

STATE OF TEXAS           §  
   §           ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
COUNTY OF DALLAS   §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Coppell, Texas (the “City”), and ATP Science Pty Ltd, located at Unit 2, 9-11 Babblyle Street, Loganholme QLD 4129 Australia (“Lessee”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

**W I T N E S S E T H:**

**WHEREAS**, Lessee has or intends to enter a lease of approximately 21,000 square feet of space (with option to expand up to 42,000 square feet of space for ten (10) years) in a building located at 410 N. Freeport Parkway, Coppell, Texas 75019 (the “Leased Premises”), for a period of at least five (5) years (the “Lease”), and intends to locate certain Tangible Personal Property (hereinafter defined) at the Leased Premises, for operating a new facility; and

**WHEREAS**, Lessee has advised the City that a contributing factor that would induce the Lessee to enter into the Lease and occupy the Leased Premises would be an agreement by the City to provide an economic development grant to the Lessee as set forth herein; and

**WHEREAS**, the City has adopted programs for promoting economic development and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, the City has determined that making an economic development grant to the Lessee in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (2) benefit the City and the City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I**  
**Term**

This Agreement shall be effective on the last date of execution hereof (“Effective Date”) and shall continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article II Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Annual BPP Grants” shall mean five (5) annual economic development grants to be provided by City, each in an amount equal to fifty percent (50%) of the City ad valorem taxes assessed against the Tangible Personal Property and collected by the City for the applicable Tax Year, in excess of the ad valorem taxes assessed by City against the Tangible Personal Property and collected by City for the Base Year to be paid as set forth herein.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof; provided, however, “Bankruptcy or Insolvency” shall not include an event that does not affect the Lessee’s ability to continue to make the Required Use of the Leased Premises and otherwise to meet its obligations under this Agreement.

“Base Year” shall mean 2019.

“Capital Investment” shall mean the Lessee’s total capitalized cost for the Tangible Personal Property located at the Leased Premises.

“City” shall mean the City of Coppel, Texas.

“Consummated” shall have the same meaning assigned by Texas Tax Code, Section 321.203, or its successor.

“Commencement Date” shall mean the date the City has issued a certificate of occupancy for Lessee to occupy the Leased Premises.

“Expiration Date” shall mean the date of payment of the last of the Grants, unless sooner terminated as provided herein.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Grants” shall collectively mean the Annual BPP Grants and the Sales Tax Grants.

“Grant Year” shall mean a given Tax Year, except that the First Grant Year shall mean the Tax Year commencing January 1 of the calendar year following the Commencement Date.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Lessee or any property or any business owned by Lessee within the City.

“Lease” shall mean Lessee’s lease of the Leased Premises for a period of not less than five (5) years commencing on the Lease Inception Date.

“Leased Premises” shall mean the 21,000 square feet of space in a building located at 410 N. Freeport Parkway, Coppell, Texas 75019. The Leased Premises shall include the additional square feet of space in the building located at 410 N. Freeport Parkway, Coppell, Texas 75019 if the Lessee exercises the option under the Lease to expand the square footage of space under the Lease.

“Lease Inception Date” shall mean the commencement date of the lease term under the Lease, but no later than January 31, 2019.

“Lessee” shall mean ATP Science Pty Ltd, an incorporated entity located at Unit 2, 9-11 Babdoyle Street, Loganholme QLD 4129 Australia.

“Minimum Annual Sales of Taxable Items” shall mean sale of Taxable Items by Lessee consummated at the Leased Premises for each Sales Tax Reporting Period in the amount of Five Million Six Hundred Thousand Dollars (\$5,600,00.00).

“Payment Request” shall mean: (i) with respect to a Sales Tax Grant, a written request from Lessee to the City for payment of a Sales Tax Grant accompanied by the Sales Tax Certificate for the applicable Sales Tax Reporting Period; and (ii) with respect to an Annual BPP Grant, a written request from Lessee to the City for payment of the applicable Annual BPP Grant, which request shall be accompanied by copies of tax statement and/or receipt(s) and/or other evidence reasonably satisfactory to the City to establish that the ad valorem taxes assessed by the City against the Tangible Personal Property has been paid for such Grant Year.

“Related Agreements” shall mean any agreement (other than this Agreement) by and between the City and Lessee and/or any of its affiliated or related entities.

