

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Deakin	07/12/2007
RECEIVING PARTY DATA	
Name:	Venomix, Inc.
Street Address:	4717 Campus Drive
Internal Address:	Suite 1200
City:	Kalamazoo
State/Country:	MICHIGAN
Postal Code:	49008
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	5763568
CORRESPONDENCE DATA	
Fax Number:	(269)383-5828
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	2693835833
Email:	sinotte@millercanfield.com
Correspondent Name:	Jonathan P. O'Brien
Address Line 1:	277 S. Rose
Address Line 2:	Miller, Canfield, Paddock and Stone
Address Line 4:	Kalamazoo, MICHIGAN 49007
ATTORNEY DOCKET NUMBER:	133981/FAM F/00024
NAME OF SUBMITTER:	Jonathan P. O'Brien
Total Attachments: 29 source=Venomix_Assignments#page1.tif source=Venomix_Assignments#page2.tif	

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## ASSIGNMENT BACK OF SPIDER TOXIN TECHNOLOGY

THIS DEED of Assignment is made the 21<sup>ST</sup> day of SEPTEMBER two thousand and four  
BETWEEN

**VISTAGEN INC.** of 1150 Marina Village Drive, ALAMEDA, California, United States of America (hereinafter called "**VISTAGEN**") of the one part  
AND

**DEAKIN RESEARCH PTY LIMITED** (A.C.N 003 312 552) whose principal place of business is at 11th Floor 49 York Street, Sydney, NSW 2000, PO Box 144, North Sydney, NSW 2060, Australia (hereinafter called "**Deakin Research**")  
and

**DEAKIN UNIVERSITY** of Pigdons Road, Waurn Ponds, Geelong 3217 in the State of Victoria, Australia (hereinafter called "**Deakin University**")  
and

**THE UNIVERSITY OF SOUTHERN QUEENSLAND** (formerly called THE UNIVERSITY COLLEGE OF SOUTHERN QUEENSLAND) of Toowoomba 4350 in the State of Queensland, Australia (hereinafter called "**The University of Southern Queensland**")  
and

**RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION** of Level 1, 42 Macquarie Street, Barton 2600, in the Australian Capital Territory, Australia (hereinafter called "**Rural Industries Research and Development Corporation**")  
hereinafter collectively called "**DEAKIN**" of the other part

### WHEREAS

- (A) By Deed 18 December, 2000 ("the assignment to **VISTAGEN**") **DEAKIN** assigned to **VISTAGEN** certain patent rights and granted **VISTAGEN** certain patent rights (the "Patent Rights") and granted **VISTAGEN** a world-wide exclusive licence to use the Confidential Information, and a non-exclusive licence to use the remainder of the Know-how.
- (B) Clause 8.2 of the assignment to **VISTAGEN** provides that on termination of that agreement **VISTAGEN** shall:
- (i) assign to **DEAKIN** all of the Patent Rights and any patents granted on the Patent Rights or on any applications for patent claiming priority from or derived from the Patent Rights held by **VISTAGEN**;
  - (ii) assign to **DEAKIN** the Spider Toxin Technology and any development thereof including any biological control agents expressing the Spider Toxin;

- (iii) transfer to **DEAKIN** its exclusive right to use the Confidential Information originally granted under the assignment to **VISTAGEN**;
  - (iv) grant to **DEAKIN** a non-exclusive right to use the **VISTAGEN** Know-How and **VISTAGEN** Confidential Information.
- (C) In accordance with Clause 8.2 of the assignment to **VISTAGEN**, the parties have agreed that the rights described in recital (B) above will be re-transferred to **DEAKIN** on the following terms.

**NOW IT IS AGREED** as follows:

1. Definitions

In this Agreement, the following defined terms shall have the following meanings:

**“Patents”** shall mean the patents and patent application detailed in the Schedule and any applications for patent claiming priority from or derived from the Patent Rights as defined in the assignment to **VISTAGEN**.

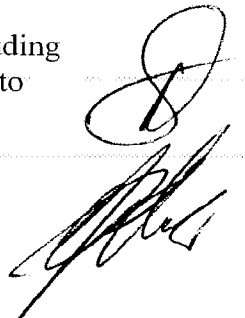
**“Confidential Information” “Know-how”, “Patent Rights”, “Spider Toxin”, “VISTAGEN Confidential Information”, “VISTAGEN Know-How” and “Spider Toxin Technology”** shall have the meanings given in the assignment to **VISTAGEN**

2. Assignment

2.1 In consideration of the sum of \$AUD10 (tens dollars Australian Currency) now paid by **DEAKIN** to **VISTAGEN**, the receipt of which is acknowledged, **VISTAGEN** hereby assigns to **DEAKIN**:

2.1.1. All its right title and interest in and to the Patent Rights including the Patents, and all its rights, powers, liberties and immunities attaching to them, including the right to be registered as the proprietor and the right to claim priority from them under the International Convention of Paris; and

2.1.2. its right to take action for infringement of any of the Patents including the rights conferred by publication of any patent application, and to receive any consequent damages;



in each case to the extent that these were assigned to **VISTAGEN** under the assignment to **VISTAGEN** or have been acquired or developed by **VISTAGEN** since the date of that agreement.

