9. INVENTIONS, KNOW-HOW AND PATENTS.

9.1 Existing Intellectual Property.

ALL EXISTING INTELLECTUAL PROPERTY OF EITHER PARTY, INCLUDING ALL PATENTS, INFORMATION, AND OTHER INTELLECTUAL PROPERTY OWNED BY SUCH PARTY AS OF THE EFFECTIVE DATE, SHALL REMAIN THE SOLE PROPERTY OF SUCH PARTY, SUBJECT TO THE RIGHTS AND LICENSES GRANTED TO THE OTHER PARTY UNDER SUCH INTELLECTUAL PROPERTY EXPRESSLY PROVIDED IN THIS AGREEMENT. OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY GRANTS ANY RIGHT, TITLE, OR INTEREST IN ANY PATENT, INFORMATION, OR OTHER INTELLECTUAL PROPERTY RIGHT CONTROLLED
9.2 **Ownership of Inventions.**

(a) Ownership of inventions, developments or discoveries, in each case, with respect to Licensed Products, whether patentable or non-patentable, invented or otherwise discovered or generated during the Term in the course of performing each Party's obligations under this Agreement and the Development Plan ("Inventions"), and any and all intellectual property rights therein, shall be determined in accordance with the rules of inventorship in accordance with United States patent law.

For clarity, (i) Licensor M shall solely own any Inventions and intellectual property rights therein that are made, conceived, reduced to practice, authored, or otherwise discovered solely by M or any of its employees, Affiliates, licensees, sublicensees (where permitted), independent contractors, or agents including, without limitation, any Patent in which all of the claims included in such Patent claim only such solely owned Invention (the "M Inventions"), (ii) Licensee A shall solely own any Inventions and intellectual property rights therein that are made, conceived, reduced to practice, authored, or otherwise discovered
solely by A or any of its employees, Affiliates, licensees, sublicensees (where permitted), independent contractors, or agents including, without limitation, any Patent in which all of the claims included in such Patent claim only such solely owned Invention (the “A Inventions”), and (iii) the Parties shall jointly own any Inventions and intellectual property rights therein that are made, conceived, reduced to practice, authored, or otherwise discovered jointly by the Parties or any of their employees, Affiliates, licensees, sublicensees (where permitted), independent contractors, or agents including, without limitation, any Patent on such jointly owned Invention (each, a “Joint Invention”).

Subject, in all cases, to the applicable terms and conditions of this Agreement, each Party shall have the right to use and license such Joint Inventions and all intellectual property rights therein for any and all purposes without the need to account to or seek permission from the other Party; provided, however, that neither Party shall assign or transfer any such Joint Invention to a Third Party without the prior written consent of the other Party. For clarity, the foregoing shall not be construed as granting or conveying to either Party any license or other rights to the other Party’s other intellectual property rights, unless otherwise expressly set forth in this Agreement.
(b) Notwithstanding the foregoing, if any Patent from an A Invention claims priority to one or more Patents included in the M Patent Rights, and/or A reasonably believes that the claims of any Patent filed with respect to such A Invention would be anticipated by such M Patent Right in such a way as to prevent a Patent from issuing from such A Invention, A may, at its sole discretion, assign to M without additional consideration all of its right, title and interest in and to an A Invention (thereafter an “Assigned Invention”), and (i) all Assigned Inventions shall thereafter be added to the M Patent Rights and shall be subject to the licenses granted under this Agreement; provided that the license to such Assigned Inventions shall be non-royalty-bearing, and such Assigned Inventions shall not be included in any determination of the existence of Valid Claims for the purposes of determining the Royalty Term hereunder, and (ii) M hereby covenants and agrees that it shall not assert, at any time during the Term or thereafter, such Assigned Inventions against A (including its present and future Affiliates, successors, assigns, licensees, distributors, contractors, agents, and customers.

(c) Subject to the terms and conditions of this Agreement, during the Term, A hereby grants
to M a non-exclusive, fully sublicenseable, transferable license under the A Inventions relating to formulations or methods of manufacturing formulations derived from the Licensed Intellectual Property (i) to make, have made, develop, use, sell, offer for sale and import Licensed Products outside the Territory, and (ii) to make and have made Licensed Products inside the Territory for or on behalf of A in accordance with the terms of the Supply Agreement. In the event of termination of this Agreement by A pursuant to Section 17.3(a), the license granted in this Section 9.2(c) shall become worldwide, subject to Section 17.3(c)(ii)(E). In the event of termination of this Agreement by M pursuant to Section 17.3(b), the license granted in this Section 9.2(c) shall become perpetual, worldwide and fully-paid.

