terminate this Agreement at any time on or after the filing by the Licensee of an assignment in bankruptcy, or on or after the Licensee is either bankrupt or insolvent or after any adjudication of applications for the reorganization, readjustment, or rearrangement of the business of the Licensee under any law or governmental regulation relating

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to bankruptcy or insolvency, or on or after the appointment of a receiver for all or substantially all of the property or assets of the Licensee, or on or after the making by the Licensee of any assignment or attempted assignment for the benefit of creditors, or on or after the institution by the Licensee of any proceedings for the winding-up of its business. In any event, this Agreement shall be terminated (10) days after Dalhousie has given written notice to the Licensee, or its legal representative, of the exercise of its right of termination under this paragraph.

The Licensee shall have the right to request a renegotiation of the terms and conditions of this Agreement in the event that a court of competent jurisdiction from which there is no further appeal finds that the sale of Licensed Products infringes the rights of third parties or if Dalhousie acknowledges as such in writing. In the event that the Parties, acting reasonably, are unable to reach an agreement regarding the revised terms and conditions within ninety (90) days from the date of receipt of a notice from the Licensee then the Licensee may terminate this Agreement.

#### **9.04 RIGHTS AND OBLIGATIONS:**

Any termination by Dalhousie of this Agreement shall not in any way operate to deny any of Dalhousie's rights or remedies, either at law or in equity, or to relieve the Licensee of any obligation to pay royalties or of any other obligation accrued prior to the effective date of termination and in particular Sections 2.04(2), 2.06, 3.01, 4.03, 5.01, 5.02, 5.03, 5.04, 6.03, 7.01, 7.02, and Article Ten shall survive the termination of this Agreement.

### **Article Ten. Miscellaneous**

#### **10.01 GOVERNING LAW:**

This Agreement shall be construed, governed, interpreted and enforced according to the laws of the Province of Nova Scotia. Each Party unconditionally and irrevocably attorns to the jurisdiction of the provincial and federal courts in Nova Scotia. In the event of a dispute, the parties agree to cooperation to find a solution and negotiate in good faith, and to consider mechanisms to resolve such disputes, including, without limitation mediation and binding arbitration

#### **10.02 PAYMENTS:**

All amounts indicated herein or otherwise payable by one Party to the other Party shall be exclusive of Harmonized Sales Tax/Goods and Services Tax, which shall be levied and paid as appropriate. All payments from one Party to the other Party shall be due and payable on the dates indicated in this Agreement or, if there is no such date set out in this Agreement, within thirty (30) days of being presented with an invoice that sets out the particulars of the relevant amounts owing.

#### **10.03 NOTICES:**

Any notice or communication required or permitted to be given by either Party hereunder, shall be deemed sufficiently given, if mailed by registered mail, return receipt requested, and addressed to the Party to whom notice is given as follows:

If to the Licensee, to:

Pacific Therapeutics Ltd.  
1525 West 8<sup>th</sup> Ave, Suite 202  
Vancouver, BC V6T 1T5

Attention Doug Unwin, President & CEO

If to Dalhousie, to:

Dalhousie University  
Industry Liaison and Innovation Office  
1379 Seymour Street  
Halifax, NS B3H 3M6

Attention: Executive Director

**10.04 ASSIGNMENT:**

Neither Party shall assign or transfer this Agreement without the express prior written consent of the other, which consent shall not be unreasonably withheld. For purposes of this Agreement, an assignment or transfer of this Agreement by the Licensee shall be deemed to occur in connection with (a) an express assignment or transfer, (b) a general assignment for the benefit of creditors or in connection with any bankruptcy or other debtor relief law, or (c) any merger, acquisition, amalgamation or consolidation to which the Licensee is a party, regardless of whether the Licensee is the surviving corporation. Notwithstanding the foregoing, Dalhousie may assign this Agreement and any that relate to the Dalhousie Rights to any entity that it controls without the consent of the Licensee but Dalhousie shall give notice of such assignment to the Licensee.

**10.05 ENTIRE AGREEMENT:**


This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof as of the Effective Date, and may only be subsequently altered or modified by an instrument in writing. This Agreement cancels and supersedes any and all prior oral or written agreements between the Parties which relate to the subject matter of this Agreement.

