

THIS LICENCE AGREEMENT is made on

04/04/2020

2020

BETWEEN:

- (1) **Diamedica (UK) Limited** incorporated and registered in England with company number 06560532 whose registered office is at Goodwood House, Blackbrook Park Avenue, Taunton, Somerset, United Kingdom, TA1 2PX ("**Licensor**");
- (2) **The Minister for the Cabinet Office** of 1 Horse Guards Road, London SW1A 2HQ, acting as part of the Crown ("**Licensee**").

WHEREAS:

- (A) The Licensor has developed and own rights in a design of ventilators known as "Helix", and also own rights in significant elements of a new design of ventilators known as "Jarrehead".
- (B) The Licensee wishes to develop, manufacture and sell ventilators for use in the United Kingdom incorporating elements of such designs.
- (C) The Licensee wishes to receive and the Licensor is willing to grant to the Licensee, a licence on the terms and conditions set out in this Agreement to use the relevant designs in order to manufacture, use and sell or otherwise deal in the Licensed Products (as defined below).
- (D) The Licensor is willing to provide advice, guidance and support to the Licensee on the terms and conditions set out in this Agreement.

IT IS AGREED:

1 Interpretation

The definitions and rules of interpretation in this clause apply in this Agreement.

1.1 Definitions

"Confidential Information" means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential. The Technical Information shall be Confidential Information.

"Effective Date" means the date of this Agreement.

"Force Majeure Event" means any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Agreement but excluding any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned.

"Foreground IPR" means any Intellectual Property Rights generated pursuant to this Agreement including the exploitation of the Licensed Rights under this Agreement and the advice, guidance and support provided by the Licensor under this Agreement.

"Helix Products" means the ventilator products marketed and supplied by the Licensor known as "Helix".

"Improvement" means any improvement, enhancement or modification to the design and technology which is the subject of the Licensed Rights.

"Insolvency Event" in respect of a person: (i) if that person is insolvent; (ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; or (iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Jarrehead Product" means the ventilator design known as "Jarrehead".

"Licensed Products" means respiratory support or ventilation devices, and any product or component thereof, which embodies, incorporates or utilises any of the Licensed Rights, in each case solely for use in the United Kingdom to provide healthcare funded by the public sector.

"Licensed Rights" means: (i) any and all Intellectual Property Rights in the Helix Products; (ii) the Intellectual Property Rights owned by the Licensor in the Jarrehead Product; (iii) the Intellectual Property Rights in the Technical Information; and (iv) any software forming part of (i), (ii) or (iii).

"Manufacturers" means (i) Cogent Technology Limited; (ii) Plexus Corp (UK) Limited; and (iii) in the event that the Licensee is unable to source sufficient Licensed Products from the existing Manufacturers, any additional third party manufacturer(s) approved in advance in writing by the Licensor, such approval not to be unreasonably withheld or delayed.

"Party" means either of the parties to this Agreement, and **"Parties"** means both of them.

"Quarterly Periods" means the periods of three months commencing on 1 January, 1 April, 1 July and 1 October respectively.

"Request for Information" has the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply).

"Technical Information" means all know-how, experience, drawings, designs, circuit diagrams, manufacturing instructions and all other technical information relating to the

development, manufacture or supply of the Licensed Products, including full product specifications and instruction manuals for the Helix Products and the Jarrehead Product.

“**VAT**” means value added tax chargeable under the Value Added Tax Act 1994.

