

THIS LICENCE AGREEMENT (this "Agreement") is effective as of the date that it is executed by both Parties (the "Effective Date") and is made

BETWEEN:

- (1) **VIIV HEALTHCARE COMPANY** ("ViiV"), a company incorporated under the laws of Delaware and having its registered office at Corporation Service Company, Suite 400, Wilmington, Delaware, 19808; and
- (2) **THE MEDICINES PATENT POOL FOUNDATION** (the "MPPF"), a non-profit foundation registered under the laws of Switzerland, and having a principal place of business at Rue de Varembe 7, CH-1202 Geneva,

each a "Party" and collectively referred to as the "Parties".

BACKGROUND:

- (A) ViiV is a pharmaceutical company 100% focused on the needs of people living with and affected by HIV.
- (B) The MPPF is a non-profit organisation with a mission to improve the health of people by increasing access to quality, safe, efficacious and affordable medicines by facilitating access to intellectual property to medicines, in this case, dolutegravir-containing medicines.
- (C) ViiV or its Affiliates own or have a licence under certain rights, title and interest in, and have the right to license or sublicense (as applicable), certain patents and patent applications, which relate to the compounds known as dolutegravir and abacavir.
- (D) ViiV and the MPPF have existing voluntary licences in place allowing supply of dolutegravir-containing medicines in low-income countries, least-developed countries, lower-middle income countries and sub-Saharan Africa.
- (E) ViiV desires to expand the number of countries that can benefit from generic competition for dolutegravir-containing medicines in the public sector in order to promote access to such medicines for adult people living with HIV, by granting a voluntary licence to the Patents (as defined below) in certain upper middle-income countries.
- (F) The MPPF desires to obtain such a licence from ViiV under the Patents solely to allow it to grant sublicences to the Patents to agreed third parties.
- (G) ViiV is willing to grant such a licence provided that such sublicences are in the form of the Sublicence (as defined below).
- (H) 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:

“Adult Patients” has the meaning given to such term in the Sublicence;

“Affiliate” in relation to a Party, means 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” means the ability of any corporation, firm, partnership or other entity, whether through ownership of shares or otherwise, to procure that the affairs of an entity are conducted in accordance with the wishes of such corporation, firm, partnership or other entity;

“Agreement Quarter” means any period of three months ending on the last day of March or June or September or December;

“ALHIV On Treatment” has the meaning given to such term in the Sublicence;

“Approved Affiliate” has the meaning given to such term in the Sublicence;

“Approved Public Market Procurement” has the meaning given to such term in the Sublicence;

“Business Day” has the meaning given to such term in the Sublicence;

“Calendar Month” means a period from a specified day in one month to the day numerically corresponding to that day in the following month, less one;

“Calendar Year” means each successive period of twelve (12) months commencing on January 1 and ending on December 31;

“Confidential Information” means all information that would reasonably be regarded as, or is designated as, of a confidential or commercially sensitive nature by the Party to which the information relates including, without limitation, any matter relating to, or arising in connection with, this Agreement or a Sublicence or the business or affairs of any of the Parties or their Affiliates, including Appendix D of the form of Sublicence under Schedule 1 and of any Sublicence. For the avoidance of doubt, neither this Agreement (except Appendix D of the form of Sublicence under Schedule 1 to this Agreement) nor any Sublicence (except Appendix D of such Sublicence) shall be considered as Confidential Information;

“Engagement Plan” means a plan setting out those activities to be undertaken by the MPPF (and ViiV where applicable) in a given Calendar Year, to facilitate rapid registration and availability of Products in each country in the Territory and to support rapid adoption and implementation by each country in the Territory of the WHO HIV Treatment Guidelines, which shall include obligations on the MPPF (and ViiV where applicable) to:

- (a) disseminate information to all key stakeholders, including governments and procurement agencies, on opportunities pursuant to the Sublicence to procure Licensed Mono Products and Licensed Combination Products;
- (b) identify and contribute to addressing barriers to the rapid adoption and implementation of the WHO HIV Treatment Guidelines in the Territory;

- (c) work with governments (including engaging in meetings and communications with Government Officials and other key stakeholders) to identify the fastest and most appropriate route for registering the Products in the Territory; and
- (d) work with Sublicensees to support rapid registration and availability of Products in the Territory,

in each case within certain timelines specified therein;

“Existing Adult Licence” has the meaning given to such term in the Sublicence;

“Good Manufacturing Practice” means the part of quality assurance which ensures that products are consistently produced and controlled in accordance with the quality standards appropriate to their intended use as defined in 21 C.F.R. § 210 and 211 and in applicable United States and World Health Organization guidance and regulatory requirements for a pharmaceutical product, as amended from time to time;

“Government Official” (where “government” means all levels and subdivisions of governments, i.e. local, regional, national, administrative, legislative, executive, or judicial, and royal or ruling families) means: (a) any officer or employee of a government or any department, agency or instrumentality of a government (which includes public enterprises, and entities owned or controlled by the state); (b) any officer or employee of a public international organisation such as the World Bank or United Nations; (c) any officer or employee of a political party, or any candidate for public office; (d) any person defined as a government or public official under applicable local laws (including anti-bribery and corruption laws) and not already covered by any of the above; and/or (e) any person acting in an official capacity for or on behalf of any of the above. This term shall also include any person with close family members who are Government Officials (as defined above) with the capacity, actual or perceived, to influence or take official decisions;

“Letter of Indemnity” means a letter of indemnity in the form set out in Schedule 2 hereto;

“Licensed Combination Products” has the meaning given to such term in the Sublicence;

“Licensed Mono Products” has the meaning given to such term in the Sublicence;

“Licensee Selection Process” means the process set out in Clause 3;

“Non-Territory Patents” has the meaning given to such term in the Sublicence;

“Patents” has the meaning given to such term in the Sublicence;

“Product Access Percentage” has the meaning given to such term in the Sublicence;

“Products” has the meaning given to such term in the Sublicence;

“Public Market” has the meaning given to such term in the Sublicence;

“Reporting Guidance” has the meaning given to such term in the Sublicence;

“Sublicence” means a licence agreement in the form set out in Schedule 1 hereto;

“Sublicensee” means a Third Party which:

- (A) is selected pursuant to the Licensee Selection Process;
- (B) in the opinion of the MPPF (acting reasonably) has demonstrated willingness and capability to (a) manufacture Products in a manner consistent with World Health Organization (“WHO”) pre-qualification standards or the standards of any regulatory authority which was a member or observer of the International Council on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (“ICH”), or associated with an ICH member through a legally-binding, mutual recognition agreement, in each case as before 23 October 2015; and (b) make Products widely available on terms that will facilitate access to Products in the Territory for administration to Adult Patients; and
- (C) has entered into a Sublicence;

“Territory” has the meaning given to such term in the Sublicence;

“Third Party(ies)” means any party other than a Party to this Agreement;

“Trade Dress Guidance” has the meaning given to such term in the Sublicence;

“Unit of Product” has the meaning given to such term in the Sublicence;

“Usage Period” has the meaning given to such term in the Sublicence;

“WHO HIV Treatment Guidelines” means the “*Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations*” published by WHO, as updated from time to time; and

“WIPO Mediation Rules” means the mediation rules adopted by the World Intellectual Property Organization from time to time.

- 1.1 Clause and Schedule headings shall not affect the interpretation of this Agreement.
- 1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.3 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement, unless otherwise stated.
- 1.4 References to the provisions of a Sublicence are to those provisions in the form of Sublicence as included at Schedule 1 to this Agreement or to any equivalent provision in any Sublicence entered into with any Sublicensee.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.8 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 Any words following the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.10 A “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.