2.1.3. All of its right title and interest in the Spider Toxin Technology and any development thereof including any biological control agents expressing the Spider Toxin; and

2.1.4. All of its right title and interest in the Confidential Information granted by **DEAKIN** on an exclusive basis to **VISTAGEN** under clause 6.1 of the assignment to **VISTAGEN**

**TO HOLD** unto **DEAKIN** absolutely.

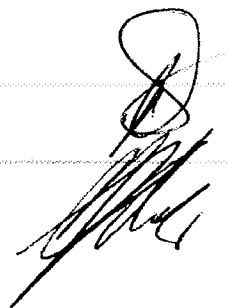
2.2 Unless other wise agreed among themselves, the constituent parties of **DEAKIN** will own the Patent Rights and the Spider Toxin Technology in the following undivided proportions:

Deakin Research	50.0%
Deakin University	12.5%
The University of Southern Queensland	7.5%
Rural Industries Research and Development Corporation	30.0%

### 3. Know-How and Royalties

3.1 So far as it is aware **VISTAGEN** has transferred to **DEAKIN** all **VISTAGEN** Know-How relating to Spider Toxin Technology and **VISTAGEN** hereby grants to **DEAKIN** a non-exclusive licence with the right to sublicense to such **VISTAGEN** Know-How. For the avoidance of doubt "VISTAGEN Know-How" is defined in the assignment to **VISTAGEN** and expressly includes the **VISTAGEN** Confidential Information

3.2 **VISTAGEN** warrants that it has not developed any products from the Spider Toxin Technology, and that accordingly no royalties are or will be due to **DEAKIN** pursuant to the royalty obligations of clause 5.1 of the assignment to **VISTAGEN**



4. General

- 4.1 Notwithstanding the termination of the assignment to **VISTAGEN** all confidentiality obligations of that agreement shall continue in full force and effect.
- 4.2 **VISTAGEN** will, at **DEAKIN**'s request and expense execute any document or do any act or thing which **DEAKIN** reasonably requires to give effect to this Agreement including providing such further assistance to **DEAKIN** as is reasonably required by **DEAKIN** to facilitate the recording of **DEAKIN** as the beneficial owner of the Patents and to obtain the grant of the patent application listed in the attached Schedule.
- 4.3 **VISTAGEN** hereby irrevocably appoints **Deakin Research** as its true and lawful attorney for **VISTAGEN**, and in **VISTAGEN**'s name, and as **VISTAGEN**'s act and/or deed,
- 4.3.1 to execute under hand, or under seal, and deliver at the Attorney's option (which delivery may be conditional or unconditional) any document which **DEAKIN** reasonably requires, and
- 4.3.2 to do any act or thing which **DEAKIN** reasonably requires,
- as contemplated by clause 4.2 hereof to give effect to this agreement.
- 4.4 **VISTAGEN** warrants that to the best of its knowledge, information and belief the Patents represent all of the Patent Rights held by **VISTAGEN** and required to be assigned to **DEAKIN** by clause 8.2.1 of the assignment to **VISTAGEN**.
- 4.5 This agreement is governed by the laws of New South Wales, Australia and the parties irrevocably agree that the courts of New South Wales, Australia shall have exclusive jurisdiction to deal with any disputes howsoever or wheresoever arising out of or in connection with this Deed.
- 4.6 This Deed shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 4.7 **Vistagen** hereby indemnifies and forever holds **DEAKIN** harmless against any claim action or cost arising between 18 December 2000 and the date of

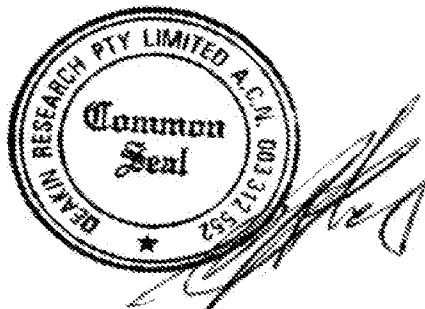
this assignment in respect of the Patents, Patent Rights, Confidential Information, Know How and Spider Toxin Technology brought by any third party.

5. No Challenge to Validity

5.1 **VISTAGEN** will not oppose (or encourage or assist others to oppose) the grant of the patent application listed in the attached Schedule or dispute (or encourage or assist others to dispute) the validity of any of the Patents

IN WITNESS whereof this assignment has been duly executed by the parties or their duly authorised representatives as a deed, the day and year first above written.

THE COMMON SEAL of )  
**DEAKIN RESEARCH PTY** )  
**LIMITED** was hereunto affixed )  
by authority of the board of directors )  
in the presence of: )



*Rowley*

Secretary

Name of Secretary: J. Rowley

Date: 22-12-2004

Director

Name of Director: S.J. Dick

THE COMMON SEAL of )  
**DEAKIN UNIVERSITY** )  
was hereunto affixed on the )  
the 18th day of Nov. 2004 )  
by direction of the )  
Vice Chancellor in the presence of: )

VC

*Jally Walker*

VC VICE-CHANCELLOR  
Name and Position of Signatory:

*W.A. [Signature]*

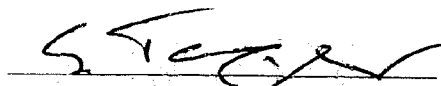
Name of Witness:

Date: 18 Nov. 04.

The Common Seal of the  
**UNIVERSITY OF SOUTHERN QUEENSLAND**  
was affixed by the authority  
of the Vice-Chancellor

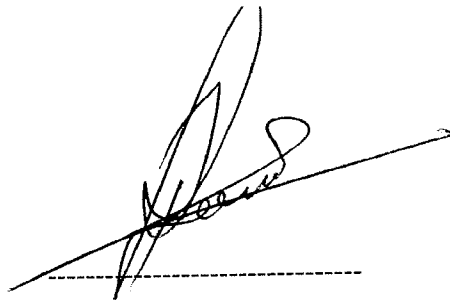
in the presence of  
this 21st day of October 2004

  
Vice-Chancellor

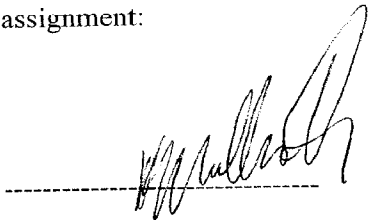
  
Secretary to Council



EXECUTED by Robert Reardon )  
on behalf of VISTAGEN INC who )  
warrants his authority to bind the )  
Company for the purposes of this )  
assignment: )



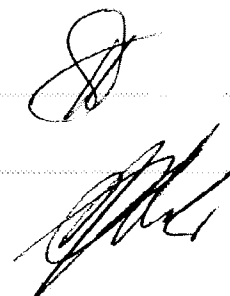
A handwritten signature in black ink, appearing to read 'Robert Reardon', is written over a horizontal dashed line.