“**Working Day**” means Monday to Friday other than bank holidays in England and Wales.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. A reference to writing or written includes fax and email.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Grant

- 2.1 The Licensor hereby grants to the Licensee a worldwide, non-exclusive, irrevocable licence of the Licensed Rights to develop, make, have made, modify, use, sell and have sold or otherwise supply Licensed Products for the term of this Agreement.
- 2.2 The Licensee agrees not to exploit the Licensed Rights to manufacture any ventilator device for use outside the United Kingdom.
- 2.3 Where the Licensor or any of its affiliates develops any Improvements during the term of this Agreement, the Licensor shall notify the Licensee in writing and such Improvements shall form part of the licence granted under clause 2.1.
- 2.4 The Licensee shall have the right to grant to any person a sub-licence of any of its rights under this Agreement provided that: (i) the Licensee may only sub-licence its right to make or have made the Licensed Products to the Manufacturers; (ii) in each case the Licensee shall remain liable for the compliance of any sub-licensee with this licence and that such sub-licences shall include obligations of confidentiality in respect of the Licensor's Confidential Information; and (iii) all sub-licences granted shall terminate automatically on termination or expiry of this Agreement; and (iv) no sub-licence may be granted of rights in the Technical Information other than to the Manufacturers, save that (iv) shall not apply to the extent that a sub-licence is necessary: (a) for any safety or regulatory purposes; or (b) in respect of any manuals or software forming part of the Technical Information, to permit the use, operation and maintenance of the Licensed Products by end users and/or to provide support to such end users. Where Technical Information other than manuals or software is reasonably

required to permit the use, operation and maintenance of the Licensed Products by end users, or to provide support to such end users, the relevant rights in the Technical Information may be sub-licensed for such purposes subject to the prior written consent of the Licensor, such consent not to be unreasonably withheld or delayed.

- 2.5 The Licensor shall as soon as practicable following the Effective Date provide to the Licensee (or such sub-licensee as the Licensee may designate):

- 2.5.1 copies of the Technical Information which is within the control of the Licensor;
- 2.5.2 copies of any software forming part of the Licensed Rights in both source code and object code form;
- 2.5.3 copies of all documentation within the control of the Licensor that are reasonably necessary to make the relevant Licensed Products in accordance with the relevant Technical Information;
- 2.5.4 reasonable cooperation to facilitate such technical transfer; and
- 2.5.5 reasonable access to Licensor's personnel or agents, to answer questions and provide technical support for such manufacturing,

provided that within a reasonable time after the Licensee (and any sub-licensee) stops making the Licensed Products, any documents provided by the Licensor under this clause shall be returned to the Licensor or destroyed (and if destroyed, their destruction shall be confirmed to the Licensor). All know how and information supplied to the Licensee (or its sub-licensees) under this clause 2.5 shall be deemed to form part of the Licensed Rights.

- 2.6 The Licensee shall promptly provide the Licensor on request with copies of all written communications involving the Licensee relating to the Helix Products and/or the Jarrehead Product, with any regulatory, industry or other authority which are relevant to the exploitation of the Licensed Rights by the Licensee.
- 2.7 The Licensor acknowledges that all Foreground IPR shall be the exclusive property of the Licensee or, where applicable, the relevant sub-licensee. The Licensor hereby assigns, by way of present and future assignment, all its rights, title, and interest in the Foreground IPR to the Licensee and shall do all acts and things, and execute such documents, reasonably required to vest any Foreground IPR in the Licensee. To the extent that any Foreground IPR assigned to the Licensee under this clause 2.7 constitutes an Improvement, the Licensee hereby grants to the Licensor a worldwide, perpetual, irrevocable, non-exclusive, royalty free licence with the right to sub-licence to use and exploit any such Foreground IPR.

3 Consultancy

- 3.1 The Licensor shall, on request from the Licensee, provide advice, guidance and support to the Licensee (and its sub-licensees) in respect of the design, development, testing and manufacture of the Licensed Products, including obtaining and/or complying with any regulatory approval for or consent to market the Licensed Products.
- 3.2 Such advice, guidance and support shall be provided at the times and locations and in the form agreed between the Parties.

- 3.3 The Licensor shall keep a written record of the time spent providing such support, and shall promptly make such record available to the Licensee on request.