2. Grant of Licence

- 2.1 Subject to the terms and conditions of this Agreement, ViiV hereby grants to the MPPF a non-exclusive, royalty-free, non-transferable licence under the Patents and the Non-Territory Patents to enter into a maximum of three (3) Sublicences with Sublicensees, selected pursuant to the Licensee Selection Process, under which the MPPF shall grant such Sublicensees non-exclusive, royalty-bearing, non-sublicensable, non-transferable licences under the Patents and the Non-Territory Patents for the limited purposes set out in the Sublicence.
- 2.2 No rights are hereby granted for any other purpose and the MPPF agrees that it will not use or exploit the Patents or the Non-Territory Patents itself or grant sublicences or other rights thereto: (i) to entities other than Sublicensees; and/or (ii) other than in the form of the Sublicence.
- 2.3 The MPPF will coordinate the Licensee Selection Process as described below and the subsequent execution of Sublicences between the MPPF and Sublicensees.

3. Licensee Selection Process

- 3.1 Promptly after the Effective Date (and in any event within sixty (60) days of the Effective Date), or pursuant to Clause 3.7 below, the MPPF will identify and notify ViiV of up to a maximum of three (3) proposed sublicensees who have:
- (A) an Existing Adult Licence from the MPPF or ViiV;
 - (B) obtained at least tentative FDA approval or World Health Organization (WHO) pre-qualification for a Licensed Mono Product;
 - (C) demonstrated possession of adequate infrastructure to enable the Sublicensee to distribute and supply Product to every country in the Territory;
 - (D) production facilities operating under current Good Manufacturing Practice;
 - (E) adequate environment, health and safety measures in place;
 - (F) undergone and passed an anti-bribery and corruption assessment to ensure compliance with applicable anti-corruption laws; and
 - (G) a quick and efficient batch trace procedure following the GS1 Global Traceability Standards in place so as to enable the identification and location of Products from individual batches with minimal delay and the ability to implement the same at the MPPF’s or ViiV’s request if at any time the MPPF or ViiV is of the opinion that any

batch or batches of the Product have been, or may have been, diverted (i) outside the Public Market in the Territory and/or (ii) outside the Territory,

collectively the "Selection Criteria". At the same time, the MPPF shall provide documentary evidence, to ViiV's satisfaction, that each proposed sublicensee meets such Selection Criteria.

- 3.2 Within ten (10) Business Days of receipt by ViiV of satisfactory documentary evidence that such proposed sublicensees meet the Selection Criteria, ViiV shall inform the MPPF in writing whether it agrees or disagrees that the entities proposed by the MPPF meet the Selection Criteria and may be Sublicensees. In the case of disagreement, ViiV shall provide its reasons for considering that the Selection Criteria have not been sufficiently satisfied for the entity to be considered a suitable sublicensee. In the event of a disagreement, the Parties shall resolve the disagreement in accordance with Clause 30 of this Agreement.
- 3.3 Following ViiV's written confirmation that a sublicensee proposed by the MPPF is acceptable to ViiV pursuant to Clause 3.2, the MPPF shall promptly (and in any event within one (1) Calendar Month of the Effective Date) execute a Sublicence in the form included at Schedule 1 with such sublicensee.
- 3.4 The MPPF shall procure that at the same time as any Sublicence is entered into, the relevant Sublicensee also enters into a Letter of Indemnity. Within thirty (30) days of the execution of such Sublicence and Letter of Indemnity, the MPPF shall provide to ViiV (i) a fully executed copy of the relevant Sublicence and (ii) two originals of the relevant Letter of Indemnity.
- 3.5 The MPPF shall not authorise or agree to any amendments to the terms of the Sublicence as set out in Schedule 1, whether before or after the execution of such Sublicence, without ViiV's express prior consent in writing, signed by or on behalf of ViiV.
- 3.6 ViiV shall 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 4.2 and 4.3 of the Sublicence.
- 3.7 In the event that any Sublicence is terminated pursuant to Clause 13.12 of the Sublicence, MPPF shall be entitled to re-initiate the Licensee Selection Process in order to identify qualified sublicensee(s) up to the maximum of three (3) Sublicensees.

4. Governance

- 4.1 As soon as reasonably practicable and in any event within thirty (30) days after the Effective Date, the Parties will establish a steering committee (the "Steering Committee"). The Steering Committee shall be responsible for: (i) reviewing the performance of the Parties' respective obligations under this Agreement; (ii) reviewing the performance of the Sublicensee and the MPPF's respective obligations under each Sublicence; (iii) facilitating communication between the Parties; (iv) reviewing, commenting on and agreeing any amendments to the Engagement Plan as described in Clause 5.3; and (v) considering whether any amendments or extensions are required to this Agreement (subject always to Clause 26) or any Sublicence (subject always to Clause 3.5).
- 4.2 The Steering Committee shall be composed of four (4) persons ("Members"), two (2) Members from each Party, each with appropriate seniority and operational expertise. Each

Party may replace any of its Members, either on an ad hoc or permanent basis. A Party that replaces a Member shall notify the other Party prior to the next scheduled meeting of the Steering Committee. The quorum for a meeting of the Steering Committee shall be one (1) Member of each Party, or the relevant Member's replacement. Both Parties may invite a reasonable number of additional experts and/or advisors and/or observers to attend a part or the whole of each Steering Committee meeting, if and as the need arises, with prior notification to the Steering Committee and subject to obligations of confidentiality no less onerous than those in Clause 13.

- 4.3 The venue for the Steering Committee meetings shall be agreed by the Steering Committee and such meetings shall be held on a quarterly basis, either in person or by tele-/video-conference, or as frequently as the Members may agree shall be reasonably necessary. Each Party shall bear responsibility for all travel and other related costs for its Members and representatives to attend and/or participate in Steering Committee meetings.
- 4.4 A Member from the MPPF shall: chair each Steering Committee meeting; prepare and distribute in advance of each meeting a draft agenda; and record and circulate draft minutes of each meeting within five (5) Business Days of the meeting. Any comments on the draft minutes must be provided to the relevant drafting MPPF Member in writing within fourteen (14) days after receipt. The Members shall act in good faith to attempt to resolve any disputes over the content of the Steering Committee minutes as quickly as possible. If, however the Parties cannot agree on the content of the Steering Committee minutes it shall be noted in the minutes that the Parties did not agree on the content of the minutes and each Party's view shall be recorded.
- 4.5 The Members of the Steering Committee shall act in good faith and cooperate with one another and seek agreement with respect to issues to be decided by the Steering Committee. All decisions are to be made by unanimous consensus of Members in attendance and voting, with the MPPF Members collectively having one vote and the ViiV Members collectively having one vote. If the Steering Committee is unable to decide a matter by consensus within ten (10) Business Days of the matter first being discussed at a Steering Committee meeting following inclusion on a draft agenda distributed to the Steering Committee Members, the issue shall be resolved pursuant to Clause 30.

5. Engagement Plan

- 5.1 The Parties will agree an Engagement Plan for each Calendar Year of the term of this Agreement.
- 5.2 The Parties will use their best efforts to complete the activities assigned to them under the Engagement Plan in a timely manner and in accordance with the timelines set out in the Engagement Plan. The MPPF (and ViiV where applicable) shall designate qualified personnel having the necessary skill, expertise, and experience to perform appropriately such activities under the Engagement Plan.
- 5.3 At each Steering Committee meeting the Steering Committee shall review the Parties' performance of the activities in the Engagement Plan against the timelines set out in the then current Engagement Plan. The Steering Committee may identify and agree any changes to the then current Engagement Plan (including any additional activities) that may be helpful or necessary to address any identified challenges to access to the Products in the Territory and support the rapid adoption and uptake of the WHO HIV Treatment Guidelines in the Territory. If the Steering Committee is unable to agree on any amendments to the Engagement Plan by consensus within ten (10) Business Days of the matter first being discussed at a Steering Committee meeting following inclusion on a draft agenda

distributed to the Steering Committee Members, the issue shall be resolved pursuant to Clause 30.