A handwritten signature in black ink is written over a horizontal dashed line.

DARREN ZARBO  
Name of Witness:

Date of Signing 21 / 9 / 04



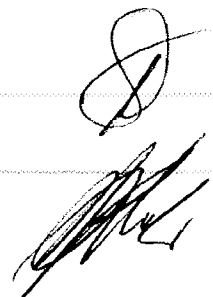
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SCHEDULE

PATENTS

<u>PATENT NO.</u>	<u>GRANT DATE</u>	<u>COUNTRY</u>
673816	25 <sup>th</sup> March, 1997	Australia
61087	9 September, 2000	China
0726947	22 May 2002	Europe
0726947	22 May 2002	France
69331955.0-88	22 May 2002	Germany
246834	15 <sup>th</sup> January, 1997	New Zealand
0726947	22 May 2002	United Kingdom
5763568	9 <sup>th</sup> June, 1998	U.S.A
5959182	28 September, 1999	U.S.A.

<u>APPLICATION NO.</u>	<u>FILING DATE</u>	<u>COUNTRY</u>
2128421	29 <sup>th</sup> January, 1993	Canada



THE COMMON SEAL of THE )  
UNIVERSITY OF SOUTHERN )  
QUEENSLAND was hereunto )  
affixed on the      day of      200 )  
by direction of the )  
Vice Chancellor in the presence of: )

GRAHAM BAKER

PRO VICE CHANCELLOR (RESEARCH)

Name and Position of Signatory:

Julian M. Madden

Name of Witness:

JILLIAN MARY HARVEY

SIGNED SEALED AND )  
DELIVERED by the **RURAL** )  
**INDUSTRIES RESEARCH** )  
**AND DEVELOPMENT** )  
**CORPORATION** by its duly )  
Authorised Signatory in the presence of: )

Simon Hearn

RIRDC Managing Director

Name and Position of Signatory:

Juliana M. Madden

Name of Witness:

Juliana M. Madden

Date of Signing 03 Dec 2004

THIS DEED is made the 12<sup>th</sup> day of July two thousand  
and seven  
BETWEEN

**VENOMIX, INC.** of 4717 Campus Drive, Suite #1200, Kalamazoo, Michigan,  
49008, United States of America (hereinafter called "**VENOMIX**") of the one part  
AND

**DEAKIN RESEARCH PTY LIMITED** (A.C.N 003 312 552) whose principal place  
of business is at 11<sup>th</sup> Floor 49 York Street, Sydney, NSW 2000, PO Box 144, North  
Sydney, NSW 2060, Australia (hereinafter called "**Deakin Research**")  
and

**DEAKIN UNIVERSITY** of Pigdons Road, Waurn Ponds, Geelong 3217 in the State  
of Victoria, Australia (hereinafter called "**Deakin University**")  
and

**THE UNIVERSITY OF SOUTHERN QUEENSLAND** (formerly called THE  
UNIVERSITY COLLEGE OF SOUTHERN QUEENSLAND) of Toowoomba 4350  
in the State of Queensland, Australia (hereinafter called "**The University of Southern  
Queensland**")  
and

**RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION**  
of Level 1, 42 Macquarie Street, Barton 2600, in the Australian Capital Territory,  
Australia (hereinafter called "**Rural Industries Research and Development  
Corporation**")

hereinafter collectively called "**DEAKIN**" of the other part

WHEREAS

- (A) **DEAKIN** is the beneficial owner of an invention relating to toxins  
(and homologous variants thereof which are toxic to insects and/or their  
larvae) as detailed in PCT International Patent Application Number  
PCT/AU93/000039 ("the Spider Toxins") and is the owner of the letters patent  
and applications for letters patent in the countries, particulars of which are  
given in the first schedule to this Deed (hereinafter called "the Patent Rights")  
in the following undivided proportions:

<b>Deakin University</b>	12.5%
<b>The University of Southern Queensland</b>	7.5%
<b>Rural Industries Research and Development Corporation</b>	30.0%
<b>Deakin Research</b>	50.0%

I hereby certify that this is a  
true and complete copy  
of the original document



**ROSARIA STRAMANDINOLI**  
GRIFFITH HACK  
509 St. Kilda Road, Melbourne 3004  
A Registered Patent Attorney within the  
meaning of the Patents Act 1990.

**PATENT**

**REEL: 020897 FRAME: 0449**

- (B) **DEAKIN** has identified or caused to be identified, sequenced, synthesised and cloned into plasmids synthetic genes designed for the expression of one of the Spider Toxins in a virus and in plants and transferred the V-1 gene expression unit into the viral genome via homologous recombination into a *Heliothis* nuclear polyhedrosis virus, and has produced a mimic of one of the Spider Toxins which may have oral applications.
- (C) **Deakin University, The University of Southern Queensland and the Rural Industry Research and Development Corporation** have granted **Deakin Research** the sole right to commercially exploit the Spider Toxin Technology (as hereinafter defined) on behalf of **DEAKIN**
- (D) **DEAKIN** is interested to have the Spider Toxin Technology developed and exploited.
- (E) **VENOMIX** is interested in the Spider Toxin Technology including to develop biological control agents based on the Spider Toxins for the control of insects and like pests.
- (F) **DEAKIN** and **VENOMIX** have therefore agreed on the sale and transfer to **VENOMIX** of the Patent Rights (including the right to apply for or obtain corresponding letters patent in any country of the world, so far as the same may be practicable) and the exclusive licence to **VENOMIX** of the Confidential Information for the consideration more particularly described below.