“Required Use” shall mean Lessee’s continuous occupancy of the Leased Premises and the continuous operation of an office and warehouse/distribution facility for dietary supplements/nutraceuticals and fulfillment services at the Leased Premises. The Lessee will also undertake manufacturing of dietary supplements/neutraceuticals during the term of this Agreement.

“Sales and Use Tax” shall mean the City's one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by Lessee Consummated at the Leased Premises.

“Sales Tax Certificate” shall mean a report provided by the State of Texas to the City in accordance with Texas Tax Code, Section 321.3022, (or other applicable provision of the Texas Tax Code) which lists the amount of Sales and Use Tax paid (including any refunds, credits or adjustments) received by the City from the State of Texas from the sale of Taxable Items by the Lessee Consummated at the Leased Premises for the applicable Sales Tax Reporting Period, or if such report is not available, a certificate or other statement in the form reasonably approved by the City, setting forth the collection of Sales and Use Tax (including any refunds, credits or adjustments) by the Lessee received by the City from the State of Texas, for the sale of Taxable Items by the Lessee Consummated at the Leased Premises for the applicable Sales Tax Reporting Period, and the total sales of Taxable Items by Lessee consummated at the Leased Premises for the applicable Sales Tax Reporting Period, which are to be used to determine eligibility of the Lessee for the Sales Tax Grants, together with such supporting documentation required herein, and as the City may reasonably request.

“Sales Tax Grants” shall mean five (5) annual grants economic development grants to be paid by City to Lessee each in the amount equal to forty percent (40%) of the Sales Tax Receipts for the applicable Sales Tax Reporting Period, to be paid to the Lessee as set forth herein. The amount of each Sales Tax Grant shall be computed by multiplying the Sales Tax Receipts received by the City for a given Sales Tax Reporting Period by the forty percent (40%) less any administrative fee charged to City by the State of Texas for collection of the Sales and Use Taxes pursuant to Tax Code Section 321.503 or other applicable law.

“Sales Tax Receipts” shall mean City’s receipts of Sales and Use Tax from the State of Texas from Lessee’s collection of Sales and Use Tax (it being expressly understood that City’s one percent (1%) sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes) as a result of sale of Taxable Items by Lessee for the applicable Sales Tax Reporting Period Consummated at the Leased Premises.

“Sales Tax Reporting Period” shall mean each twelve (12) month period during the term of this Agreement provided however the first Sales Tax Reporting Period shall begin with the first calendar month immediately following the Commencement Date.

“State of Texas” shall mean the office of the Texas Comptroller, or its successor.

“Tangible Personal Property” shall have the same meaning assigned by Tax Code, Section 1.04, and shall mean all tangible personal property, equipment, fixtures, and machinery, inventory and supplies owned or leased by Lessee and located in the Leased Premises on January 1 of a given Tax Year. Tangible Personal Property shall not include Freeport Goods or Goods in Transit.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

### **Article III**

#### **Economic Development Grant**

##### **3.1     Annual BPP Grants.**

- (a)     Annual BPP Grant. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Lessee, and the obligation of Lessee to repay the Grants in accordance with Article V hereof, City agrees to provide Lessee with five (5) Annual BPP Grants to be paid within thirty (30) days after receipt of a Payment Request following March 1 of each calendar year (or the immediately following business day if March 1 is not a business day), beginning with March 1, of the year following the First Grant Year, provided the City ad valorem taxes assessed against the Tangible Personal Property have been paid in full for the respective Grant Year (i.e., the Tax Year immediately preceding the year in which an Annual BPP Grant is to be made) prior to the delinquency date. Failure to timely submit a Payment Request on or before March 1 of the calendar year for a given Grant Year shall operate as a forfeiture of the Annual BPP Grant for such Grant Year.
- (b)     Tax Protest. In the event Lessee or another party timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Tangible Personal Property with the applicable appraisal district (or its successor), the obligation of City to provide the Annual BPP Grant with respect to the Tangible Personal Property for such Tax Year shall be delayed with respect to the portion protested or contested until a final determination has been made of such protest or contest. In the event Lessee’s protest and/or contest

results in a final determination that changes the amount of ad valorem taxes assessed and due for the Tangible Personal Property (or portion thereof) after any Annual BPP Grant has been paid for such Tax Year, the Annual BPP Grant for such Tax Year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual BPP Grant, or within thirty (30) business days after such determination in the event no further Annual BPP Grant is due under the Agreement.