6. Reporting

Annual reporting requirements

- 6.1 As soon as practicable and in any event by no later than 15 November in each Calendar Year of the term and provided that the MPPF receives the relevant information from the appropriate Third Parties, the MPPF shall provide to ViiV a written forecast (in a form that is satisfactory to ViiV) of the amount of Products it expects the Sublicensees to sell in the following Calendar Year, broken down in respect of each country in the Territory and each Product.
- 6.2 By no later than 31 March in each Calendar Year of the term, the MPPF shall deliver a written report (in a form that is satisfactory to ViiV) setting out, (i) on a country-by-country, Sublicensee-by-Sublicensee and Product-by-Product basis the total amount of Products sold by each Sublicensee in each country in the Territory in the previous Calendar Year; (ii) on a country-by-country and Product-by-Product basis the total amount of Product which was forecast to be sold in that Calendar Year pursuant to the relevant forecast in Clause 6.1; and (iii) the difference between the amounts in (i) and (ii) above and a summary of the reasons why such different amounts were sold (if and where applicable).

Quarterly reporting requirements

- 6.3 Within fifteen (15) Business Days after the end of each Agreement Quarter, the MPPF shall deliver a written report to ViiV consolidating the contents of all reports provided to the MPPF by each Sublicensee and setting out:
- (A) on a country-by-country, Sublicensee-by-Sublicensee and Product-by-Product basis:
- (1) the total amount of Products sold and/or supplied by each Sublicensee under the Sublicences for the immediately preceding Agreement Quarter;
 - (2) the total aggregate amount of Products sold and/or supplied by each Sublicensee under the Sublicences in that Calendar Year up to and including the immediately preceding Agreement Quarter;
 - (3) the royalty calculations with amounts due to ViiV in respect of each Sublicensee for the immediately preceding Agreement Quarter; and
 - (4) information on any regulatory activities as reported to the MPPF in accordance with clause 4.5 of each Sublicensee; and
- (B) on a country-by-country and Product-by-Product basis, the estimated total number of adults living with HIV that have been treated with a Product in the Calendar Year up to and including the immediately preceding Agreement Quarter.

Such report shall further include a written certification of an officer of the MPPF confirming that the MPPF has reviewed the contents of all reports provided to the MPPF by each Sublicensee in the preparation of this report and that, in the MPPF's reasonable opinion: (i) each Sublicensee's sales comply with the terms of the Sublicensee (including that sales were made pursuant to an Approved Public Market Procurement and sold for use by Adult

Patients in the Territory) and (ii) each Sublicensee's royalty calculations for the relevant period are correct.

Monthly reporting requirements

- 6.4 Within fifteen (15) Business Days of the end of each Calendar Month, the MPPF will provide to ViiV copies of all the Sublicensees' reports in respect of Products sold and/or supplied by such Sublicensees as provided to the MPPF pursuant to Clause 11.2 of the Sublicence, except that the MPPF shall not provide to ViiV any information regarding gross sales or Net Sales Value.
- 6.5 ViiV agrees to treat any information of Sublicensees provided to it under this Clause 6 as Confidential Information.

7. Approval Requests

The Parties acknowledge and agree that pursuant to the terms of the Sublicence, each Sublicensee is required to seek the MPPF's approval in respect of certain actions. The MPPF shall therefore:

- (A) promptly review every request by a Sublicensee for prior written approval of any sale or supply of Product by the Sublicensee within the Territory submitted pursuant to Clause 2.4 of the Sublicence. The MPPF shall promptly determine whether the proposed sale or supply (i) is to a Public Market in a country of the Territory and for a Usage Period evidenced by adequate documentation and (ii) is of a number of Units of Product(s) that is commensurate with the demand for Product(s) to treat ALHIV On Treatment in the Public Market in the country in the applicable Usage Period, as such demand is reasonably estimated by the MPPF, including by reviewing all relevant procurement documentation, any other appropriate evidence, and by taking into account all relevant sales of Product(s) for use in that country of the Territory made by other Sublicensees. If the proposed sale or supply is not to a Public Market in a country of the Territory, the documentary evidence in support of the Usage Period is not adequate (as reasonably determined by the MPPF), or the number of Units of Product(s) is not commensurate with the demand described above, the MPPF shall promptly (and in any event within five (5) Business Days of receipt of such request from the Sublicensee) notify the Sublicensee in writing that approval under Clause 2.4 of the Sublicence is not granted. The MPPF agrees that it shall in no event approve (or allow its approval to be deemed to be granted in respect of) any sale or supply of Product under Clause 2.4 of a Sublicence which would result in any Product Access Percentage in relation to a country of the Territory exceeding 100%. For the avoidance of doubt, the MPPF shall not provide its approval (or allow its approval to be deemed to be granted) in respect of a proposed sale or supply unless it has reviewed a copy of all relevant procurement documentation. Where a Sublicensee's request for approval includes a request that an increased Product Access Percentage should apply under Clause **Error! Reference source not found.** of the Sublicence, the MPPF shall promptly forward such request to ViiV and inform the Sublicensee that it has forwarded the request and that approval is not yet granted. ViiV shall promptly consider the request, and as soon as possible and in any event within 10 Business Days of receipt of all necessary supporting documents from the MPPF, inform the MPPF that (i) it approves the request (providing an increased Product Access Percentage to apply to the relevant Units of Product(s)), or (ii) rejects the request.

- (B) promptly review all requests by a Sublicensee for prior written approval of any of its Affiliates as an Approved Affiliate pursuant to Clause 1.9A of the Sublicence. The MPPF shall promptly assess whether such entity constitutes an Approved Affiliate and if (and only if) so, it shall promptly submit the details (including all supporting documents provided by the Sublicensee) of such Affiliate to ViiV for written approval. ViiV shall respond to the MPPF regarding such request for approval of an Approved Affiliate within thirty (30) days of receipt by ViiV of the appropriate supporting documents from the MPPF. For the avoidance of doubt, if the MPPF determines that such Affiliate does not constitute an Approved Affiliate, it shall promptly inform the Sublicensee of the same in writing.
- (C) promptly review all requests by a Sublicensee for prior written approval of any Third Party as an Approved Distributor pursuant to Clause 1.9B of the Sublicence. The MPPF shall promptly assess the proposed distribution arrangement and promptly inform the Sublicensee in writing whether it approves the distributor as an Approved Distributor. In the event that the MPPF considers (or ought reasonably to consider) that any ground for the withdrawal of such approval arises, it shall promptly inform ViiV of the same in writing (providing full details), and it shall withdraw or refrain from withdrawing such approval upon ViiV's request.
- (D) promptly review all requests by a Sublicensee for prior written approval pursuant to Clause 8.3 and/or Clause 10.3 of the Sublicence. The MPPF shall promptly assess whether the proposed use by the Sublicensee of any trade or service marks, trade dress (where applicable), symbols or devices in relation to the Product(s) or any of their packaging (whether external, intermediate or internal) or promotional material complies with the Trade Dress Guidance, and if (and only if) so, it shall promptly submit all relevant materials (including all samples and documentation provided by the Sublicensee, as applicable) to ViiV for written approval. ViiV shall respond to the MPPF regarding such request for approval within thirty (30) days of receipt by ViiV of all relevant materials necessary to consider the Sublicensee's request. For the avoidance of doubt, if the MPPF determines that any trade or service marks, trade dress, symbols or devices which the Sublicensee proposes to use in relation to the Product(s) or any of their packaging or promotional material do(es) not comply with the Trade Dress Guidance, it shall promptly inform the Sublicensee of the same. ViiV shall provide the MPPF with the Trade Dress Guidance and shall keep it up to date by including information such as specific tablet shapes, tablet colours and packaging colours to be avoided, and any additional new and/or future ViiV trade dress as soon as practicable after ViiV considers such information no longer to be confidential. The same Trade Dress Guidance as that provided by ViiV to the MPPF in connection with its Existing Adult Licences shall apply to the Sublicences and the MPPF shall provide such Trade Dress Guidance and each update thereto to each Sublicensee promptly after execution of each Sublicence or receipt of the same from ViiV, as applicable.

