

LICENCE AGREEMENT

THIS LICENCE AGREEMENT (this "Agreement") is made on 13.02. 2013,

BETWEEN:

VIIV HEALTHCARE UK LIMITED, a company incorporated under the laws of England and having its registered office at 980 Great West Road, Brentford, Middlesex, TW8 9GS ("ViiV");

and

THE MEDICINES PATENT POOL FOUNDATION, a non-profit foundation registered under the laws of Switzerland, and having a principal place of business at 150 route de Ferney, P.O. Box 2100, CH-1211 Geneva 2 (the "MPPF"),

with ViiV and the MPPF collectively referred to as the "**Parties**".

WITNESSETH THAT:

WHEREAS the MPPF is a non-profit organization with a mission to improve the health of people living in the developing world by increasing access to quality, safe efficacious and affordable medicines by facilitating access to intellectual property on these medicines;

WHEREAS ViiV or its Affiliates own certain rights, title and interest in and/or have the right to sublicense the Patents (as defined below);

WHEREAS the MPPF desires to obtain a licence from ViiV under the Patents solely to allow it to grant sublicences of the Patents to various third parties in order to promote access to paediatric formulations of antiretroviral drugs in a number of low and middle-income countries;

WHEREAS ViiV is willing to grant such a licence provided that such sublicences are in the form of the Sublicence (as defined below);

WHEREAS the intent of this Agreement is to provide access to Patents, and not to create any non-patent-related barriers where Patents or Non-Territory Patents (as defined below) do not exist;

NOW THEREFORE in consideration of the covenants and obligations expressed in this Agreement, and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS

For the purposes of this Agreement:

- (a) "**Affiliate**", in relation to a party, shall mean any corporation, firm, partnership or other entity which is directly or indirectly controlled by, in control of, or under common control with such party. For the purposes of this definition, "control" shall mean the ability of any corporation, firm, partnership or other entity, whether through ownership of shares or otherwise, to procure that the affairs of a party hereto are conducted in accordance with the wishes of such corporation, firm, partnership or other entity;



- (b) “**Confidential Information**” has the meaning given to such term in the Sublicence;
- (c) “**EMA**” means the European Medicines Agency;
- (d) “**FDA**” means the United States of America’s Food and Drug Administration;
- (e) “**Letter of Indemnity**” means a letter of indemnity in the form set out in schedule 2 hereto;
- (f) “**Non-Territory Patents**” means any patents relating to the Products (as that term is defined in the Sublicence) owned by ViiV or its Affiliates which have been granted by a country which is outside of the Territory;
- (g) “**Patents**” has the meaning given to such term in the Sublicence;
- (h) “**Products**” has the meaning given to such term in the Sublicence;
- (i) “**Raw Materials**” has the meaning given to such term in the Sublicence;
- (j) “**Sublicence**” means a licence agreement in the form set out in schedule 1 hereto;
- (k) “**Sublicensee**” means a third party which:
 - (i) in the opinion of the MPPF (acting reasonably) has demonstrated willingness and capacity to (a) manufacture Raw Materials and/or Products in a manner consistent with World Health Organization (“WHO”) pre-qualification standards or the standards of any Stringent Regulatory Authority, defined as regulatory agencies which are members, observers, or associates of the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use, as may be updated from time to time; and (b) make Products widely available at prices that will facilitate access to Products in the Territory.
 - (ii) has entered into a Sublicence.
- (l) “**Territory**” has the meaning given to such term in the Sublicence.

2. GRANT OF LICENCE

- 2.1 Subject to the terms and conditions of this Agreement, ViiV hereby grants to the MPPF a non-exclusive, non-transferable licence under the Patents to enter into Sublicences with Sublicensees. No rights are hereby granted for any other purpose and the MPPF agrees that it will not use the Patents itself or grant sublicences: (i) to entities other than Sublicensees; and/or (ii) other than in the form of the Sublicence.
- 2.2 The MPPF shall procure that at the same time as any Sublicence is entered into the relevant Sublicensee enters into a Letter of Indemnity and that within 30 days of the execution of such Sublicence:
 - (a) a fully executed copy of the relevant Sublicence; and

(b) two originals of the relevant Letter of Indemnity,

are provided to ViiV.

- 2.3 ViiV hereby covenants with the MPPF that it shall not bring legal action against a Sublicensee for breach of any Non-Territory Patents where such Sublicensee is carrying on activities outside of the Territory solely for purposes which are expressly permitted by the relevant Sublicence.
- 2.4 For avoidance of doubt, it shall not be a breach of the Sublicence for Sublicensees to manufacture, use, sell or supply Products or Raw Materials outside the Territory where such activities would not infringe Non-Territory Patents, including, without limitation, where a country outside the Territory has issued a compulsory licence on Non-Territory Patent(s).