NOW IT IS HEREBY AGREED as follows:

1. In this Deed (including the Recitals)

“Spider Toxin Technology”

means the inventions described in the claims and specifications of the Patent Rights (but excluding the use of any mimics of the toxins as antigen analogues or as T-cell epitopes as described in International Patent



Applications PCT/AU 93/00441 and  
PCT/AU 95/00090).

“Spider Toxin Products”

means all products resulting from or derived using the Spider Toxin Technology and for the avoidance of doubt includes any product derived from the exploitation of or includes the toxins described in the claims and specifications of the Patent Rights, their amino acid sequences or variations or mimics thereof.

“Confidential Information”

means all that part of the Know-how (as defined below) which is not in the public domain

“Intellectual Property”

means patents, trade marks, service marks registered designs, applications for any of the foregoing, trade and business names, unregistered trade marks and service marks, copyrights, rights in designs, inventions, trade secrets, rights under licences, consents, orders statute or otherwise howsoever in relation to any such rights of the same or similar effect or nature, in any part of the world.

“Know-how”

means all information (including but not limited to the Confidential Information) as it, and only to the extent that it, relates specifically to the Spider Toxin Technology or Spider Toxin Products owned or controlled by **DEAKIN** and used, or required to be used, in connection with the

Spider Toxin Technology (including, without limitation, that comprised in or derived from data, formulae, methodology, test results, specifications and instructions).



“Net Selling Price”

means gross receipts received by  
**VENOMIX** from sales or other disposal  
to an unconnected buyer or party  
(or which **VENOMIX** would have  
received if the sale or other disposal had  
been to an unconnected buyer or party)  
less:-

- (i) commissions, cash, trade or  
quantity discounts;
- (ii) shipping, import and export fees,  
insurance related to the shipping  
of goods and packaging;
- (iii) allowances or credits to  
customers on account of  
settlement of complaints, returns  
and replacements; and
- (iv) sales taxes and/or taxes,  
and/or tariff duties directly  
imposed on sales of the  
Spider Toxin Products,  
paid, allowed or given in respect  
thereof or included therein.

“VENOMIX”

for the purposes of this Clause 1 and  
Clause 4.1, 4.2, 4.3, 4.6.1 and 7.1 of this  
Agreement includes **VENOMIX, INC**  
and any Affiliate or successor in title in  
whatever country organized.

“Affiliate”

means any entity in whatever country  
organised which directly or indirectly  
owns, is owned by or is under common  
ownership with a party to this Agreement  
or any entity actually controlled by,  
controlling or under common control of a  
party to this Agreement. For the purpose  
of this definition, “ownership” or  
“control” shall mean where such entity or  
person and its associates owns or  
controls twenty percent (20%) or more of  
the equity conferring voting rights and/or

“Valid Claim”

otherwise has the ability to direct the business affairs of another entity

means a pending claim or an issued claim of an unexpired patent within the Patent Rights or an application for patent or a patent issued pursuant to an application for patent made or caused to be made by **VENOMIX** claiming priority from or derived from the Patent Rights that has not been withdrawn, cancelled or disclaimed or held invalid or unenforceable by a court or other tribunal of competent jurisdiction as a consequence of a bona fide arms length action commenced by a party other than **VENOMIX** or its Affiliates and its decision is not justiciable.

2. Each of **Deakin Research, Deakin University, The University of Southern Queensland and Rural Industries Research and Development Corporation** hereby sells, assigns and transfers, and **VENOMIX** hereby purchases their entire right, title, benefit and interest in the Patent Rights and all rights arising therefrom together with all corresponding rights obtainable in any other country in respect of the invention the subject matter of the Patent Rights and the benefit of the priority dates attaching to the Patent Rights,.
3. **DEAKIN** covenants that at the request and cost of **VENOMIX** it will at all times hereafter do all such acts and execute all such documents, assignments, bills of sale and other instruments as may reasonably be necessary or desirable both to secure the vesting in **VENOMIX** of all rights, title and interest assigned to **VENOMIX** hereunder and solely to assist in the resolution of any question concerning the Patent Rights, any patent applications deriving therefrom and any resulting patents and pending the vesting in **VENOMIX** of such rights, title and interests **DEAKIN** shall hold the legal estate in the Patent Rights in trust for **VENOMIX**.
- 4.1 In consideration of the assignment set forth in Clause 2 and in order to facilitate payment on the part of **VENOMIX**, **VENOMIX** will, for a period of 25 years from the date of the payment of the first royalty payable under this Deed, pay to **Deakin Research** on behalf of **DEAKIN** a royalty



(excluding value added tax, if applicable) of the following percentage of the Net Selling Price of all Spider Toxin Products