For the avoidance of doubt, if the MPPF repeatedly breaches the terms of this Clause 7, ViiV shall have the right to terminate this Agreement pursuant to Clause 15.4.

8. Sublicence Compliance Monitoring

- 8.1 The MPPF shall, using all reasonable care, diligence and skill, actively monitor each Sublicensee's compliance with the terms of its Sublicence, including:
- (A) procuring that all Sublicensees provide the sales reports referred to in Clauses 11.2 and 11.3 of the Sublicence in a timely manner and in accordance with the terms of

those Clauses and with the Reporting Guidance. If, notwithstanding the MPPF's efforts, a Sublicensee does not provide a sales report referred to in Clause 11.2 or 11.3 of the Sublicence within five (5) Business Days after the required ten (10) Business Day period under the terms of the Sublicence, the MPPF shall notify ViiV of the same and provide details of its efforts to procure such sales report to date;

- (B) procuring that all Sublicensees provide the regulatory reports referred to in Clauses 4.5 and 7.2 of the Sublicence in a timely manner and in accordance with the terms of those Clauses and with the Reporting Guidance (if applicable). If, notwithstanding the MPPF's efforts, a Sublicensee does not provide such a regulatory report within: (i) in the case of those reports under Clause 4.5 of the Sublicence, five (5) Business Days after the required ten (10) Business Day period under the terms of the Sublicence, or (ii) in the case of those reports under Clause 7.2 of the Sublicence, promptly following the end of the relevant annual period (or in the case of clinical trial reports at the conclusion of the relevant clinical research), the MPPF shall notify ViiV of the same and provide details of its efforts to procure such regulatory report to date;
- (C) verifying, using all reasonable skill and care, that the number of Units of Product(s) sold and/or supplied by Sublicensees for use in any country of the Territory for any period of time is commensurate with the demand for Product(s) to treat ALHIV On Treatment in the Public Market in such country, as reasonably estimated by the MPPF (including where applicable by reference to the details provided under Clause 6). If the number of Units of Product(s) sold and/or supplied by Sublicensee(s) for use in a country of the Territory exceeds such demand, the MPPF will take reasonable steps to determine whether such Sublicensee has breached the terms of its Sublicence (or whether such Sublicensees have breached the terms of their Sublicences, as applicable). The MPPF shall promptly notify ViiV: (i) of any such concern with respect to a Sublicensee; (ii) of the reasonable steps it is taking to determine if a breach of the Sublicence has occurred; and (iii) its conclusion following such steps as to whether a breach of the Sublicence has occurred. The MPPF agrees that in no event should the aggregate number of Units of Product(s) sold and/or supplied under the Sublicences for use in any given period of time in a country of the Territory exceed the number of Units of Product(s) necessary to treat all ALHIV On Treatment in such country in such period of time, as reasonably estimated by the MPPF;
- (D) verifying, using all reasonable skill and care, that all sales and supplies of Product(s) in each Agreement Quarter were made in accordance with an Approved Public Market Procurement, and promptly reporting in writing the outcome of such verification to ViiV and summarising the steps taken by the MPPF in reaching such outcome;
- (E) verifying, using all reasonable skill and care, the accuracy of any royalty calculation included in or accompanying a sales report provided by the Sublicensee pursuant to the terms of the Sublicence. If an error is identified by the MPPF in respect of such a royalty calculation, the MPPF shall promptly take all steps necessary to ensure that such error is rectified and that the correct amount of royalties payable under the Sublicence is remitted to ViiV;
- (F) ensuring the timely quarterly payment of royalties (together with any interest due) to ViiV (or to such other person as ViiV has nominated) pursuant to, and in accordance with, Clause 3 of the Sublicence, and ensuring the delivery of invoices from ViiV in

respect of royalties owed to it to each Sublicensee and procuring that all such invoices issued by ViiV to a Sublicensee are paid to ViiV on time; and

- (G) fully exercising the audit right set out in Clause 11.1 of the Sublicence at the MPPF's own cost as soon as the MPPF has reasonable cause to believe (or as soon as ViiV has notified the MPPF that ViiV has reasonable cause to believe) an audit is necessary (including where such a Party has reasonable grounds for suspecting non-compliance with the Sublicence).

For the avoidance of doubt, if the MPPF repeatedly breaches the terms of this Clause 8.1, ViiV shall have the right to terminate this Agreement pursuant to Clause 15.4.

- 8.2 Where the Sublicence requires a Sublicensee to obtain approval from ViiV, the MPPF shall facilitate the consideration of such requests by ViiV in accordance with Clause 2.10 of the Sublicence.
- 8.3 If the MPPF becomes aware of any act or omission of a Sublicensee which constitutes a breach of the relevant Sublicence (including pursuant to Clause 8.1(D) above), then the MPPF shall immediately notify ViiV of the same and:
 - (A) if such breach is capable of remedy and does not give rise to an immediate right of termination under the Sublicence, direct the relevant Sublicensee in writing to cure the breach, and provide a copy of that notice to ViiV; and
 - (B) if such breach remains uncured at the end of the specified period in the Sublicence, or if there are otherwise grounds for termination under the Sublicence, then in each case, if requested to do so by ViiV, the MPPF shall procure the termination of the relevant Sublicence in accordance with its terms.
- 8.4 The MPPF agrees to exercise the rights of ViiV as granted under Clause 18.3 of any Sublicence only as and to the extent requested in writing by ViiV. For the avoidance of doubt, this shall not affect or prejudice ViiV's ability to exercise its rights directly under any Sublicence. Upon ViiV's request, the MPPF shall provide all reasonable assistance to ViiV in any dispute that might arise between ViiV and a Sublicensee.
- 8.5 The MPPF's obligations under this Clause 8 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.

9. Liability and Indemnity

- 9.1 The MPPF shall be held jointly and severally liable with each Sublicensee for any breach of a Sublicence by such Sublicensee.
- 9.2 The MPPF undertakes to indemnify, defend and hold harmless ViiV and its Affiliates in respect of any and all losses, claims, liabilities, costs, awards, fines, penalties, damages and expenses (including, legal costs and other professional expenses) of any nature whatsoever and whether or not reasonably foreseeable or avoidable ("Losses") incurred by ViiV and/or its Affiliates arising out of, or in connection with any claim by a Third Party relating to:
 - (A) any breach by the MPPF of any provisions of this Agreement;
 - (B) any negligence or wilful misconduct by or on behalf of the MPPF; and/or

(C) any breach of a Sublicence by the MPPF or any Sublicensee,

except to the extent arising or resulting from ViiV's negligence or wilful misconduct.