9.3 **Patent Prosecution and Maintenance.**

(a) Subject to the terms of Sections 9.1, 9.2, 9.3(a) and 9.3(c), A shall have the sole right, in its reasonable discretion, to prepare, file, prosecute, conduct and control interferences, re-examinations, and post-issuance proceedings (including without limitation, post-grant review, inter parties review, derivation proceedings and supplemental examination before the United States Patent and Trademark Office and the relevant local equivalent thereof;
and applications for patent term extensions, supplementary protection certificates, or equivalents thereof), maintain, and enforce any Patents in the Territory related to the Licensed Products or included in M Patent Rights at A's expense, in full compliance with all applicable laws, regulations, and duties. A shall keep M timely apprised of all significant events concerning the filing, prosecution and maintenance of any Patents in the Territory related to the Licensed Products or included in M Patent Rights (including, without limitation, preparation of patent applications, filing of patent applications, office actions, responses to office actions, requests for reexamination, interference proceedings, term adjustments, requests for term extensions, and abandonment or discontinuation decisions), and shall consider and incorporate all reasonable input from M regarding such preparation, filing, prosecution and maintenance. In the event that A elects not to prosecute and/or maintain any Patent included in the M Patent Rights in the Territory, it shall notify M of such election not to prosecute and maintain such M Patent Rights not less than thirty (30) days prior to any patent office deadline, and M shall have the right, but not the obligation, to elect, upon written notification to), to perform such activities, at M's expense (such rights, the “Abandoned Patent Rights”, provided that if M elects to take over the prosecution and maintenance of such Abandoned Patent Rights, A shall assign to M without additional consideration all of its right, title and interest in and to such Abandoned Patent Rights,
and cooperate with and take reasonable additional actions and execute such agreements, instruments, and documents as may be reasonably required to perfect right, title and interest in, to and under such Abandoned Patent Rights. Following such assignment, such Abandoned Patent Rights shall no longer be included within the scope of the M Patent Rights, or subject to the licenses granted hereunder.

(b) Subject to the terms of this Section 9.3(b) and Section 9.3(c), M shall have the sole right, in its sole discretion, to prepare, file, prosecute, conduct and control interferences, re-examinations, and post-issuance proceedings (including without limitation, post-grant review, inter parties review, derivation proceedings and supplemental examination before the Korean Intellectual Property Office; and applications for patent term extensions, supplementary protection certificates, or equivalents thereof), maintain, and enforce any Patents outside the Territory related to the Licensed Products or included in MEDYTOX Patent Rights at M's expense, in full compliance with all applicable laws, regulations, and duties. M shall keep A timely apprised of all significant events concerning the prosecution and maintenance of any Patents outside the Territory related to the Licensed Products or included in M Patent Rights (including, without limitation, preparation of patent applications, filing of patent applications, office actions, responses to office actions,
requests for re-examination, interference proceedings, term adjustments, requests for term extensions, and abandonment or discontinuation decisions), and shall reasonably consider and incorporate, in good faith, all reasonable input from A regarding such preparation, filing, prosecution and maintenance.

(c) Each Party shall provide the other Party all reasonable assistance and cooperation, at the other Party’s request and expense, in the patent prosecution efforts provided above in this Section 9.3 and in Section 9.4, including providing any necessary Information, and powers of attorney, and executing and delivering any other required documents or instruments for such patent prosecution. Each Party shall execute and deliver to the other assignments with respect to any Joint Inventions, A Inventions, and M Inventions, as applicable, in a mutually agreeable form and will take whatever actions reasonably necessary (including the appointment of the other Party as its attorney in fact solely to make such assignment) to effect such assignment. The prosecuting Party under this Section 9.3 agrees to conduct such prosecution toward the objective of optimizing overall patent protection for Licensed Products.
(d) Within thirty (30) days after the Closing Date, M shall deliver to A copies of all patent prosecution files relating to the M Patent Rights in the Territory.

9.4 **Joint Patents.**

(a) Subject to this Section 9.4(a), A shall prepare, file, prosecute and maintain Patents derived from Joint Inventions ("Joint Patents") in the Territory in the names of M and A as co-owners, and shall bear its own internal costs thereof, and the external costs for such prosecution (e.g., outside counsel, filing fees, etc.). A shall keep M timely apprised of all significant events concerning the prosecution and maintenance of any Joint Patents in the Territory (including, without limitation, preparation of patent applications, filing of patent applications, office actions, responses to office actions, requests for re-examination, interference proceedings, term adjustments, requests for term extensions, and abandonment or discontinuation decisions), and shall reasonably consider and incorporate, in good faith, all reasonable input from M regarding such preparation, filing, prosecution and maintenance. In any event, A will not finally abandon, disclaim, or dedicate to the public any claims or limit any claims specific to Licensed Products in the Territory without M’s prior written consent.
(b) Subject to this Section 9.4(b), M shall prepare, file, prosecute and maintain Joint Patents outside the Territory in the names of M and A as co-owners, and shall bear its own internal costs thereof, and the external costs for such prosecution (e.g., outside counsel, filing fees, etc.). M shall keep A timely apprised of all significant events concerning the prosecution and maintenance of any Joint Patents outside the Territory (including, without limitation, preparation of patent applications, filing of patent applications, office actions, responses to office actions, requests for reexamination, interference proceedings, term adjustments, requests for term extensions, and abandonment or discontinuation decisions), and shall reasonably consider and incorporate, in good faith, all reasonable input from A regarding such preparation, filing, prosecution and maintenance. In any event, M will not finally abandon, disclaim, or dedicate to the public any claims or limit any claims specific to Licensed Products outside the Territory without A's prior written consent.