- 4.1.1 Where any of the Spider Toxin Products are manufactured, put into use, sold or otherwise disposed of by or on behalf of **VENOMIX** (other than for the purposes of scientific research and development pursuant to this Deed) in a country where the Patent Rights are covered by a Valid Claim, 3% (three percent) of the Net Selling Price of the Spider Toxin Products. Royalties shall be payable under this clause 4.1.1 on a country-by-country and Spider Toxin Product –by- Spider Toxin Product basis until the expiration in such country of the last to expire valid Claim. **VENOMIX** shall pay royalties once only in respect of each sale of a Spider Toxin Product and not be obligated to pay multiple royalties if a Spider Toxin Product is covered by more than one Valid Claim or manufactured, used, sold or otherwise disposed of in more than one country
- 4.1.2 Where any of the Spider Toxin Products are manufactured, put into use, sold or otherwise disposed of by or on behalf of **VENOMIX** (other than for the purposes of scientific research and development pursuant to this Deed) in a country other than a country to which clause 4.1.1 applies or a country to which clause 4.1.1 would have applied except that the Patent Rights cease to be covered by a Valid Claim other than by a failure of **VENOMIX** to properly maintain the Patent Rights, 1.5 % (one and one-half percent) of the Net Selling Price of the Spider Toxin Products.
- 4.1.3 Where **VENOMIX** is required to pay a royalty to a third party (other than **DEAKIN**) for the necessary use of their Intellectual Property in the manufacture, use, sale or other disposal of a Spider Toxin Product: where clause 4.1.1 applies thereto the royalty otherwise payable will be reduced to 2% (two percent) of the Net Selling Price of that Spider Toxin Product; and where Clause 4.1.2 applies thereto the royalty otherwise payable will be reduced to 1% (one percent) of the Net Selling Price of that Spider Toxin Product,  
**EXCEPT THAT** where the total royalty payable by **VENOMIX** to third parties (including **DEAKIN**) would otherwise exceed 4% of the Net Selling Price of a Spider Toxin Product the royalty under clauses

4.1.1 and 4.1.2 will be reduced to 1% (one percent) of the Net Selling Price of that Spider Toxin Product.

- 4.1.4 Where any of the rights of **VENOMIX** under this Deed are exercised other than by **VENOMIX**, with the consent of **VENOMIX**, whether under a licence granted by **VENOMIX** to manufacture and put into use, sell or otherwise dispose of a Spider Toxin Product or otherwise, the Spider Toxin Product shall be deemed to have been manufactured, put into use, sold or otherwise disposed of by or on behalf of **VENOMIX**.
- 4.1.5 No sums shall be payable by **VENOMIX** to **DEAKIN** under the provisions of this Clause 5 unless Spider Toxin Product are manufactured, put into use, sold or otherwise disposed of by or on behalf of **VENOMIX**.
- 4.1.6 **VENOMIX** covenants that it will not transfer or assign any application for patent claiming priority from or derived from the Patent Rights or any patent granted thereon unless the transferee or assignee, if **DEAKIN** requires, executes (under seal or otherwise as **DEAKIN** reasonably requires ) a personal covenant or undertaking to perform the provisions of clause 4.1 and clause 5.2 along with such other provision of this Deed mutatis mutandis are necessary to give effect to Clause 4.1, and this covenant shall survive termination.
- 4.1.7 In the event that Spider Toxin Product is sold in combination with another active ingredient or compound having independent therapeutic effect or diagnostic utility **which is at the date of this agreement is being marketed or sold for the purpose of its intended use in combination with the Spider Toxin Product and which results in a synergistic or enhanced therapeutic effect or diagnostic utility of the Spider Toxin Product**, then "Net Selling Price" for the purposes of determining royalty payments shall on the combination during the royalty payment period in question shall be calculated as follows:

By multiplying the Net selling Price of the combined product by the fraction  $A/(A+B)$ , where A is the list price of such Spider Toxin Product as sold separately, and B is the list price of the other active ingredients or components as sold separately



In the event that there are no separate sales of such Spider Toxin Product or the active ingredients or compounds in such combination product, Net Selling Price shall instead be calculated by multiplying them by the formula in the foregoing paragraph of this clause 4.1.7, but where the A is the commercial value of other active ingredients or components if sold separately, with each such value determined using criteria and a commercial value mutually agreed upon in writing by **DEAKIN** and **VENOMIX**

4.2 All sums payable under this Deed shall be calculated in the currency in which **VENOMIX** keeps its accounts and shall be paid to **DEAKIN** not later than 30 days after the end of each three month period ended 31 March, 30 June, 30 September and 31 December in which they accrue or become payable in each year in United States of America Dollars in Sydney as advised by **DEAKIN** from time to time, If sales of Spider Toxin Products are invoiced in currencies other than United States dollars, the exchange conversion of such sales into United States dollars shall be made on a monthly basis at the rate of exchange provided by Reuters Ltd on the close of business on the last business day of the month preceding the month in which such invoiced sales are made by or on behalf of **VENOMIX**

4.2.1 **VENOMIX** shall at the time of making each royalty payment provide **DEAKIN** with a statement setting out the basis and method of calculation of the royalty payment made including the value and source thereof.

4.3 All sums shall be paid in full without deductions, except only for such taxes, or other levies or duties as **VENOMIX** is legally bound to withhold under applicable laws. **DEAKIN** shall be responsible for securing any authorisation for **VENOMIX** to reduce the amounts deducted in respect of taxes and levies as aforesaid where permitted under the relevant United States of America/Australian Taxation Treaty and **VENOMIX** will provide **DEAKIN** with reasonable assistance in this respect.

4.4 **VENOMIX** shall keep for three (3) years from the date of each payment of royalties full and proper books of account and records showing all transactions, proceedings and information reasonably necessary for the accurate calculation and verification of all royalties and all matters relating to

the manufacture, use, sale or other disposal of the Spider Toxin Products by or on behalf of VENOMIX.