3. OBLIGATIONS OF THE MPPF

- 3.1 The MPPF agrees to be primarily liable for any breach of a Sublicence by any Sublicensee and undertakes to indemnify ViiV and its Affiliates in respect of any and all liabilities, costs, damages and expenses (including, but not limited to, legal costs) incurred by ViiV and/or its Affiliates arising out of, or in connection with any breach of a Sublicence by any Sublicensee. ViiV shall (i) provide MPPF with prompt written notice of such claims, (ii) grant MPPF the right to control the defence or negotiation of settlement of such claims (except to the extent such claims relate to the validity or enforcement of Patents or Non-Territory Patents) and (iii) make available all reasonable assistance in defending any claims.
- 3.2 If the MPPF becomes aware of any act or omission of a Sublicensee which constitutes a breach of the relevant Sublicence the MPPF shall (i) if the breach is capable of correction and does not give rise to an immediate right of termination under the Sublicence, direct the relevant Sub-licensee in writing to cure the breach, with a copy of that writing to ViiV; (ii) if the breach remains uncured at the end of the specified period, or if there are otherwise grounds for termination under the Sublicence, and in each case if so requested by ViiV, procure the termination of the relevant Sublicence in accordance with its terms.
- 3.3 The MPPF agrees to exercise the rights of ViiV as granted under Clause 16.3 of any Sublicence only as requested in writing by ViiV. For the avoidance of doubt, this shall not affect ViiV exercising its rights directly under any Sublicence.
- 3.4 The MPPF's obligations under this Clause 3 constitute direct, primary and unconditional obligations of the MPPF and shall not require ViiV to first take any steps against any Sublicensee or any other person.

4. COMPLIANCE

- 4.1 The MPPF acknowledges receipt of GSK's "Prevention of Corruption – Third Party Guidelines" and agrees to perform its obligations under this Agreement in accordance with the principles set out therein.
- 4.2 The MPPF shall comply fully at all times with all applicable laws and regulations, including but not limited to applicable anti-corruption laws, of the territories in which the MPPF conducts business with ViiV and/or grants Sublicences.

4.3 ViiV shall be entitled to terminate this Agreement immediately on written notice to the MPPF if the MPPF fails to perform its obligations in accordance with this Clause 4. The MPPF shall have no claim against ViiV or any of their Affiliates for compensation for any loss of whatever nature by virtue of the termination of this Agreement in accordance with this Clause 4. To the extent (and only to the extent) that applicable law provides for any such compensation to be paid to the MPPF upon the termination of this Agreement, the MPPF hereby expressly agrees to waive (to the extent possible under applicable law) or repay to ViiV any such compensation or indemnity.

5. GENERAL

5.1 Each Party shall seek each other's prior written approval of any initial press release or public announcement concerning the grant, scope or terms of this licence. Following an initial announcement, neither Party shall be required to seek the other Party's consent to reactive statements, provided such statements are accurate and not misleading. ViiV's prior written approval shall not be required to factual public announcements concerning the grant of sublicenses by the MPPF.

5.2 In the event that this Agreement is terminated the MPPF shall procure that any Sublicences already granted shall be immediately terminated in accordance with their terms or converted into a licence between ViiV and the relevant Sublicensee(s), provided that Sublicensee is not in breach of the Sublicence. This Clause 5.2 shall survive any termination of this Agreement.

5.3 Other than as set out under Clause 2.1, this Agreement confers: (a) no intellectual property rights whatsoever on the MPPF; and (b) no rights on the MPPF to sublicense its rights hereunder, which is expressly prohibited.

5.4 The MPPF shall have no rights in relation to, the conduct of any matter relating to the Patents, including the filing, prosecution and maintenance thereof,

5.5 The MPPF agrees that it shall provide such assistance as ViiV reasonably requires to enable ViiV to exercise its rights under this Agreement and any Sublicence.

5.6 ViiV agrees only to exercise the rights granted to it under Clause 8.2 of the Sublicence in accordance with the licence granted therein. ViiV shall treat any information disclosed under Clause 8.1 of the Sublicence as Confidential Information and the confidentiality obligations of Clauses 5.1 to 5.4 of the Sublicence shall apply, *mutatis mutandis*, to ViiV with respect to such information provided, for the avoidance of doubt, that ViiV shall be entitled to disclose information about the quantities of Products manufactured by Sub-Licensees on an aggregate basis.