- 9.3 If ViiV exercises its rights under Clause 9.2, ViiV shall: (i) provide the MPPF with prompt written notice of such Third Party claims; and (ii) grant the MPPF the right to control the defence or negotiation of settlement of such Third Party 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 which is reasonably requested by the MPPF in defending any claims (at the MPPF's cost).
- 9.4 ViiV will not be liable to the MPPF for any Losses incurred by the MPPF as a result of: (i) the MPPF's exercise of the rights granted to it under this Agreement; or (ii) a Sublicensee's exercise of the rights granted to it under a Sublicence, in both cases including any Losses in relation to any infringement of the intellectual property rights of any Third Party.
- 9.5 EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY OR OTHER THIRD PARTY RIGHTS, VALIDITY OR ENFORCEABILITY OF INTELLECTUAL PROPERTY RIGHTS, THE GRANT OF ANY PENDING PATENT APPLICATIONS, OR RELEVANCE OF THE PATENTS TO THE PRODUCTS, ARE MADE OR GIVEN BY OR ON BEHALF OF ViiV AND, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED. IN PARTICULAR NO REPRESENTATION OR WARRANTY IS MADE IN RESPECT OF THE ACCURACY OF ANY DETAILS PROVIDED IN RESPECT OF THE PATENTS INCLUDING THOSE SET OUT IN APPENDIX C OF THE SUBLICENCE.
- 9.6 Notwithstanding the foregoing, nothing in this Agreement shall limit or exclude the liability of either Party for death or personal injury resulting from negligence or fraud or fraudulent misrepresentation or other matters, the exclusion of liability for which is not allowable under applicable laws.

10. **Audit Rights**

- 10.1 During the term of this Agreement and for a period of three (3) years thereafter, ViiV and its Affiliates shall have the right to, upon reasonable advance written notice to the MPPF, and during normal business hours at a mutually agreed upon time (such agreement not to be unreasonably withheld or delayed), and through the engagement of an independent, internationally recognized accounting firm (at ViiV's expense and subject to confidentiality restrictions consistent with Clause 13), review and inspect records maintained by the MPPF in respect of its performance of this Agreement and the Sublicences and its compliance with applicable laws for the sole purpose of determining the MPPF's compliance with this Agreement, the Sublicences and applicable laws. The scope of any such review may at ViiV's discretion include the review of relevant internal procedures, training records, financial books and records and any other documents reasonably necessary to assess compliance by the MPPF with any of the terms of this Agreement or the Sublicence(s). The MPPF will cooperate fully with any audit and provide all reasonable assistance to ViiV and its representatives or contractors for completion of such audit. To the extent that any material deficiencies are identified as the result of such inspection, the MPPF shall take all reasonable corrective measures to remedy any such material deficiencies. For clarity, any examination or inspection by ViiV or its Affiliate shall be subject to the terms of Clause 13.

11. Intellectual Property

- 11.1 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.
- 11.2 ViiV agrees only to exercise the rights granted to it under Clause 9.2 of the Sublicence in accordance with the licence granted therein.
- 11.3 ViiV shall have the exclusive right, but shall be under no obligation whatsoever, to maintain, prosecute, renew, defend or enforce any of the Patents or Non-Territory Patents. For the avoidance of doubt, the MPPF shall have no rights whatsoever to maintain, prosecute, renew, defend or enforce any of the Patents or Non-Territory Patents and nor shall it purport to grant any such rights to any Sublicensee or Third Party.

12. Compliance

- 12.1 The MPPF agrees that it shall comply fully at all times with all applicable laws and regulations, including but not limited to anti-corruption laws, and that it has not, and covenants that it will not, in connection with the performance of this Agreement, directly or indirectly, make, promise, authorise, ratify or offer to make, or take any act in furtherance of any payment or transfer of anything of value for the purpose of influencing, inducing or rewarding any act, omission or decision to secure an improper advantage; or improperly assisting it or ViiV in obtaining or retaining business, or in any way with the purpose or effect of public or commercial bribery, and warrants that it has taken reasonable measures to prevent subcontractors, agents and any other Third Parties, subject to its control or determining influence, from doing so. For the avoidance of doubt this includes facilitating payments, which are unofficial, improper, small payments or gifts offered or made to Government Officials to secure or expedite a routine or necessary action to which either Party is legally entitled.
- 12.2 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 12. The MPPF shall have no claim against ViiV for compensation for any loss of whatever nature by virtue of the termination of this Agreement in accordance with this Clause 12.
- 12.3 The MPPF shall inform ViiV in writing, if, during the course of this Agreement, it is convicted of or pleads guilty to a criminal offence involving fraud or corruption, or becomes the subject of any government investigation for such offences, or is listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government programs.
- 12.4 The MPPF represents and warrants that except as disclosed to ViiV in writing prior to the commencement of this Agreement: (1) none of its senior management or significant donors (i.e. a donor contributing greater than 25% of the funding of the MPPF from time to time) have influence over ViiV's business; (2) no member of senior management team, members of the Board of Directors, or key individuals who will be responsible for the performance of this Agreement or any Sublicence, are currently or have been in the past two years a Government Official with actual or perceived influence which could affect ViiV business; (3) it is not aware of any immediate relatives (e.g. spouse, parents, children or siblings) of the persons listed in the previous subsection (2) having a public or private role which involves making decisions which could affect ViiV business or providing services or products to, or on behalf of ViiV; (4) it does not have any other interest which directly or indirectly conflicts with its proper and ethical performance of this Agreement; and (5) it shall maintain arm's

length relations with all Third Parties with which it deals for or on behalf of ViiV in performance of this Agreement. The MPPF shall inform ViiV in writing at the earliest possible opportunity of any conflict of interest as described in this Clause 12 that arises during the performance of this Agreement.

- 12.5 The MPPF shall ensure that all transactions under this Agreement are properly and accurately recorded in all material respects on its books and records and each document upon which entries in such books and records are based is complete and accurate in all material respects. The MPPF must maintain a system of internal accounting controls reasonably designed to ensure that it maintains no off-the-books accounts.
- 12.6 The MPPF agrees that in the event that ViiV believes that there has been a possible violation of the terms of this Agreement, ViiV may make full disclosure of such belief and related information at any time and for any reason to any competent government bodies and their agencies, and to whomsoever ViiV determines in good faith has a legitimate need to know.

Labour Rights

- 12.7 The MPPF represents and warrants, to the best of its knowledge, that in connection with this Agreement, it respects the human rights of its staff and does not employ child labor, forced labor, unsafe working conditions, or cruel or abusive disciplinary practices in the workplace and that it does not discriminate against any workers on any ground (including race, religion, disability, gender, sexual orientation or gender identity); and that it pays each employee at least the minimum wage, provides each employee with all legally mandated benefits, and complies with the laws on working hours and employment rights in the countries in which it operates. The MPPF shall be respectful of its employees' right to freedom of association and the MPPF shall encourage compliance with these standards by any supplier of goods or services that it uses in performing its obligations under this Agreement.

Adverse Experience Reporting

- 12.8 The responsibilities of the Parties for reporting of adverse drug experiences related to the Products to regulatory authorities in the Territory shall be performed in accordance with applicable laws and regulations. The responsibilities of the Parties for safety related or Product related inquiries shall be performed in accordance with applicable laws and regulations.
- 12.9 The MPPF hereby undertakes to (a) use reasonable efforts to monitor the activities and duties of each Sublicensee as regards pharmacovigilance obligations as set out in Clause 7 of the Sublicence, and (b) otherwise procure compliance by each Sublicensee with such Clause 7.