- 4.4.1 The records and accounts to be kept by **VENOMIX** shall be kept and maintained at **VENOMIX**'s place of business of which **DEAKIN** shall be notified.
- 4.4.2 **VENOMIX** shall within 120 days of 30 June in each year provide **DEAKIN** with a true statement of account of royalties payable by **VENOMIX** to **DEAKIN** under this Deed certified to be correct by **VENOMIX**.
- 4.4.3 **DEAKIN** shall have the right at any time during the period of three (3) years after receiving any such report or statement at **DEAKIN**'s cost to have a third party mutually acceptable to **VENOMIX** (or failing agreement thereon within 14 days after the nomination of the third party by **DEAKIN** a third party appointed by the President of the Institute of Chartered Accountants in Australia) conduct an audit of payments made or required to be made under the provisions of this Clause 4. Such audit(s) to be performed at 'reasonable' time periods and shall not be exercised by **DEAKIN** more than once in any calendar year nor more than once in respect of sales of any Spider Toxin Product in any given period. **DEAKIN** shall pay for such inspections, except that in the event there is any upward adjustment in the aggregate royalties, payable for any relevant royalty payment period shown by such inspection of more than five percent (5%) of the amount paid, **VENOMIX** shall pay for such inspection.
- 4.5 Upon assignment hereunder to **VENOMIX** of the Patent Rights **VENOMIX** shall assume responsibility for the prosecution and maintenance of the Patent Rights, any patent applications derived therefrom and any resulting patents and subject as specifically referred to below **DEAKIN** shall have no liability in respect of any fees associated with such prosecution and maintenance which arise after the date hereof. Promptly upon request by **VENOMIX**, **DEAKIN** will transfer or procure the transfer of its patent files relating to the Patent Rights to **VENOMIX** or its agents.

To the extent that **VENOMIX** decides to cease to prosecute any of the Patent Rights or to maintain any resulting patents **VENOMIX** shall give notice to

**DEAKIN** of such decision and **DEAKIN** shall have the right, by notice to **VENOMIX** given within 30 days of **DEAKIN**'s receipt of **VENOMIX**'s notice, to require **VENOMIX** to reassign the applicable letters patent, applications for letters patent and any such resulting patents to **DEAKIN** and if all of the Patent Rights, and the resulting patents have been so reassigned this Deed between **VENOMIX** and **DEAKIN** shall terminate forthwith.

If **DEAKIN** is of the reasonable view that **VENOMIX** (or a licensee) has ceased to prosecute any of the Patent Rights or to maintain any resulting patents it may give notice to that effect to **VENOMIX** and if **VENOMIX** shall fail to remedy such default within 30 days of such notice or shall within 30 day period fail to give notice under clause 6.3.1 to refer the matter to an independent expert then **DEAKIN** shall have the right, upon thirty (30) days' notice to **VENOMIX**, to require **VENOMIX** to reassign the applicable letters patent, applications for letters patent and any such resulting patents to **DEAKIN** and if all of the Patent Rights, and the resulting patents have been so reassigned this Deed between **VENOMIX** and **DEAKIN** shall terminate forthwith.

4.6 **DEAKIN**, in addition to any other right of **DEAKIN** in this Deed, may terminate this Deed by notice to **VENOMIX** in any of the following circumstances:

4.6.1 any royalties in excess of \$US 50,000 (fifty thousand dollars United States of America currency) pursuant to this Clause 4 are due to be paid by **VENOMIX** and are unpaid within 30 days from the date of notice by **DEAKIN** to **VENOMIX** requiring the payment of those royalties (which shall be deemed to be a material breach for the purposes of Clause 4.6.2);

4.6.2 **VENOMIX** commits a material breach of this Deed and, if the breach is capable of being remedied, fails to remedy the breach within 30 days of being required to do so by **DEAKIN** in writing;

4.6.3 **VENOMIX** ceases to carry on business or threatens to stop payment of all or any class of its debts, or is declared insolvent, or has an administrator appointed over all or any of its assets, in any such case for a period of 120 days or more;

4.6.4 The independent expert or the arbitrator as the case may be appointed

pursuant to Clause 6.3 decide pursuant to clause 6.3 that **VENOMIX** is failing to use diligence required by clause 6.3; provided that **VENOMIX** shall have 120 days from the first determination pursuant to clause 6.3 during the term of this agreement to cure such failure

4.6.5 **VENOMIX** fails to report in accordance with clause 4.7 and fails to do so within 30 days of being required to do so by **DEAKIN** in writing.

4.7 **VENOMIX** shall provide **DEAKIN** development plan within 3 months of the the date of this Deed and shall report to **DEAKIN** at least once each year thereafter, the progress of its (or its Licensee(s)') research and development work in respect of the Spider Toxin Technology and the exploitation of the Spider Toxin Products and such report shall form part of the Confidential Information.

5.1 **DEAKIN** hereby grants to **VENOMIX** a worldwide exclusive right to use its Confidential Information together with a non-exclusive right to use the remainder of the Know-how (and to copy any copyright material in the Know-how) for whatever lawful purpose **VENOMIX** deems fit including the right of **VENOMIX** to grant sub-licences in respect of the Know-how for the purposes of the licences contemplated by Clause 4.1.4 EXCEPT THAT if application for letters patent or resulting patent are reassigned to **DEAKIN** pursuant to Clause 4.5 or 4.6 **DEAKIN** shall during the term of this Deed be entitled to use the Know-how (which for the avoidance of doubt includes the Confidential Information) in respect of the exploitation of such applications and resulting patents in those countries to which applications or resulting patents applies but only to the extent necessary to enable **DEAKIN** to so exploit such applications for letters patent or resulting patents and not otherwise.

5.2 The assignment of the rights to **VENOMIX** pursuant to Clause 2 of this Deed are personal to **VENOMIX** and **VENOMIX** covenants that it will not transfer or assign the Patent Rights or any patents granted on the Patent Rights without the prior consent in writing of **DEAKIN** whose consent shall not be unreasonably withheld if:

5.2.1 the transferee or assignee is a responsible, solvent and  
competent party able to carry out and perform the provisions of this Deed to be performed; and

5.2.2 the transferee or assignee if **DEAKIN** requires, executes (under seal or otherwise as **DEAKIN** reasonably requires) a personal covenant or undertaking to perform and observe the provisions of this Deed including this Clause 5.2.

