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Assignment/Sale of Intellectual Property

MEMORANDUM OF AGREEMENT

Entered into between:

(insert name of assignor)
(hereinafter “the Assignor”)

and

(insert name of assignee)
(hereinafter “the Assignee”)

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1 Interpretation and definitions

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1 “the Assignor” is *(insert full names)*;

1.1.2 the Assignor’s address is *(insert physical address)*;

1.1.3 “the Assignee” is *(insert full names)*;

1.1.4 the Assignee’s address is *(insert physical address)*;

1.1.5 “the Parties” are *(specify)*;

1.1.6 the “Effective Date” is *(insert date)*;

1.1.7 the “Price” is *(insert price)*;

1.1.8 the “Invention” means *(give details of the invention)*;

1.1.9 the “Intellectual Property” means:

1.1.9.1 the Patents;

1.1.9.2 the Know-How;

1.1.9.3 the Trade Marks; and

1.1.9.4 (*include any other intellectual property that may be relevant*);

1.1.10 the “Patent” means the registered patents and patent applications listed in annexure “A” hereto, which annexure may be amended by agreement between the parties;

1.1.11 the “Know-how” means all confidential information of whatever nature relating to the Intellectual Property and its exploitation including technical information, manufacturing techniques, designs, specifications, formulae, systems, processes and information concerning materials;

1.1.12 the “Trade Marks” means the registered or unregistered trade marks and trade mark applications listed in annexure “B” hereto, which annexure may be amended by agreement between the Parties;

1.1.13 words in the singular number include the plural and vice versa;

1.1.14 words importing any one gender include each of the other two genders; and

1.1.15 a reference to a natural person includes a legal persona.

1.2 The headings of clauses are intended for convenience only and shall not affect the interpretation of this Agreement.

2 Preamble

2.1 The Assignor is the proprietor of the Intellectual Property.

2.2 The Assignor has agreed to assign to the Assignee all right, title and interest in and to the Intellectual Property in consideration for which the Assignee has agreed to pay the Assignor the Price.

2.3 This Agreement sets out the terms of the agreement between the Parties relating to the Intellectual Property.

3 Assignment

3.1 The Assignor hereby assigns to the Assignee, with effect from the Effective Date:

3.1.1 the Intellectual Property;

3.1.2 the inventions disclosed in any of the Patent specifications;

3.1.3 all rights to priority flowing from the applications in respect of the Patents; and

3.1.4 all accrued rights to claim relief from third parties in respect of infringement or unlawful use of the Intellectual Property which may have occurred prior to the Effective Date.

(Alternatively or Additionally:

3.2 The Assignor hereby assigns to the Assignee, with effect from the Effective Date:

3.2.1 all right, title and interest in and to the Invention; and

3.2.2 the right to file patent applications in respect of the Invention.)

3.3 The Assignor hereby undertakes to sign all documents and to do all things that may be necessary to record and perfect the transfer of the Intellectual Property into the name of the Assignor.

4 Payment

4.1 In consideration for the rights assigned to it in terms of this Agreement, the Assignee has agreed to pay the Assignor (*the price or the sum of R.....*) (*in respect of all units of the Invention*).

4.2 The Assignee agrees to pay the Assignor the Price on or before (*insert date*), in cash, free of exchange and without deduction or demand.

(Alternatively:

4.3 The consideration that is payable by the Assignee to the Assignor for a Licence Quarter shall be calculated and paid by the Assignee within (*number*) days of the end of a Licence Quarter.

4.4 Simultaneously with each payment the Assignee shall furnish the Assignor with a complete and accurate statement including a calculation of the amount that has become payable to the Assignor. All statements furnished by the Assignee pursuant to this Agreement shall be certified as correct by a director of the Assignee.

4.5 All payments made by the Assignee shall be made in cash; free of exchange; without deduction or demand; at the Assignor's address or care of the Assignor's (*name of country*) bankers as notified to the Assignee from time to time by notice duly given and in (*specify currency*).