13. Confidentiality

- 13.1 Each Party shall hold the Confidential Information disclosed to it under or in connection with this Agreement in strict confidence and shall not use such Confidential Information for any other purpose than the performance of this Agreement.
- 13.2 The Party that releases, exchanges, or discloses Confidential Information (the "Disclosing Party") shall use reasonable efforts to mark such Confidential Information as "Confidential". In the event that Confidential Information is disclosed and not so marked, the receiving Party agrees to treat such information as confidential to the extent that a reasonable person would

consider such information to be confidential given the content and circumstances of the disclosure.

- 13.3 A receiving Party shall not disclose any Confidential Information received from the Disclosing Party and/or any of their Affiliates under or in connection with this Agreement, or otherwise developed by any party in the performance of activities in furtherance of this Agreement, except to such of its officers, employees, agents, representatives, Affiliates, advisors, consultants and Sublicensees to whom disclosure is necessary to exercise the Party's rights or perform the Party's obligations under this Agreement, and who are bound by confidentiality and non-use obligations (i) no less onerous than those contained in this Clause 13 and (ii) enforceable by the Disclosing Party.
- 13.4 The obligations in Clauses 13.1, 13.2 and 13.3 shall not apply to the following as established by reasonable, written proof:
- (a) information which at the time of disclosure is in the public domain; or
 - (b) information which, after its disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement; or
 - (c) information that a Party can demonstrate was lawfully possessed by it prior to disclosure under or in connection with this Agreement; or
 - (d) information that a Party receives from a Third Party which is not legally prohibited from disclosing such information; or
 - (e) information a Party is required by law to disclose, provided that the other Party is promptly notified of any such requirement; or
 - (f) information which is independently developed by the receiving Party or its Affiliates who had no knowledge of the Disclosing Party's Confidential Information.
- 13.5 If a receiving Party becomes obligated by law to disclose Confidential Information received under or in connection with this Agreement, or any portion thereof, to any Third Party, governmental authority or court, that Party shall immediately notify the Disclosing Party thereof of each such requirement and identify the Confidential Information to be disclosed so that the Disclosing Party may seek an appropriate protective order or other remedy with respect to narrowing the scope of such requirement and, to the extent necessary, waive the receiving Party's compliance with the confidentiality obligations of this Agreement.
- 13.6 The Parties acknowledge that disclosure of any Confidential Information in breach of this Agreement could give rise to irreparable injury to the non-breaching Party or its Affiliates and that such injury will not be adequately compensated by damages. Accordingly, the non-breaching Party and its Affiliates shall be entitled to the remedies of specific performance and injunctive relief or other equitable relief for any threatened or actual breach of this Clause 13. Such relief shall be in addition to all other remedies available to the non-breaching Party at law or in equity.
- 13.7 All Confidential Information shall remain the property of the Disclosing Party. In the event that a court or other legal or administrative tribunal of competent jurisdiction, directly or through an appointed master, trustee or receiver, assumes partial or complete control over the assets of a Party, based on the insolvency or bankruptcy of such Party (or based on any other analogous or similar status of that Party under foreign laws), the bankrupt or insolvent Party shall promptly notify the court or other tribunal:
- (a) that Confidential Information remains the property of the Disclosing Party; and
 - (b) of the confidentiality obligations under this Agreement.

In addition, the bankrupt or insolvent Party shall, to the extent permitted by law, take all steps necessary or desirable to maintain the confidentiality of such Confidential Information and to ensure that the court, other tribunal or appointee maintains such information in confidence in accordance with the terms of this Agreement.

- 13.8 For the avoidance of doubt, ViiV shall treat any information disclosed to it under Clauses 4.5 or 11 of the Sublicence as Confidential Information provided that ViiV shall be entitled to disclose information about the quantities of Products sold or supplied by Sublicensees on an aggregate basis provided such disclosure does not reveal any Confidential Information of any Sublicensee.
- 13.9 The obligations under this Clause 13 shall remain in full force and effect:
- (A) in perpetuity in relation to Appendix D (and all information contained therein) to the form of Sublicence under Schedule 1 to this Agreement and any Appendix D (and all information contained therein) of any Sublicence; and
 - (B) for the duration of this Agreement plus five (5) years in relation to all other Confidential Information.

14. Publicity and external communications

- 14.1 Each Party shall seek the other Party's written approval of any initial press release or public announcement concerning the grant, scope or terms of this Agreement ("Initial Announcement") prior to such press release, or any other publication regarding this Agreement, being made. Following the Initial Announcement, neither Party shall be required to seek the other Party's consent to respond to reactive statements to the Initial Announcement, provided such statements are accurate and not misleading.
- 14.2 the MPPF shall not refer to ViiV and/or its Affiliates, or ViiV's and/or its Affiliate(s)' trademarks and/or logos in any external communications without prior approval from ViiV, except where such reference is to the ViiV company name and is limited to a factual statement that ViiV is the licensor of the patents under this Agreement. For the avoidance of doubt, the MPPF shall in no circumstances refer to any brand name of ViiV and/or its Affiliates in any communication without ViiV's prior written approval.
- 14.3 Subject to Clauses 13, 14.1 and 14.2, neither Party shall be required to obtain the other Party's prior consent for any external communication relating to this Agreement.
- 14.4 The MPPF shall provide ViiV the opportunity to review and comment on the methodology behind any external communication regarding the MPPF's analysis of the economic and public health impact of this Agreement at least five (5) Business Days prior to publication of any such communication. For the avoidance of doubt, subsequent communications made by MPPF regarding its analysis of the economic and public health impact of this Agreement that are based on the methodology already reviewed by ViiV shall not require additional requests for review, however the MPPF will use reasonable endeavours to provide copies of any such communications to ViiV at least five (5) Business Days prior to publication, where practicable.
- 14.5 Each Party shall ensure that any external communication relating to this Agreement is accurate and not misleading.

14.6 Each Party acknowledges that it is solely responsible and liable for its communications relating to this Agreement, including compliance with any applicable codes, laws and/or regulations.

15. **Term and termination**

15.1 The term of this Agreement shall commence on the Effective Date and this Agreement shall continue in force, on a country-by-country basis, until the expiration, lapse or invalidation of the last remaining Patent in the Territory (unless terminated earlier in accordance with its terms).

15.2 Either Party may terminate this Agreement, upon written notice to the other Party, any time after the second (2nd) anniversary of the Effective Date if the terminating Party, in its reasonable opinion, believes that this Agreement is not achieving what the terminating Party intended this Agreement to achieve at the Effective Date with respect to improving access to the Product(s) in the Territory.

15.3 If ViiV believes that the MPPF is in breach of its material obligations hereunder, including but not limited to under Clause 8, then ViiV may deliver notice of such breach to the MPPF, and the MPPF shall have thirty (30) days from such notice to cure such breach. If the MPPF fails to cure that breach within such time period, then ViiV may terminate this Agreement effective on written notice of termination to the MPPF.

15.4 If the MPPF repeatedly breaches any of the terms of this Agreement, including but not limited to Clauses 7 and 8, then ViiV may terminate this Agreement with immediate effect by giving written notice of the same to the MPPF.

15.5 ViiV may terminate this Agreement immediately in accordance with Clause 12.

15.6 Either Party may terminate this Agreement in accordance with Clause 17.

15.7 ViiV may terminate this Agreement with immediate effect by providing written notice of the same to the MPPF, if the MPPF is subject to a change of Control. In this Clause 15.7, "Control" shall mean the ability of any corporation, firm, partnership or other entity to procure that the affairs of the MPPF are conducted in accordance with the wishes of such corporation, firm, partnership or other entity. For the avoidance of doubt, MPPF securing new or different funders or donors shall not constitute a change of Control under this Clause.