“Notwithstanding the foregoing, that VENOMIX may assign this agreement without DEAKIN prior written consent to an Affiliate of VENOMIX or to a party which acquires all or substantially all of **VENOMIX**’s business, whether by merger, sale of assets or otherwise IF the transferee or assignee is a responsible, solvent and competent party able to carry out and perform the provisions of this Deed to be performed; and the transferee or assignee, if DEAKIN requires, executes (under seal or otherwise as DEAKIN reasonably requires) a personal covenant or undertaking to perform and observe the provisions of this Deed including this Clause 5.2 as though they were a party to this Agreement in the stead of VENOMIX AND VENOMIX and the assignee as soon as practicable after the execution of any assignment agreement give notice to DEAKIN of the assignment agreement. A permitted assignee shall, simultaneously with assignment all obligations of the assignor under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and permitted assigns of the parties and the name of the party herein will be deemed to include the names of such party’s successors and permitted assigns to the extent necessary to carry out the intent of this Agreement

6.1 **DEAKIN** shall not, and shall use all reasonable endeavours to procure its staff and students shall not at any time after the date of this Deed use or disclose to any third party any Confidential Information which may be within or come to its knowledge EXCEPT THAT **DEAKIN** shall be entitled to use information and knowledge in relation to toxins, recombinant insect viruses, transgenic plants, peptide technology or mimics other than as they apply to the Spider Toxin Technology to conduct scientific research and development other than in relation to the Spider Toxin Technology and Spider Toxin Products.

6.2 Clause 6.1 shall not apply to:

6.2.1 disclosure of any Confidential Information required by law;  
or

6.2.2 any Confidential Information which comes into the public domain otherwise than by a breach of this Clause 6 by **DEAKIN**.

6.3 **VENOMIX** shall during the term of this Deed use all reasonable endeavours to research, develop and exploit the Spider Toxin Technology and Spider Toxin Products by using all of its efforts and skills to the extent that it is reasonable to do so and **VENOMIX** shall within three months of the date of this Deed in the development plan provided by, and thereafter in each report given by, **VENOMIX** under clause 4.7) and in so far as it is able to do so advise **DEAKIN** of chronological decision points in this regard, the reasons therefor and the decision points still outstanding.

6.3.1 Where there is dispute concerning whether **VENOMIX** is using diligence as set out in Clause 6.3 **DEAKIN** shall after notice to **VENOMIX** have the right to refer the matter to panel of three (3) independent expert agreed between the parties or, failing agreement between them within thirty days of the notice by **DEAKIN** to **VENOMIX**, by arbitration under the rules of the British Columbia International Commercial Arbitration and in this regard:

6.3.1.1 the appointing authority shall be the British Columbia International Commercial Arbitration Centre;

6.3.1.2 any arbitration shall be administered in accordance with its Rules;

6.3.1.3 the place of Arbitration shall be Vancouver, British Columbia, Canada;

6.3.1.4 the governing law shall be law of Canada; and

6.3.1.5 the language of the arbitration shall be English

6.3.2 The independent experts shall give due weight to any representation put forward by a party within the time limit prescribed by the independent experts. The parties shall supply the independent expert with any information, assistance and co-operation which they may request in connection with their determination.

6.3.3 The independent experts shall act as experts and not as an arbitrator and their majority decision in the absence of manifest error, shall be final and binding on the parties.



- 6.3.4 The fees and expenses of the independent experts or the arbitrator shall be borne equally by the parties unless the independent experts or arbitrator determines in their absolute discretion that a party should bear all or a greater proportion of them because of the conduct of that party.
- 6.4 Any disputes howsoever arising out of or in connection with this Deed (other than a dispute concerning whether **VENOMIX** is using diligence as set out in Clause 6.3) shall be settled by arbitration under the rules of the British Columbia International Commercial Arbitration and in this regard:
- 6.4.1 the appointing authority shall be the British Columbia International Commercial Arbitration Centre;
  - 6.4.2 any arbitration shall be administered in accordance with its Rules;
  - 6.4.3 the place of Arbitration shall be Vancouver, British Columbia, Canada;
  - 6.4.4 the governing law shall be law of Canada; and
  - 6.4.5 the language of the arbitration shall be English
- 6.5 Any notice demand, consent or other communication given or made under this Deed;
- 6.5.1 must be in writing and signed by a person duly authorised by the sender;
  - 6.5.2 must either be delivered to the intended recipient by registered airmail, by hand or by fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

In the case of <b>DEAKIN</b>	Deakin Research Pty Limited
and each member of	11th Floor,
<b>DEAKIN</b>	49 York Street,
	SYDNEY NSW 2000
	Australia
	Fax (61 2) 9279 2083

In the case of **VENOMIX**     The President  
VENOMIX, Inc.  
4717 Campus Drive,  
Suite #1200  
Kalamazoo, Michigan, 49008  
U.S.A.  
Fax (269) 372-3397

7.1     This Deed shall come into force on the date hereof and unless terminated pursuant to Clause 4.5 or clause 4.6 shall continue in force until the expiry of the last to expire of any patents which may be granted pursuant to the Patent Rights or any application for a patent claiming priority from or derived from the Patent Rights EXCEPT THAT:

7.1.1     termination of this Deed pursuant to Clause 4.5, Clause 4.6, this Clause 7 or otherwise shall not affect the provisions of Clause 4.1 which shall survive termination along with such other provision of this Deed mutatis mutandis are necessary to give effect to Clause 4.1 and the royalty thereunder shall continue to be payable by **VENOMIX** to **DEAKIN** while ever any of the Spider Toxin Products are manufactured, put into use, sold or otherwise disposed of by or on behalf **VENOMIX** during the period, if a royalty is paid by **VENOMIX** to **DEAKIN** under this Deed, of 25 years from the date of the payment of the first royalty payable under this Deed, otherwise 30 years from the termination of this Deed, or such other maximum lesser period permitted under any law that would otherwise render this Deed or any provision hereof void or otherwise unenforceable by **DEAKIN** AND EXCEPT FURTHER THAT:

7.1.2     the license of Confidential Information shall continue unless this deed is terminated pursuant to Clause 4.5 or Clause 4.6 AND EXCEPT FURTHER THAT:

7.1.3     the survival of these clauses shall not be construed as meaning that **DEAKIN** has consented to such manufacture, use, sale or other disposal by or on behalf **VENOMIX** or use of the Know-how.