5.7 ViiV shall provide any Sublicensee with NCE Exclusivity or other regulatory exclusivity waivers to the extent required by the applicable regulatory authorities in order to manufacture or sell Product in the Territory in accordance with the terms of the Sublicence. ViiV shall further provide to any Sublicensee such consents which it has the legal capacity to give as are necessary to enable such Sublicensee to perform its obligations under Clauses 3.2 and 3.3 of the Sublicence.

5.8 This Agreement may only be amended in writing signed by duly authorised representatives of each Party.

- 5.9 The rights of each Party under this Agreement: (a) may be exercised as often as necessary; (b) except as otherwise expressly provided in this Agreement, are cumulative and not exclusive of rights and remedies provided by law; and (c) may be waived only in writing and specifically. Delay in exercising or non-exercise of any such right is not a waiver of that right.
- 5.10 This Agreement may be executed in counterparts, which taken together shall constitute one and the same agreement, and any Party (including any duly authorised representative of a Party) may enter into this agreement by executing a counterpart.
- 5.11 This Agreement sets forth the entire agreement between the Parties and supersedes all prior agreements, arrangements and understandings, oral or written, between the Parties with respect to the subject matter hereof.
- 5.12 A person who is not a Party may not enforce any of terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 5.13 The MPPF shall send to ViiV within 30 days of receipt by the MPPF thereof a copy of any reports provided to MPPF under Clause 3.5 of the Sublicence. The MPPF agrees to use reasonable endeavours to procure that Sublicensees provide such reports to the MPPF in accordance with the terms of the relevant Sublicence. ViiV agrees to treat such information of Sublicensee as Confidential Information and the confidentiality obligations of Clauses 5.1 to 5.4 of the Sublicence shall apply, *mutatis mutandis*, to ViiV with respect to such information.

6. GOVERNING LAW AND JURISDICTION

- 6.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
- 6.2 Subject to Clause 6.3, the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement) and the Parties submit to the exclusive jurisdiction of the English courts.
- 6.3 The parties agree that in the event of a dispute they shall submit such dispute to mediation in accordance with the WIPO Mediation Rules. In the event that the dispute remains outstanding after 60 days from the date when it was first discussed (in any manner) between the parties, either party may commence court proceedings. The foregoing however shall not prevent any person from seeking and obtaining injunctive relief at any time.
- 6.4 Without prejudice to the foregoing in relation to the Licensee, nothing in this Agreement shall prevent or restrict ViiV from electing to bring proceedings in relation to patent infringement or from applying for injunctive relief in any country outside England, to which election the Licensor and the Licensee hereby agree.

IN WITNESS WHEREOF the Parties, through their duly authorised representatives, have executed this Agreement.

Signed for and on behalf of:
VIIV HEALTHCARE UK LIMITED

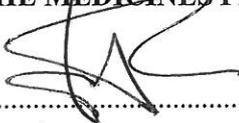

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Signature

LIMET
.....
Name

CEO
.....
Position

13.02.2013
.....
Date

Signed for and on behalf of:
THE MEDICINES PATENT POOL FOUNDATION


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Signature

Geoff Kelly
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Name

EXECUTIVE DIRECTOR
.....
Position

13.02.2013
.....
Date

W.

SCHEDULE 1
FORM OF SUBLICENCE

FORM OF LETTER OF INDEMNITY

To: ViiV Healthcare UK Limited
980 Great West Road
Brentford
Middlesex, TW8 9GS
United Kingdom

Date: _____ 2013

Dear Sirs

Letter of indemnity regarding the Licence Agreement between the Medicines Patent Pool Foundation and _____ dated _____.

We refer to the licence agreement in relation to antiretroviral patents between the Medicines Patent Pool Foundation and ourselves, _____ (the “**Licensee**”) dated _____ (the “**Licence Agreement**”) under which the Licensee was granted a licence relating to the Patents (as such term is defined under the Licence Agreement).

It is noted that ViiV Healthcare UK Limited and or its Affiliates (together “**ViiV**”) own the rights, title and interest in and/or is the licensee of the Patents.

Unless the contrary intention appears, a word or expression used in this letter shall have the same meaning as given to that word or expression under the Licence Agreement.

The Licensee hereby agrees that:

- (a) notwithstanding anything contained in the Licence Agreement, it does not have a right of sublicense under the Licence Agreement; and
- (b) it shall be responsible for and undertakes to indemnify ViiV and its Affiliates in respect of any and all liability, costs, damages and expenses (including, but not limited to, legal costs) (“**Losses**”) incurred by ViiV and/or its Affiliates arising out of, or in connection with: (i) any breach of the Licence Agreement by the Licensee or any of its Affiliates; and/or (ii) the Licensee’s exercise of its rights pursuant to the Licence Agreement (including for the avoidance of doubt any product liability claim relating to the Products manufactured by or on behalf of Licensee pursuant to this Agreement), provided that the indemnification obligation established in this Letter of Indemnity shall not apply to the extent such Losses arise out of negligence or wilful misconduct by ViiV and/or its Affiliates.