**10.06 WAIVER:**

A failure by one of the Parties to assert its rights for or upon any breach or default of this Agreement shall not be deemed a waiver of such rights nor shall any such waiver be implied from acceptance of any payment. No such failure or waiver in writing by any one of the Parties hereto with respect to any rights shall extend to or affect any subsequent breach or impair any right consequent thereon.

**10.07 SEVERABILITY:**

The Parties agree that it is the intention of neither Party to violate any public policy, statutory or common laws, any governmental or supranational regulations and that if any sentence, paragraph, clause or combination of the same is in violation of any applicable law or regulation, or is unenforceable or void for any reason whatsoever, such sentence, paragraph, clause or combinations of the same shall be deemed to be severed from this Agreement and the remainder of the Agreement shall remain binding upon the Parties.



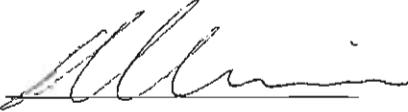
**10.08 INDEPENDENT CONTRACTORS:**

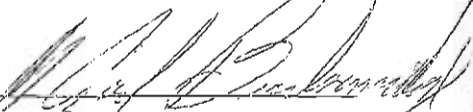
The Parties hereby acknowledge and agree that each is an independent contractor and that neither Party shall be considered to be the agent, representative, master or servant of the other Party for any purpose whatsoever, and that neither Party has any authority to enter into a contract, assume any obligation or to give warranties or representations on behalf of the other Party. Nothing in this Agreement shall be construed to create a relationship of joint venture, partnership, fiduciary or other similar relationship between the Parties.

IN WITNESS WHEREOF, the Parties hereto have properly executed this Agreement, in duplicate by their respective duly authorized officers as of the day and year herein written.

**PACIFIC THERAPEUTICS LTD.**

**DALHOUSIE UNIVERSITY**

Per: 

Per: 

Name: Doug Unwin

Name: W. CARL BRACKENDALE

Title: President + CEO

Title: VP. Research

Date: April 20, 2007

Date: April 24, 2007

SCHEDULE "A"

DALHOUSIE PATENT RIGHTS

<b>US Patent Number</b>	5,985,592	6,025,151	6,294,350
<b>Patent Title</b>	Uses of Pentoxifylline or Functional Derivatives/Metabolites Thereof	Uses for Compounds Which Reduce C-JUN Gene Expression	Methods for Treating Fibroproliferative Diseases
<b>File Date</b>	June 5, 1997	June 5, 1998	November 2, 1999
<b>Date of Issue</b>	November 16, 1999	February 15, 2000	September 25, 2001
<b>Expiration</b>	June 5, 2017	June 5, 2018	November 2, 2019



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AT SUCH TIME AS ANY LICENSED PRODUCT IS BEING COMMERCIALY DISTRIBUTED OR SOLD (OTHER THAN FOR THE PURPOSE OF OBTAINING REGULATORY APPROVALS) BY THE LICENSEE OR BY A SUBLICENSEE OR AGENT OF THE LICENSEE, THE LICENSEE SHALL AT ITS SOLE COST AND EXPENSE, PROCURE AND MAINTAIN COMPREHENSIVE GENERAL LIABILITY INSURANCE, WITH COMMERCIALY REASONABLE LIMITS UNDER THE CIRCUMSTANCES AND NAMING THE INDEMNIFIED PARTIES AS ADDITIONAL INSURED. SUCH COMPREHENSIVE GENERAL LIABILITY	

INSURANCE SHALL PROVIDE (I) PRODUCT LIABILITY COVERAGE AND (II) BROAD FORM CONTRACTUAL LIABILITY COVERAGE FOR THE LICENSEE'S INDEMNIFICATION UNDER THIS AGREEMENT. THE MINIMUM AMOUNTS OF INSURANCE COVERAGE REQUIRED SHALL NOT BE CONSTRUED TO CREATE A LIMIT OF THE LICENSEE'S LIABILITY WITH RESPECT TO ITS INDEMNIFICATION UNDER THIS AGREEMENT..... 11

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