4 Payment

- 4.1 The Licensee shall pay to the Licensor a royalty per unit of Licensed Product manufactured, sold, transferred or otherwise supplied, provided always that in respect of any unit of Licensed Product manufactured, sold, transferred or otherwise supplied, only a single royalty shall be payable. The applicable royalty shall be [REDACTED] per unit of Licensed Product based on the Helix Product design or [REDACTED] per unit of Licensed Product based on the Jarrehead Product design.
- 4.2 The Licensee shall pay to the Licensor a consultancy fee of [REDACTED] per day for advice, guidance and support provided pursuant to clause 3.
- 4.3 All sums payable under this Agreement are stated exclusive of VAT (or similar tax) and shall be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. The Licensor shall issue a VAT invoice to the Licensee for sums falling due under this Agreement.
- 4.4 Sums payable under this Agreement shall be paid in sterling to the credit of a bank account to be designated in writing by the Licensor.
- 4.5 Royalties payable under this Agreement shall be paid within 30 days of the end of each successive Quarterly Period. Consultancy fees payable under this Agreement shall be paid within 30 days of the end of the month in which the advice, guidance or support was provided.
- 4.6 Within 14 days of the end of each Quarterly Period, the Licensee shall submit or cause to be submitted to the Licensor a statement in writing recording the calculation of such royalties payable and in particular:
- 4.6.1 the Quarterly Period for which the royalties were calculated;
 - 4.6.2 the number of units of Licensed Products manufactured, sold, transferred or otherwise supplied during the Quarterly Period;
 - 4.6.3 whether such units of Licensed Products were based on the Helix Products design or the Jarrehead Product design; and
 - 4.6.4 the amount of royalties due and payable.
- 4.7 The Licensee shall keep proper records and books of account showing the number of Licensed Products manufactured, sold, transferred or otherwise supplied by the Licensee and each sub-licensee under this Agreement, and whether such units of Licensed Products were based on the Helix Products design or the Jarrehead Product design. Such records and books shall be open during normal business hours to inspection and audit by the Licensor (or its authorised representative or its designated auditor), who shall be entitled to take copies of or extracts from them. If such inspection or audit should reveal a discrepancy in the royalties paid from those payable under this Agreement, the Licensee shall make up the shortfall. Such right of inspection of the Licensor shall remain in effect for a period of one year after the termination or expiry of this Agreement.

- 4.8 In the event of any delay in paying any sum due under this clause 4 by the due date, the Licensor shall be entitled to charge interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount.
- 4.9 The provisions of this clause 4 shall remain in effect notwithstanding termination or expiry of this Agreement until the settlement of all subsisting claims by the Licensor.
- 4.10 The Licensor agrees and accepts that the royalty payable under this Agreement is in full and final compensation for the licence granted under this Agreement and the Licensor waives any rights to claim royalties other than as set out in this Agreement in respect of such licence, whether under statute or otherwise.

5 Duration

- 5.1 This Agreement shall come into force on the Effective Date and, unless terminated earlier in accordance with clause 8, shall remain in force until the later of:
- 5.1.1 12 months from the Effective Date; and
- 5.1.2 the date on which the UK Government confirms that the Covid-19 pandemic has ended.

6 Warranties

- 6.1 The Licensor warrants that:
- 6.1.1 It is entitled to enter into this Agreement and grant the licences granted by the Licensor hereunder;
- 6.1.2 the Licensor owns or is licensed to use and sub-licence the Licensed Rights;
- 6.1.3 the Helix Product is CE marked in respect of its use as a ventilator device for the treatment of humans; and
- 6.1.4 the Licensor has received no reports of adverse effects arising from use of the Helix Products during the 5 years that the Helix Products have been supplied by the Licensor.

7 Indemnity

- 7.1 The Licensee shall bear all liability arising out of or in connection with use of the Licensed Products except to the extent that such liability arises as a result of the Licensor's breach of its warranties under clause 6.
- 7.2 The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including any reasonable professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with any Licensed Products made pursuant to the licence granted under this Agreement provided that this indemnity shall not apply if such liability arises as a result of the Licensor's breach of its warranties under clause 6.