The parties hereby agree that the provisions of annex 1 hereto shall apply and, further, the Licensee hereby represents and warrants in the terms of the representations and warranties set out in annex 1 hereto.

This letter and any non-contractual obligations arising out or in connection with it shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this letter (including a dispute relating to any non-contractual obligations arising out of or in connection with this letter) and the parties submit to the exclusive jurisdiction of the English courts.

This letter shall be executed and take effect as a deed and may be executed in any number of counterparts.

Please acknowledge your agreement to the above by executing the enclosed copy of this letter as a deed and returning a copy to the Licensee at its address above.

Yours faithfully,

EXECUTED as a DEED by

acting by:
in the presence of: Director

Witness's signature:

Name:

Address:

.....

We acknowledge our agreement to the above:

EXECUTED as a DEED by
VIIV HEALTHCARE UK LIMITED
acting by:
in the presence of: Director

Witness's signature:

Name:

Address:

.....

ANNEX 1

ANTI-CORRUPTION

1. The Licensee acknowledges receipt of GSK's 'Prevention of Corruption – Third Party Guidelines' and agrees to perform its obligations under the Licence Agreement in accordance with the principles set out therein.
2. The Licensee shall comply fully at all time with all applicable laws and regulations, including but not limited to applicable anti-corruption laws, of the Territory.
3. The Licensee agrees that it has not, and covenants and that it will not, in connection with the performance of the Licence Agreement, promise, authorise, ratify or offer to make, or take any act in furtherance of any payment or transfer of anything of value, directly or indirectly: (i) to any individual including Government Officials (as defined below); or (ii) to an intermediary for payment to any individual including Government Officials; or (iii) to any political party. It is the intent of the parties that no payments or transfers of value shall be made, promised, authorised, ratified or offered with the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of securing an improper advantage or obtaining or retaining business.

For the purpose of this Clause "**Government Official**" means: (a) any officer or employee of a government or any department, agency or instrument of a government; (b) any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government; (c) any officer or employee of a company or business owned in whole or part by a government; (d) any officer or employee of a public international organisation such as the World Bank or United Nations; (e) any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or (f) any candidate for political office.

4. Except in the routine course of business, the Licensee shall not contact, or otherwise meet with any Government Official with respect to any transactions required under the Licence Agreement, without the prior written approval of ViiV and, when requested by ViiV, only in the presence of a ViiV designated representative.
5. The Licensee represents that it has not been convicted of or pleaded guilty to a criminal offence, including one involving fraud, corruption, or moral turpitude in the Territory.
6. The Licensee represents and warrants that except as disclosed in writing: (a) it does not have any interest which directly or indirectly conflicts with its proper and ethical performance of the Licence Agreement; and (b) it shall maintain arms length relations with all third parties (including government officials) with which it deals in performance of the Licence Agreement.
7. ViiV shall have the right during the term of the Licence Agreement to conduct an investigation and audit of the Licensee to monitor compliance with the terms of this annex 1. The Licensee shall cooperate fully with such investigation or audit, the scope, method, nature and duration of which shall be at the sole reasonable discretion of ViiV.
8. The Licensee shall ensure that all transactions under the Licence Agreement are properly and accurately recorded in all material respects on its books and records and each document upon which entries such books and records are based is complete and

accurate in all material respects. The Licensee shall maintain a system of internal accounting controls reasonably designed to ensure that it maintains no off-the-books accounts.

9. The Licensee agrees that ViiV may make full disclosure of information relating to a possible violation of the terms of the Licence Agreement at any time and for any reason to any competent government bodies and its agencies, and to whomsoever ViiV determines in good faith has a legitimate need to know.
10. ViiV shall be entitled to require the Licensee to procure the termination of the Licence Agreement immediately on written notice to the Licensee, if the Licensee fails to perform its obligations in accordance with this annex 1. The Licensee shall have no claim against ViiV for compensation for any loss of whatever nature by virtue of the termination of the Licence Agreement in accordance with this annex 1. To the extent (and only to the extent) that applicable law provide for any such compensation to be paid to the Licensee upon the termination of the Licence Agreement, the Licensee hereby expressly agrees to waive (to the extent possible under the laws of the territory) or to repay to ViiV any such compensation or indemnity.