4.6 In the event that the consideration payable by the Assignee is subject to VAT such tax shall be payable by the Assignee and any amount payable by the Assignee to the Assignor shall be calculated net of VAT.

5 Warranty

5.1 The Assignor makes no representations and gives no warranties as to the effectiveness of the Invention or as to the merchantability, fitness for use or particular purpose of products made or processes described in terms of the Invention and further the Assignor will not be liable for damages resulting from the practice of the Invention, or from the manufacture, use or sale of defective or inadequate products made or processes undertaken in terms of the Invention.

5.2 The Assignor warrants that he is the inventor of the Invention and that to the best of his knowledge no third party holds any rights in and to the Invention.

5.3 The Assignor warrants that:

5.3.1 it is the proprietor of the Intellectual Property;

5.3.2 none of the Intellectual Property is encumbered in any way and no third party holds any rights of any nature whatsoever in and to the Intellectual Property;

5.3.3 none of the Intellectual Property is the subject of any form of licence or pre-emptive agreement;

5.3.4 no steps have been taken by any person to challenge the registrations of the Intellectual Property or limit their scope in any way and the Assignor is not aware of any circumstances which would give rise to an application to challenge the registrations of the Intellectual Property or to limit the scope of any registration; and

5.3.5 the Intellectual Property is not the subject of any existing litigation and the Assignor is not aware of any facts or circumstances which would give rise to litigation relating to the Intellectual Property.

6 Costs of assignment of intellectual property

6.1 The costs of (*insert name of attorneys' firm*) in the negotiation, drafting and typing of this Agreement, including all prior drafts and all attendances shall be paid by the Assignor.

6.2 The costs of recording and perfecting the assignment of the Intellectual Property from the Assignor to the Assignee shall be paid by the Assignee.

6.3 The Assignor shall be responsible for the legal costs incurred in the filing, prosecution and maintenance of the Patents and the Trade Marks up to and including the Effective Date whereafter the Assignee shall be liable for these costs.

7 Possible additional clauses

7.1 Delivery of technology

7.2 Taxes

7.3 Improvements

7.4 Confidentiality

8 Breach of Agreement

8.1 If either of the Parties commits a material breach of any provision of this Agreement, the other party may call in writing on the party in breach to remedy the breach within a period which, if the breach consists in the non-payment of money due, will not be less than 10 days and if the breach is of any other nature will be not less than 30 days. If the breach remains unremedied after the notice period has expired, the aggrieved party may institute proceedings immediately for enforcement of the terms of this Agreement or any other remedy that may be available to it at law.

8.2 The provisions of this clause will not affect the rights of the Parties to claim damages in respect of a breach of any of the provisions of this Agreement.

9 Governing law

This Agreement shall be governed in all respects by the laws of the Republic of South Africa.

10 Whole agreement

10.1 This documents constitutes the whole Agreement (to exclusion of all else) between the Parties relating to the subject matter hereof.

10.2 No amendment, alteration, addition, variation or consensual cancellation of this document will be valid unless in writing and signed by the Parties.

11 Waiver

11.1 No waiver of any of the terms or conditions of this Agreement will be binding for any purpose unless expressed in writing and signed by the Party giving the same and any such waiver will be effective only in the specific instance and for the purpose given.

11.2 No failure or delay on the part of either party in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any right, power or privilege.

12 Chosen address

Each Party chooses as its address for citation, service of legal processes, execution and any other purpose connected with this Agreement its address set out herein which it shall be entitled to vary on notice duly given.

13 Notices

All notices and terms of this Agreement shall be in writing addressed to the chosen address of the Party and shall be sent by prepaid registered post or shall be physically delivered.

14 Severability

In the event that the provisions of this Agreement are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

Dated at (*place*) this (*day, month, year*)

Witnesses:

1

2

(*Signatures of witnesses*)

.....

(*Signature of, or on behalf of assignor*)

Witnesses:

1

2

(*Signatures of witnesses*)

.....

(*Signature of, or on behalf of assignee*)