- (c) Refunds and Underpayments of Grants. In the event City reasonably determines that the amount of any Annual BPP Grant paid by City to Lessee was incorrect, Lessee shall, within thirty (30) days after receipt of written notification thereof from City specifying the amount by which such Annual BPP Grant exceeded the correct amount to which Lessee was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to City. If City reasonably determines that the amount by which such Annual BPP Grant was less than the correct amount to which Lessee was entitled (together with such records, reports and other information necessary to support such determination), City shall, within thirty (30) days, pay the adjustment to Lessee.

### 3.2 Sales Tax Grants.

- (a) Sales Tax Grant. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Lessee, and the obligation of Lessee to repay the Grants in accordance with Article V hereof, City agrees, provided the Lessee has achieved the Minimum Sale of Taxable Items for the applicable Sales Tax Reporting Period, to provide Lessee with five (5) annual Sales Tax Grants. The Sales Tax Grants shall be paid within ninety (90) days after receipt of a Payment Request following the end of the applicable Sales Tax Reporting Period beginning with the first Sales Tax Reporting Period. Each Payment Request shall be submitted to City not later than sixty (60) days after the end of each Sales Tax Reporting Period. Failure to timely submit a Payment Request for a Sales Tax Reporting Period shall operate as a forfeiture of the Sales Tax Grant for such Sales Tax Reporting Period. If the required Minimum Sale of Taxable Items is not achieved for a given Sales Tax Sales Tax Reporting Period the Lessee shall forfeit its right to the Sales Tax Grant for such Sales Tax Sales Tax Reporting Period, but such failure shall not be considered as an event of default subject to termination and repayment as provided in Article V hereof.
- (b) Adjustment Notification. Lessee shall promptly notify City in writing of any adjustments found, determined or made by Lessee, the State of Texas, or by an audit that results, or will result, in either a refund or reallocation of Sales Tax Receipts or the payment of Sales and Use Tax or involving amounts reported by Lessee as subject to this Agreement. Such notification shall also include the amount of any such adjustment in Sales and Use Tax or Sales Tax Receipts. Lessee shall notify City in writing within thirty (30) days after receipt of notice of the intent of

the State of Texas, to audit Lessee. Such notification shall also include the period of such audit or investigation.

- (c) Amended Returns. In the event Lessee files an amended sales and use tax return, or report with the State of Texas, or if additional Sales and Use Tax is due and owing by Lessee to the State of Texas, as determined or approved by the State of Texas, affecting Sales Tax Receipts for a previous Sales Tax Reporting Period, then the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas approved amendment shall be adjusted accordingly (i.e., up or down, depending on the facts), provided City has received Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Lessee shall provide City with a copy of any such amended sales and use tax report or return, and the approval thereof by the State of Texas. Copies of any amended sales and use tax return or report or notification from the State of Texas that additional Sales and Use Tax is due and owing by Lessee to the State of Texas, as determined by the State of Texas, affecting Sales Tax Receipts for a previous Sales Tax Reporting Period shall be provided to City with the Payment Request for the next Sales Tax Reporting Period.
- (d) Refunds and Underpayments of Sales Tax Grants. In the event the State of Texas determines that City erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to Lessee exceeds (or is less than) the correct amount of Sales and Use Tax for a previous Sales Tax Reporting Period, for which Lessee has received a Sales Tax Grant, Lessee shall, within sixty (60) days after receipt of notification thereof from City specifying the amount by which such Sales Tax Grant exceeded the amount to which Lessee was entitled pursuant to such State of Texas determination, adjust (up or down, depending on the facts) the amount claimed due for the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination. If Lessee does not adjust the amount claimed due for the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination City may, at its option, adjust the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination. If the adjustment results in funds to be paid back to City, Lessee shall repay such amount to City within sixty (60) days after receipt of such State of Texas determination. The provisions of this Section shall survive termination of this Agreement.
- (e) Sales Tax Grant Payment Termination; Suspension. The payment of Sales Tax Grants shall terminate on the effective date of determination by the State of Texas or other appropriate agency or court of competent jurisdiction that the Leased Premises is not a place of business resulting in Sales and Use Taxes being due the City from the sale of Taxable Items by Lessee at the Leased Premises. In the event the State of Texas seeks to invalidate the Leased Premises as a place of business where Sales and Use Tax was properly remitted to the State of Texas (the "Comptroller Challenge") the payment of Sales Tax Grants by City hereunder shall be suspended until such Comptroller Challenge is resolved in whole favorably to