15.8 Either Party may immediately terminate this Agreement at any time upon written notice to the other Party if:

(A) such other Party is unable to pay its debts when due or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(B) a petition is filed, a resolution is passed, or an order is made, for or in connection with the winding-up of such other Party other than for the sole purpose of a scheme for a solvent amalgamation of such other Party with one or more other companies or the solvent reconstruction of that other Party, if not dismissed, bonded or stayed within forty-five (45) days, to the extent applicable; or

- (C) an application is made to court, or an order is made, for the appointment of an administrator, or if an administrator is appointed over such other Party, if not dismissed, bonded or stayed within forty-five (45) days, to the extent applicable; or
- (D) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause 15.8.

16. Consequences of expiry and termination

16.1 Upon the expiry of this Agreement, or in the event that this Agreement is terminated earlier in accordance with its terms:

- (A) all rights and licences granted hereunder (including those in Clause 2.1) shall immediately terminate;
- (B) the MPPF shall procure, and ViiV agrees, that each Sublicence granted and in full force and effect at the time of expiry or termination of this Agreement shall be:
 - (1) immediately terminated in accordance with its terms if that Sublicensee is in breach of the terms of the Sublicence; or
 - (2) converted (by way of the MPPF, ViiV and the relevant Sublicensee entering into a novation agreement transferring the rights and obligations of the MPPF under the Sublicence to ViiV) into a licence between ViiV and the relevant Sublicensee under the same terms and conditions of the Sublicence, provided that Sublicensee is not in breach of the Sublicence.
- (C) each Party shall promptly return or (at the other Party's election) destroy and irretrievably erase all embodiments of the other Party's Confidential Information which are in its power, possession, custody or control; provided, that (i) ViiV may retain copies of such of the MPPF's Confidential Information as may be required to be able to have the benefit of any continuing licences under Clause 16.1(B)(2); and (ii) each Party may retain one copy of such Confidential Information for the sole purpose of performing any continuing obligations hereunder or for archival purposes or as (and to the extent) required by applicable laws and shall continue to comply with the terms of Clause 13 in respect of the same.

16.2 Upon the termination of this Agreement, the MPPF shall have no claim for compensation for any loss of whatever nature arising as a result of such termination. To the extent (and only to the extent) that applicable law provides for compensation upon such an event, the MPPF hereby expressly agrees to waive this right (to the extent possible under the applicable law) or otherwise repay to ViiV any such compensation or indemnity.

16.3 Expiration or termination of this Agreement shall not affect any rights or remedies, obligations or liabilities of either Party that have accrued up to the date of termination or which later accrues from an act or omission which occurred prior to the expiration or termination date. Without limiting the foregoing, the provisions of Clauses 8.4, 9, 10, 11, 12.2, 12.8, 13 (subject to Clause 13.9), 16, 19, 22, 24 and 30 shall survive the expiration or termination of this Agreement.

17. Force Majeure

If the performance of any part of this Agreement by any Party, or of any obligation under this Agreement (other than those provisions which in any respect concern the payment under any indemnity or otherwise under this Agreement) is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the Party liable to perform (an "Event of Force Majeure"), unless conclusive evidence to the contrary is provided, the Party so affected shall, upon giving written notice to the other Party, be excused from such performance to the extent of such prevention, restriction, interference or delay, provided that the affected Party shall use its reasonable endeavours to avoid or remove such causes of non-performance and shall continue performance with the utmost dispatch whenever such causes are removed. If the Event of Force Majeure continues for a period of more than ninety (90) days, any Party not prevented, restricted, interfered with or delayed or otherwise in terms of performance may terminate this Agreement by providing a written termination notice to the other Party. Without limitation as to the possible types of Event of Force Majeure, an epidemic (excluding HIV epidemics), pandemic (excluding HIV pandemic), government collapse, government-imposed isolation or government-imposed quarantine shall be capable of constituting an Event of Force Majeure, provided that the elements of the definition of that term specified in this Clause 17 are satisfied.

18. [Intentionally deleted]

19. Third Party Rights

A person who is not a Party may not enforce any of the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

20. Severability

20.1 In the event that any portion of this Agreement is or is held by any court or tribunal of competent jurisdiction to be illegal, void, unenforceable or ineffective, the remaining portions hereof shall remain in full force and effect.

20.2 If any of the terms or provisions of this Agreement are in conflict with any applicable statute or rule of law, then such terms or provisions shall be deemed inoperative to the extent that they may conflict therewith and shall be deemed to be modified to the minimum extent necessary to procure conformity with such statute or rule of law.

20.3 In the event that the terms and conditions of this Agreement are materially altered as a result of Clauses 20.1 and 20.2 , the Parties will seek to renegotiate the terms and conditions of this Agreement to resolve any inequities. If the Parties cannot reach an agreement, they agree to submit their dispute to mediation in accordance with Clause 30 of this Agreement. In the event that the dispute remains unresolved, either Party may terminate this Agreement by providing a written termination notice to the other Party.

21. Entire Agreement

21.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous writings and understandings between the Parties relating to the transactions contemplated by this Agreement.

21.2 Each Party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of any other party before the date of this Agreement. Each

Party waives all rights and remedies which, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

21.3 Nothing in this Clause 21 limits or excludes any liability for fraud.

22. **Notices**

22.1 Any notice given by a Party under this Agreement shall:

- (A) be in writing and in English;
- (B) be signed by, or on behalf of, the Party giving it; and
- (C) and be sent to the relevant Party at the address set out in Clause 22.3.

22.2 Notices may be given, and are deemed received:

- (A) by hand: on receipt of a signature at the time of delivery;
- (B) by pre-paid recorded delivery or registered post: on the third (3rd) Business Day after posting;

22.3 Notices shall be sent to:

- (A) **the Medicines Patent Pool Foundation** for the attention of the General Counsel at:

Rue de Varembé 7
CH-1202 Geneva
Switzerland

- (B) **ViiV Healthcare Company** for the attention of the Head of International at:

ViiV Healthcare,
980 Great West Road,
Brentford,
Middlesex TW8 9GS,
United Kingdom,

Copied to the Head of Legal for International, at ViiV Healthcare, 980 Great West Road, Brentford, Middlesex, TW8 9GS, United Kingdom.

22.4 Any change to the contact details of a Party as set out in Clause 22.1 shall be notified to the other Party in accordance with Clause 22.1 and shall be effective:

- (A) on the date specified in the notice as being the date of such change, provided such date is on or after the date the notice is deemed to be received; or
- (B) if no date is so specified, three (3) Business Days after the notice is deemed to be received

22.5 All references to time are to the local time at the place of deemed receipt.

22.6 The provisions of this Clause 22 shall not apply to notices given in legal proceedings or arbitration.

22.7 For the avoidance of doubt, and although a notice given under this Agreement is not valid if sent by e-mail, this Clause 22 is not intended to prohibit the use of e-mail for day-to-day operational communications between the Parties, including where this Agreement requires written approval by a Party.

23. Assignment and Sub-Contracting

23.1 Neither this Agreement nor any interest arising out of or under this Agreement shall be assignable by the MPPF.

23.2 Neither Party shall be entitled to subcontract any of its rights or obligations under this Agreement provided however that each Party shall have the right to engage professional agents, advisors and/or consultants in relation to performance of this Agreement.