- 7.3 The Licensee's liability under this indemnity is conditional on the Licensor discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Licensor that may reasonably be considered likely to give rise to a liability under this indemnity ("**Claim**"), the Licensor shall:
- 7.3.1 as soon as reasonably practicable, give written notice of the Claim to the Licensee, specifying the nature of the Claim in reasonable detail;
 - 7.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Licensee;
 - 7.3.3 give the Licensee and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Licensor, to enable the Licensee and its professional advisers to examine them and to take copies (at the Licensee's expense) to assess the Claim; and
 - 7.3.4 be deemed to have given the Licensee sole authority to avoid, dispute, compromise or defend the Claim, provided that the Licensee shall not settle or compromise the Claim in any way which materially adversely impacts on the Licensor without the prior written consent of the Licensor, such consent not to unreasonably withheld or delayed.
- 7.4 Nothing in this clause 7 shall restrict or limit the Licensor's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnity in this clause 7.
- 7.5 Each Party shall notify the other Party immediately if it becomes aware of any claims, potential claims, risks or potential risks with respect to the Helix Products and/or the Jarrehead Product.

8 Ending the Agreement without a reason

- 8.1 The Licensee has the right to terminate this Agreement at any time without reason or liability by giving the Licensor not less than 30 days' written notice.

9 What happens if the Agreement ends

- 9.1 Where this Agreement is terminated:
- 9.1.1 the accumulated rights of the Parties are not affected;
 - 9.1.2 the Licensee must promptly delete or return the Technical Information and of any information (whether or not technical) of a confidential nature except where required to retain copies by law;
 - 9.1.3 the licence granted to the Licensor in clause 2.7 shall continue; and
 - 9.1.4 save as expressly provided, all rights and licences granted pursuant to this Agreement shall cease.
- 9.2 On expiry or termination of this Agreement, the Licensee and its sub-licensees shall have the right to sell, supply, transfer or otherwise dispose of all stocks of Licensed

Products in its or their possession and all Licensed Products in the course of manufacture at the date of termination, provided that any royalty payable under the provisions of clause 4.1 is paid to the Licensor in accordance with the provisions of clause 3. Existing Licensed Products may continue to be used within the United Kingdom following termination or expiry of this Agreement.

- 9.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 9.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 9.5 The Licensee agrees that, in the event that it intends to resell any used Licensed Products (or any component parts of such used Licensed Products), it will notify the Licensor in writing, and will enter into commercial negotiations with the Licensor on the terms of an agreement for the Licensor to acquire such used Licensed Products. Where the terms of such an agreement are not agreed within 30 days of the date of such notice, the Licensee shall be free to resell any such used Licensed Products or component parts to any third party within the United Kingdom.

10 Liability

- 10.1 Nothing in this Agreement shall limit or exclude the liability of either Party for:
- 10.1.1 death or personal injury caused by its negligence;
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 10.1.4 breach of section 2 of the Consumer Protection Act 1987.
- 10.2 Nothing in this Agreement shall limit the Licensee's liability under the indemnity in clause 7.
- 10.3 Subject to clause 10.1, neither Party shall under any circumstances whatsoever be liable to the other Party for any loss of profit, loss of business, loss of anticipated saving or any special, indirect or consequential damage whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.
- 10.4 Subject to clauses 10.1 and 10.3, the Licensor's total aggregate liability to the Licensee under or in relation to this Agreement, whether in contract, tort (including negligence) or otherwise shall not exceed £5,000,000
- 10.5 Subject to clauses 10.1, 10.2 and 10.3, the Licensee's total aggregate liability to the Licensor under or in relation to this Agreement, whether in contract, tort (including negligence) or otherwise shall not exceed £5,000,000.

