



## Equipment Licence

### 1. The Parties

- 1.1. A reference to "Izon" means Izon Science Limited.
- 1.2. A reference to "Licensee" means the party identified in clause 17.2.
- 1.3. This Agreement shall bind the parties hereto and their respective parents, affiliates, subsidiaries, successors and assigns.

### 2. Definitions

- 2.1. "Consumables" means any consumable product used with the Equipment, including assay kits, flexible nanopore membranes, tungsten needle tips, buffer solutions, lubricants, seals and reagents.
- 2.2. "Equipment" means all instruments, equipment, apparatus and systems utilising the Technology. "Equipment" includes the Software, although Izon retains title to the Software.
- 2.3. "Intellectual Property" means all of Izon's proprietary rights in the Technology, including, without limitation, the Patents, copyrights, design rights, Know-how, trade secrets, research and development, drawings and specifications, enhancements and improvements to the Technology.
- 2.4. "Know-how" means the technology, procedures, formulae, technical knowledge and information and trade secrets relating to the development, manufacture, use and operation of the Equipment and the Technology.
- 2.5. "Licence" means this Equipment Licence between Izon and Licensee.
- 2.6. "Patents" means UK Patent GB2421303 ("Detecting, measuring and controlling particles and electromagnetic radiation"), UK Patent GB2429524 ("Fabrication of an aperture in a deformable elastomeric material"), New Zealand Patent NZ537147 ("Detecting, measuring and controlling particles and electromagnetic radiation"), national phase applications deriving from PCT/WO2006/063872 or PCT/GB2007/050340 and such other patents (including PCT and national phase applications), continuations, cognates, divisionals and sub-divisionals concerning the Technology as Izon may obtain, prosecute and maintain in the future.
- 2.7. "Software" means any software (including programmable logic devices) used to operate or control the Equipment or to interpret any data produced with the Equipment, whether residing within the Equipment as firmware or on an external computer. Software includes all updates, upgrades and new versions thereof.
- 2.8. "Technology" means all of Izon's proprietary technology, including its technology for the detection, measurement and control of nanoscale particles in particle sensitive or radiation sensitive devices incorporating deformable materials containing deformable apertures and includes the methods of fabrication of such deformable apertures.

### 3. Technology Licence

- 3.1. Subject to clause 12 and clause 13.1, Izon grants Licensee a perpetual, non-exclusive, non-transferable, royalty free, licence to use the Technology on the Equipment.
- 3.2. Licensee shall only use the Technology on the Equipment that Licensee purchased from Izon.
- 3.3. Licensee shall only purchase the Consumables from Izon or from such other suppliers as Izon shall designate.

### 4. Software Licence

- 4.1. Subject to clause 12 and clause 13.1, Izon grants Licensee a perpetual, non-exclusive, non-transferable, royalty free, licence to use the Software.
- 4.2. Licensee shall use the Software only with the Equipment that Licensee purchased from Izon.
- 4.3. Licensee acknowledges that the Software is the property of Izon. Izon transfers no title to, or ownership of, any Software to Licensee or to

any third party.

- 4.4. Licensee shall not use the Software in any manner that would derogate from Izon's Intellectual Property in the Software.
- 4.5. Except as expressly set forth in this Licence, Licensee shall not load, execute, modify, copy, reverse engineer, decompile, disclose, transfer or otherwise use the Software or take any action inconsistent with Izon's Intellectual Property in the Software.
- 4.6. Licensee shall maintain safe custody of the Software.
- 4.7. If the Software includes any third party software, Licensee accepts the third party software subject to the terms and conditions of the applicable third party licence agreement.

### 5. Intellectual Property

- 5.1. Licensee expressly acknowledges Izon's ownership of the Intellectual Property. Licensee disclaims any right, title or interest in the Intellectual Property. Licensee shall take no action to contest the validity of the Intellectual Property. Licensee shall take no action that infringes the Intellectual Property.
- 5.2. Without limiting the generality of the foregoing, Licensee acknowledges that the Equipment and the Consumables incorporate the Intellectual Property. Licensee shall not copy, reverse engineer or manufacture the Equipment and the Consumables nor shall Licensee aid, abet or assist a third party to do so. Licensee shall not disclose the Intellectual Property to Izon's competitors (whether actual or potential), customers or former customers.
- 5.3. Under no circumstance shall Licensee use the Intellectual Property in a manner that would be detrimental to Izon's business. In particular, Licensee shall not use the Intellectual Property to compete with Izon or to confer a competitive advantage upon a third party. In all other respects, Licensee shall not use the Intellectual Property to Izon's competitive disadvantage.

### 6. Compliance with Law and Regulations

- 6.1. Licensee shall comply with all applicable laws and regulations in the countries where Licensee intends to use the Equipment. Specifically, and without limiting the generality of the foregoing, Licensee shall comply with all health and safety requirements and registration and approval requirements. Licensee shall not use the Technology for any illegal or unethical purpose.

### 7. Installation and Operation

- 7.1. Licensee is fully responsible for the installation and the operation of the Equipment. Licensee shall meet all relevant occupational safety and health requirements. Licensee shall ensure a safe and secure operating environment in accordance with relevant laws and standards.
- 7.2. Installation and operation is entirely at Licensee's risk. The Equipment should be installed and operated by qualified technicians only. Izon accepts no liability for direct, indirect, incidental, special, or consequential damages resulting from Licensee's failure to follow Izon's warnings, instructions and procedures or such other procedures generally applicable to equipment of the same type.

### 8. Limited Warranty

- 8.1. Izon warrants that the Equipment conforms in all material respects to its specifications and is free of defects in materials and workmanship. The term of this warranty is ninety (90) days from date of shipment. Izon hereby limits its liability, whether in contract, tort or otherwise, for any loss or damage suffered by Licensee to the repair or replacement of defective Equipment or the refund of the purchase price.