24. Further Assurance

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.

25. Costs

Each Party shall pay the costs and expenses incurred by it in connection with the entering into of this Agreement.

26. Amendments

The Parties agree that any amendment of this Agreement shall not be effective unless set out in writing, expressed to amend this Agreement and signed by authorised representatives of each of the Parties. For the avoidance of doubt, and notwithstanding the rights of the MPPF pursuant to Clause 25 of the Sublicence, the MPPF shall not amend Appendix C of any Sublicence without ViiV's express prior consent in writing, signed by or on behalf of ViiV.

27. Waiver

The rights of each Party under this Agreement: (a) may be exercised as often as necessary; (b) are cumulative and not exclusive of rights or 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.

28. No Agency

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties, nor constitute either Party as the agent of the other Party.

29. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

30. Governing Law and Jurisdiction

- 30.1 This Agreement and any dispute or claim arising under or relating to this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 30.2 Any dispute between the Parties relating to this Agreement will first be submitted in writing by one Party to the other Party's senior executive who shall (unless otherwise notified in writing) be the Head of International for ViiV and the Executive Director for the MPPF, who will promptly meet and confer in an effort to resolve such dispute. In the event the executives are unable to resolve any dispute within fourteen (14) days after submission to them, then, upon either Party's written notice, the Parties shall promptly engage in mediation in accordance with the WIPO Mediation Rules. If the dispute remains outstanding after sixty (60) days from the date when it was first referred to mediation by 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.
- 30.3 Subject to Clauses 30.2 and 30.4, the English courts shall 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. The Parties waive any objection to the English courts on the grounds that they are an inconvenient or inappropriate forum to settle any such dispute.
- 30.4 Without prejudice to the foregoing in relation to the MPPF, nothing in this Clause 30 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 Parties hereby agree.

[Signature page follows]

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

Signed for and on behalf of:
VIIV HEALTHCARE COMPANY

Lynn Baxter

Signature

Name LYNN BAXTER

Position PRESIDENT

Date 25 NOV 2020

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

Charles Gore

Signature

Name CHARLES GORE

Position EXECUTIVE DIRECTOR

Date 26 / 11 / 2020

SCHEDULE 1 : FORM OF SUBLICENCE

SCHEDULE 2 : FORM OF LETTER OF INDEMNITY

[ON THE LETTERHEAD OF THE LICENSEE¹]

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

Date: [•]

Dear Sirs

Letter of indemnity regarding the Licence Agreement in relation to adult patients between the Medicines Patent Pool Foundation and [insert name of the Licensee] dated [insert date]

We refer to the licence agreement in relation to antiretroviral patents between the Medicines Patent Pool Foundation and ourselves, [insert name of the Licensee] (the "Licensee") dated [insert date] (the "Licence Agreement") under which the Licensee was granted licences relating to the Patents and the Non-Territory Patents (as such terms are defined under the Licence Agreement).

It is noted that ViiV Healthcare Company and/or its Affiliates (together "ViiV") own the rights, title and interest in and/or is the licensee of the Patents and the Non-Territory 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 losses, claims, liabilities, costs, awards, fines, penalties, damages and expenses (including, legal costs and other professional expenses) of any nature whatsoever and whether or not reasonably foreseeable or avoidable ("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 the Licensee pursuant to the Licence 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 to this letter hereby agree that the provisions of Appendix 1 hereto shall apply and, further, the Licensee hereby represents and warrants in the terms of the representations and warranties set out in Appendix 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 laws of England and Wales and the English courts shall have

¹ Note: To include the Licensee's registered address.

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 DEED² by)
[NAME OF LICENSEE])
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 COMPANY)
acting by:)
in the presence of:) _____ Director

Witness's signature: _____

Name: _____

Address: _____

² Note: To be executed in a way that is binding upon the Licensee.

APPENDIX 1

ANTI-CORRUPTION

- 1) The Licensee agrees that it shall comply fully at all times with all applicable laws and regulations, including but not limited to anti-corruption laws, and that it has not, and covenants that it will not, in connection with the performance of the Licence Agreement, directly or indirectly, make, promise, authorise, ratify or offer to make, or take any act in furtherance of any payment or transfer of anything of value for the purpose of influencing, inducing or rewarding any act, omission or decision to secure an improper advantage; or improperly assisting it or ViiV in obtaining or retaining business, or in any way with the purpose or effect of public or commercial bribery, and warrants that it has taken reasonable measures to prevent subcontractors, agents and any other Third Parties, subject to its control or determining influence, from doing so. For the avoidance of doubt this includes facilitating payments, which are unofficial, improper, small payments or gifts offered or made to Government Officials to secure or expedite a routine or necessary action to which either party is legally entitled. For the purpose of this Appendix 1, "Government Official" (where 'government' means all levels and subdivisions of governments, i.e. local, regional, national, administrative, legislative, executive, or judicial, and royal or ruling families) means: (a) any officer or employee of a government or any department, agency or instrumentality of a government (which includes public enterprises, and entities owned or controlled by the state); (b) any officer or employee of a public international organisation such as the World Bank or United Nations; (c) any officer or employee of a political party, or any candidate for public office; (d) any person defined as a government or public official under applicable local laws (including anti-bribery and corruption laws) and not already covered by any of the above; and/or (e) any person acting in an official capacity for or on behalf of any of the above. "Government Official" shall include any person with close family members who are Government Officials (as defined above) with the capacity, actual or perceived, to influence or take official decisions.
- 2) The Licensee shall inform ViiV in writing, if, during the term of the Licence Agreement, it is convicted of or pleads guilty to a criminal offence involving fraud or corruption, or becomes the subject of any government investigation for such offences, or is listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government programs.
- 3) The Licensee represents and warrants that except as disclosed to ViiV in writing prior to the commencement of the Licence Agreement: (1) none of its significant shareholders (>25% shareholding) or senior management have influence over ViiV's business; (2) no significant shareholders (>25% shareholding), members of senior management team, members of the Board of Directors, or key individuals who will be responsible for the performance of the Licence Agreement, are currently or have been in the past two years a Government Official with actual or perceived influence which could affect ViiV business; (3) it is not aware of any immediate relatives (e.g. spouse, parents, children or siblings) of the persons listed in the previous subsection (2) having a public or private role which involves making decisions which could affect ViiV business or providing services or products to, or on behalf of ViiV; (4) it does not have any other interest which directly or indirectly conflicts with its proper and ethical performance of the Licence Agreement; and (5) it shall maintain arm's length relations with all Third Parties with which it deals in the performance of the Licence Agreement. The Licensee shall inform ViiV in writing at the earliest possible opportunity of any conflict of interest as described in this clause that arises during the performance of the Licence Agreement.

- 4) ViiV shall have the right during the term of the Licence Agreement to conduct an audit of the Licensee's activities under the Licence Agreement to monitor compliance with the terms of this Appendix 1. The Licensee shall cooperate fully with such audit, the scope, method, nature and duration of which shall be at the sole reasonable discretion of ViiV.
- 5) 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 in such books and records are based is complete and accurate in all material respects. The Licensee must maintain a system of internal accounting controls reasonably designed to ensure that it maintains no off-the-books accounts.
- 6) The Licensee agrees that in the event that ViiV believes that there has been a possible violation of the terms of the Licence Agreement, ViiV may make full disclosure of such belief and related information at any time and for any reason to any competent government bodies and their agencies, and to whomsoever ViiV determines in good faith has a legitimate need to know.
- 7) 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 Appendix 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 Appendix 1. To the extent (and only to the extent) that applicable law provides 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.