7.2     Where this Deed is terminated pursuant to Clause 4.5 or Clause 4.6:

7.2.1     **VENOMIX** shall assign to **DEAKIN** all of the Patent Rights and

Spider Toxin Technology and any patents granted on the Patent Rights or on any applications for patent claiming priority from or derived from the Patent Rights held by **VENOMIX**;

7.2.3 The license to **VENOMIX** granted to it under Clause 5.1 hereof shall terminate

7.2 **VENOMIX** hereby irrevocably appoints **Deakin Research** as its true and lawful attorney for **VENOMIX**, and in **VENOMIX**'s name, and as **VENOMIX**'s act and/or deed,

7.2.1 to execute under hand, or under seal, and deliver at the Attorney's option (which delivery may be conditional or unconditional) any document which **DEAKIN** reasonably requires, and

7.2.2 to do any act or thing which **DEAKIN** reasonably requires,

to give effect to clause 4.5 and clause 7.2 of this agreement.

8.1 Each of Deakin Research, Deakin University, The University of Southern Queensland and the Rural Industries Research and Development Corporation states that:

8.1.1 that it is duly authorised to enter into this Deed.

8.1.2 **DEAKIN** is the beneficial owner of the Patent Rights in the undivided proportions as stated in recital (A) to this Deed.

8.1.3 To its knowledge, the practice of Spider Toxin Technology does not infringe upon any third party's Intellectual Property and it has not received any claim alleging any such infringement or any interference, misappropriation or violation of a third party's Intellectual Property

8.2 This Deed and assignment shall be governed by the laws of British Columbia, Canada and the parties irrevocably agree that the courts of British Columbia, Canada shall have exclusive jurisdiction to deal with any disputes howsoever or wheresoever arising out of or in connection with this Deed but only to the extent that the arbitration provisions of clause 6.4 do not have the authority to resolve them.

8.3 Each party hereto agree to do all such acts and execute such deeds, documents

and assurances as shall be reasonably required by the other parties to carry out the true intent and purpose of this Deed.

- 8.4 This Deed shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 8.5 Each provision of this Deed shall be deemed to be separate and severable from the others including their applicability in respect of each jurisdiction where the operation of this Deed is brought into effect. If any provision of this Deed is determined to be invalid or unenforceable, in respect of each such jurisdiction such provision shall be inoperative in respect of that jurisdiction to the extent of the invalidity or unenforceability and any such determination and consequential severance (if any) shall not invalidate the rest of this Deed or where the provision is only partly enforceable, the remainder of that provision, which shall remain in full force and effect as if the provision had not been part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.
- 8.6 It is hereby agreed and declared that this document shall not be presumed to be delivered and shall not be or take effect as a Deed until it is dated.

IN WITNESS whereof this assignment has been duly executed by the parties or their duly authorised representatives as a deed, the day and year first above written.

THE COMMON SEAL of  
**DEAKIN RESEARCH PTY**  
**LIMITED** was hereunto affixed  
by authority of the board of directors  
in the presence of:

*Y.A. Dick*

Secretary



Director

THE COMMON SEAL of )  
DEAKIN UNIVERSITY )  
was hereunto affixed on the )  
the 2 day of July 2007 )  
by direction of the )  
Vice Chancellor in the presence of: )

Sally Walker

Bred

THE COMMON SEAL of THE )  
UNIVERSITY OF SOUTHERN )  
QUEENSLAND was hereunto )  
affixed on the 29<sup>th</sup> day of August 2007 )  
by <sup>authority</sup> ~~direction~~ of the USQ Council )  
Vice Chancellor in the presence of: )

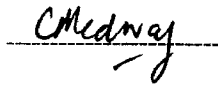
N. J. Longmore  
Vice-Chancellor  
Rob Reed  
Acting General Manager

[Signature]  
[Signature]

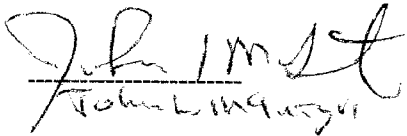
SIGNED SEALED AND )  
DELIVERED by the **RURAL** )  
**INDUSTRIES RESEARCH** )  
**AND DEVELOPMENT** )  
**CORPORATION** by its duly )  
Authorised Signatory )



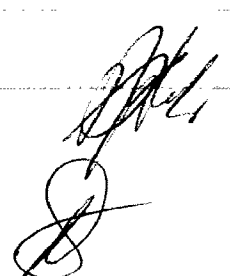
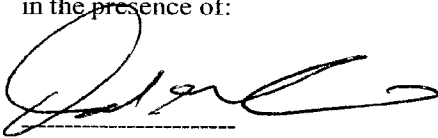
in the presence of:



SIGNED SEALED AND )  
DELIVERED by the **VENOMIX, Inc** )  
by its duly )  
Authorised Signatory )



in the presence of:



SCHEDULE

PATENTS

<u>PATENT NO.</u>	<u>GRANT DATE</u>	<u>COUNTRY</u>
673816	25 <sup>th</sup> March, 1997	Australia
2128421		Canada
61087	9 September, 2000	China
0726947	22 May 2002	Europe
0726947	22 May 2002	France
69331955.0-88	22 May 2002	Germany
246834	15 <sup>th</sup> January, 1997	New Zealand
0726947	22 May 2002	United Kingdom
5763568	9 <sup>th</sup> June, 1998	U.S.A
5959182	28 September, 1999	U.S.A.