#### Izon Science Limited

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Where another manufacturer supplied Izon with a defective component, the warranty of Izon shall not be more extensive than any warranty in favour of Izon from such other manufacturer. Izon shall endeavour to pass on to Licensee the benefit of such other manufacturer's warranty.

- 8.2. Izon's warranty is void in any of the following circumstances: (a) The warranty claim relates to normal wear and tear; (b) The Equipment has been misused, neglected, damaged, abused or involved in an accident; (c) The Equipment has been improperly operated, repaired or maintained; (d) The Equipment has been modified; (e) Components have been substituted for Izon's factory installed components; (f) The owner of the Equipment has not followed any warnings, safety instructions, maintenance instructions and care and use instructions provided with the Equipment; (g) The Equipment has been damaged after risk of loss passed from Izon to Licensee; *and/or* (h) The Equipment has been used for purposes other than for which it was designed.
- 8.3. The Equipment is capable of being used in many different types of scientific applications and operating environments. Consequently, Izon is only able to provide general guidelines concerning the suitability and use of the Equipment. It is not possible for Izon to provide specific guidelines for specific applications and operating environments simply because there are too many of them. Therefore, proper selection of the Equipment for a specific application and operating environment, and its compatibility with other equipment, is Licensee's responsibility. Licensee must assume the ultimate responsibility for the proper sizing, selection, compatibility, installation and operation of the Equipment. All operating parameters should be validated for Licensee's application by an expert. Izon does not warrant the performance of the Equipment or its suitability for a particular purpose.
- 8.4. This is an express warranty. Izon's only obligation is to repair, replace or refund the purchase price of such parts or Equipment upon the presentation of proof of purchase and a valid warranty claim. Izon disclaims any other express or implied warranties, including warranties of merchantability or fitness for purpose, to the maximum extent permitted by law. Licensee is responsible for determining whether the Equipment is suitable for Licensee's purposes and will meet Licensee's performance expectations. Licensee is solely responsible for determining the suitability of the Equipment for its needs.

## 9. Liability

- 9.1. Izon shall not be liable for incidental, special, indirect or consequential damages of any kind. Without limiting the generality of the foregoing, Izon shall not be liable for damages for personal injury, property damage, loss of operations, loss of profits, loss of product and loss of time, whether incurred by Licensee, Licensee's customer, or a third party.
- 9.2. The total liability of Izon under any circumstance, whether in contract, tort or otherwise, shall not exceed the price of the Equipment that gave rise to such liability.

## 10. Specifications

- 10.1. As part of its ongoing programme to upgrade the Equipment, Izon reserves the right to alter the specifications, design, materials, components or construction of the Equipment. Izon may do so without notifying Licensee. Any such alterations shall not impose upon Izon an obligation to alter Equipment that Izon already delivered to Licensee.

## 11. Information

- 11.1. As to any information that Izon may provide to Licensee, Izon believes such information to be accurate. However, Izon accepts no liability for any errors or omissions. Izon has endeavoured to provide timely information but it cannot represent that the information is complete.

The information shall not be deemed a warranty, representation or guarantee concerning the Equipment's suitability or fitness for Licensee's specific purpose. Izon does not warrant the information or any particular benefits that Licensee will derive. It is Licensee's responsibility to determine the suitability for its own use of the Equipment described in any information furnished. Licensee must make its independent judgement and assessment and should not rely upon any opinions, interpretations, statements, assurances or representations given. Any information that Izon supplies shall not be deemed to extend or expand Izon's obligations under this Licence.

- 11.2. Licensee accepts responsibility for ensuring that its employees, agents and customers are appropriately trained and experienced in the use of the Equipment and have read any relevant information provided by Izon. Licensee accepts responsibility for ensuring that end users know how to use the Equipment. Licensee shall discharge this responsibility through training sessions, hands-on demonstrations and technical support.

## 12. Sale or Transfer of Equipment

- 12.1. If Licensee sells or transfers the Equipment, Licensee shall procure its buyer or transferee to sign a new Equipment Licence with Izon, whereupon Licensee shall be released of any liability caused by the acts or omissions of its buyer or transferee.
- 12.2. If Licensee does not comply with clause 12.1, Licensee shall remain liable under this Licence for any acts or omissions of its buyer or transferee to the extent such acts or omissions constitute a breach of this Licence.

## 13. Termination

- 13.1. Izon may terminate this Licence if Licensee neglects or fails to perform or observe any of its obligations to Izon and does not remedy such condition within ten (10) days after notice thereof.
- 13.2. Upon termination: (a) Licensee shall destroy all copies of the Software in its possession and certify that it has done so to Izon; (b) Licensee shall cease using the Equipment, the Technology and the Intellectual Property for any purpose whatsoever.

## 14. No Waiver

- 14.1. No failure by Izon to insist upon strict performance of this Licence, or any delay in exercising any of its rights or remedies, shall constitute a waiver or variation of this Licence or a waiver of any such right or remedy.

## 15. Entire Agreement

- 15.1. This Licence represents the entire agreement between the parties in respect to the subject matter hereof. As such, it supersedes and replaces any prior agreement between the parties, whether oral or written, pertaining to the same subject matter.

## 16. Governing Law

- 16.1. New Zealand law shall govern this Licence. The parties submit to the jurisdiction of New Zealand courts.

## 17. Signatures

- 17.1. Izon Science Limited

\_\_\_\_\_  
Authorised Signature

- 17.2. Licensee

\_\_\_\_\_  
Print Name of Licensee

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_