11 Confidentiality

- 11.1 Each Party must:
- 11.1.1 keep all Confidential Information it receives confidential and secure;

- 11.1.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Agreement (which includes, in the case of the Licensee, disclosure to sub-licensees provided such sub-licensees are under obligations of confidence); and
 - 11.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 11.2 In spite of clause 11.1, either Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- 11.2.1 where disclosure is required by applicable law or by a court with the relevant jurisdiction if (where possible) the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 11.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
 - 11.2.3 if the information was given to the recipient Party by a third party without obligation of confidentiality;
 - 11.2.4 if the information was in the public domain at the time of the disclosure;
 - 11.2.5 if the information was independently developed without access to the disclosing Party's Confidential Information;
 - 11.2.6 to its auditors or for the purposes of regulatory requirements;
 - 11.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
 - 11.2.8 to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 11.3 The Licensee may disclose Confidential Information in any of the following cases:
- 11.3.1 on a confidential basis to the employees, agents, consultants and contractors of the Licensee; and
 - 11.3.2 where requested by Parliament.
- 11.4 For the purposes of clauses 11.2 and 11.3 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 11.1.
- 11.5 The Licensor must not make any press announcement or publicise this Agreement or any part of it in any way, without the prior written consent of the Licensee.

12 Freedom of Information Act

- 12.1 The Licensor must tell the Licensee within 48 hours if it receives a Request for Information.

- 12.2 Within the required timescales the Licensor must give the Licensee full co-operation and information needed so the Licensee can:
- 12.2.1 comply with any Freedom of Information Act request;
 - 12.2.2 comply with any Environmental Information Regulations request.
- 12.3 The Licensee may (and, in the case of any request for disclosure of the Technical Information, will) talk to the Licensor to help it decide whether to publish information under this clause 12, and shall give due consideration to any views expressed by the Licensor in respect of such request for disclosure. However, the extent, content and format of the disclosure is the Licensee's decision.

13 General

- 13.1 If any part of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Agreement as much as required and rendered ineffective as far as possible without affecting the rest of the Agreement, whether it's valid or enforceable.
- 13.2 The provisions incorporated into the Agreement are the entire agreement between the Parties. The Agreement replaces all previous statements and agreements whether written or oral. No other provisions apply.
- 13.3 No third parties may use the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect third party rights and remedies that exist independently from such Act.
- 13.4 A Party affected by a Force Majeure Event is excused from performing its obligations under the Agreement while the inability to perform continues, if it both:
- 13.4.1 provides written notice to the other Party;
 - 13.4.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 13.5 The Agreement does not create a partnership, joint venture or employment relationship between the Parties.
- 13.6 A partial or full waiver or relaxation of the terms of the Agreement is only valid if it is stated to be a waiver in writing to the other Party.
- 13.7 The Licensor cannot assign this Agreement without the Licensee's written consent.
- 13.8 The Licensee can assign, novate or transfer its Agreement or any part of it to any Crown Body, public or private sector body which performs the functions of the Licensee. When the Licensee exercises such rights, the Licensor must enter into a novation agreement in the form that the Licensee reasonably specifies or such other form as is agreed between the Parties, each acting reasonably. The Licensor can terminate any Agreement novated under this clause to a private sector body that is experiencing an Insolvency Event.
- 13.9 Either Party can request a variation to the Agreement which is only effective if agreed in writing and signed by each Party. The Licensee is not required to accept a variation request made by the Licensor.

- 13.10 All notices under the Agreement must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective when sent unless an error message is received. Notices must be sent to the address of the other Party in this Agreement. This clause does not apply to the service of legal proceedings.
- 13.11 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request, meet in good faith to resolve the dispute. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If any Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clause 13.12. The Agreement, and the licences granted under it, is not suspended during any dispute.
- 13.12 The Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 13.12.1 determine the dispute;
 - 13.12.2 grant interim remedies; and
 - 13.12.3 grant any other provisional or protective relief.
- 13.13 This Agreement and any issues arising out of, or connected to it, are governed by English law.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by [REDACTED]
for and on behalf of
DIAMEDICA (UK) LIMITED

[REDACTED]
Director

Signed by [REDACTED]
[REDACTED] acting on behalf of
THE MINISTER FOR THE
CABINET OFFICE

[REDACTED]
Authorised Signatory