9.5 **Third Party Infringement Claims.**

(a) **Notice.** If the Development, Manufacture, import, use, Commercialization or sale of a Licensed Product in the Territory results in a claim by a Third Party alleging infringement
of a Patent owned or controlled by such Third Party ("Third Party Claim"), the Party first having notice of such claim shall promptly notify the other Party in writing. The notice shall set forth the facts of the Third Party Claim in reasonable detail, and the Parties shall agree on and enter into a “common interest agreement” wherein the Parties agree to their shared, mutual interest in the outcome of such potential dispute, and thereafter, the Parties shall promptly meet to consider the claim or assertion and the appropriate course of action.

(b) Defense. Subject to M’s indemnification obligations under Section 15.2(d), A shall have control over the handling and be responsible for defending any Third Party Claim in the Territory including, without limitation, the selection of counsel and settlement, but shall consult with M regarding the strategy for such defense and keep M apprised of the status of, and substantive developments in, the case. In the event that M is named as a defendant in such litigation, counsel representing A shall also represent M to the extent permitted under Applicable Laws at A’s cost and expense. In the event that M retains separate counsel for such defense, all reasonable costs and expenses of such separate counsel shall be borne by M. If A recovers monetary damages in such claim, suit or action, such recovery shall first be allocated to the reimbursement of any expenses incurred by A in such litigation (including, for this purpose, a reasonable allocation of expenses of internal
counsel). If after such reimbursement any funds remain from such damages or other sums recovered, such remaining funds shall be included in Net Sales subject to the royalty payment by A to M pursuant to Section 8.3.


(a) Each Party shall notify the other Party promptly of any conduct on the part of a Third Party that it reasonably believes may be a potential infringement of M Patent Rights in the Territory, including the facts of such alleged infringement in reasonable detail. The Parties shall thereafter reasonably cooperate to promptly determine whether and the extent of any such infringement.

(b) A shall have the first right, but not the obligation, to enforce M Patent Rights or Joint Patents against any such infringing activities in the Territory, at A’s expense. If A fails to initiate litigation or take steps to abate such infringement with respect to M Patent Rights within ninety (90) days of a written request by M to do so, M, in its discretion, may undertake such action as it deems necessary to enforce the M Patent Rights or Joint Patents in the Territory, at M’s expense.
(c) Each Party agrees to cooperate fully and provide each other with information or assistance that the other Party may reasonable request in connection with any litigation initiated pursuant to this Section 9.6, including voluntarily consenting to be named as a plaintiff in an action commenced by the other Party.

(d) The Party initiating the action under Section 9.6(b) shall have control over the handling of the litigation, including the selection of counsel and settlement; provided, however, that no Party shall settle any action in a manner that will substantively adversely affect the rights of the other Party (including without limitation the licenses granted herein) without the consent of such other Party, which consent shall not unreasonably be withheld and, further provided that such other Party shall have the right, at its expense (except in the case of a conflict), to be represented in such action by separate counsel of its own choice. The Party controlling such litigation shall keep the other Party reasonably informed about the status and developments in such action, including considering, in good faith, the input of the other Party regarding the strategy and handling of the litigation.
(e) If A initiates any action under Section 9.6(b), A shall be entitled to offset all reasonable outside counsel fees and expenses (including expert fees and expenses, but excluding the costs of non-conflicted, separate counsel of a Party) of any such action against the royalty payments due to M under Section 8.3.

All recoveries, lumpsum settlements, royalty payments or other consideration received by the Parties as a result of any such litigation or settlement of any infringement (directed by either Party) shall be deemed to be Net Sales for the purposes of calculating the royalties due under Section 8.3.

9.7 **Regulatory Data Protection.**

To the extent required by or permitted by Law, A will, at its reasonable discretion, decide whether to list with the applicable Regulatory Authorities during the Term any applicable M Patent Rights covering any Licensed Product that A intends to, or has begun to, Commercialize, and that has become the subject of an application for Regulatory Approval submitted to the FDA or any equivalent Regulatory Authority in any jurisdiction.
In the event A desires to include in such listing any M Patent Right, then the Parties shall discuss such request in good faith and M will not unreasonably withhold consent to such listing, and will provide A all reasonable assistance and cooperation, at A’s request and expense, in the listing efforts, including providing any necessary Information, and powers of attorney, and executing and delivering any other required documents or instruments for such listing; provided that it shall not be unreasonable for M to withhold its consent if such extension would materially adversely affect such M Patent Right.

Such listings may include all so called “Orange Book” listings required under the Hatch-Waxman Act or listing of Patents as provided in the patent dispute resolution procedures of the Biologics Price Competition and Innovation Act of 2009 or under 42 U.S.C. § 262(l) or similar provisions in the Territory during the Term. Prior to such decision on listings, the Parties will meet to evaluate and identify all applicable Patents to be listed and A shall reasonably incorporate and address suggestions provided by M as to the listing or non-listing of any applicable Patents.

9.9 **No Challenge to Licensed Patent Rights.** Licensee A shall not, during the Term,
challenge or assist others to challenge the validity, scope, or enforceability of, or otherwise oppose, any Patent included in the Licensor M Patent Rights.