City. In such event, Lessee shall not be required to refund Sales Tax Grants previously received from City provided Lessee is actively defending against and/or contesting the Comptroller Challenge and Lessee promptly informs City in writing of such Lessee actions and with copies of all documents and information related thereto. In the event the Comptroller Challenge is not resolved favorably to City and/or in the event the State of Texas determines that the Improvements is not a place of business where the Sales and Use Tax was properly remitted to the State of Texas, and Sales and Use Tax Receipts previously paid or remitted to City relating to the Leased Premises are reversed and required to be repaid to the State of Texas, then the obligation to pay the Sales Tax Grants shall terminate and Lessee shall refund all Sales Tax Grants received by Lessee from City that relate to the Comptroller Challenge, which refund shall be paid to City within sixty (60) days of the date that the Comptroller Challenge required City to repay Sales and Use Tax Receipts.

- (f) Indemnification. THE LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVERPAID OR INCORRECTLY ALLOCATED SALES AND USE TAX ATTRIBUTED TO THE SALE OF TAXABLE ITEMS BY THE LESSEE CONSUMMATED AT THE LEASED PREMISES FOR ANY SALES TAX REPORTING PERIOD DURING THE TERM OF THIS AGREEMENT ("CLAIM"). IT BEING THE INTENTION OF THE PARTIES THAT THE LESSEE SHALL BE RESPONSIBLE FOR THE REPAYMENT OF SALES TAX GRANTS PAID TO LESSEE HEREIN BY CITY THAT INCLUDES SALES AND USE TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE ERRONEOUSLY, PAID, COLLECTED, DISTRIBUTED, OR ALLOCATED TO THE CITY.

THE INDEMNIFICATION PROVIDED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ACTIONS OR OMISSIONS OF THE CITY. THE LESSEE SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND OTHER THIRD-PARTY COSTS INCURRED BY THE CITY TO DEFEND OR CONTEST A CLAIM (COLLECTIVELY, THE "OTHER COSTS").

THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN



OBLIGATIONS, IF ANY, THAT ARISE FROM LESSEE TO CITY TO  
PERFORM OBLIGATIONS CREATED BY THIS SECTION.

3.3 Current Revenue. The Grants shall be paid solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Lessee.

3.4 Grant Limitations. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided; however, the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Grants for the then ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Lessee. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered by the Lessee in favor of any commercial lender and/or similar financial institution.

**Article IV**  
**Conditions to Grant**

The obligation of the City to pay the Annual BPP Grants shall be conditioned upon the compliance and satisfaction by the Lessee of the terms and conditions of this Agreement and each of the conditions set forth in Article IV.

4.1 Payment Request. Lessee shall, as a condition precedent to the payment of each applicable Annual BPP Grant and the applicable Sales Tax Grant, timely provide City with the applicable Payment Request.

4.2 Good Standing. The Lessee shall not have an uncured breach or default of this Agreement, or a Related Agreement.

4.3 Required Use. During the term of this Agreement beginning on the Commencement Date and continuing until the Expiration Date, the Leased Premises shall not be used for any purpose other than the Required Use, and the operation of the Leased Premises in conformance with the Required Use shall not cease for more than thirty (30) continuous days except in connection with, and to the extent of an event of Force Majeure or Casualty.

4.4 Continuous Lease and Occupancy. The Lessee shall, beginning on the Commencement Date and continuing thereafter until the Expiration Date, continuously lease and occupy the Leased Premises.

4.5 Lease. The Lessee shall have entered the Lease on or before January 31, 2019 and the Lessee shall occupy the Leased Premises on or before January 31, 2019.

4.6 Capital Investment. The Capital Investment shall be at least Two Hundred Fifty Thousand Dollars NO/100 (\$250,000.00) as of the Commencement date.

4.7 Sales Tax Certificate. Lessee shall during the term of this Agreement, provide to City a Sales Tax Certificate thirty (30) days after the end of each Sales Tax Reporting Period. The Sales Tax Certificate shall at a minimum contain, include or be accompanied by the following:

- (a) A schedule detailing the amount of the Sales and Use Tax collected and paid to the State of Texas as a result of the sale of Taxable Items by Lessee Consummated at the Leased Premises for the then ending Sales Tax Reporting Period;
- (b) A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by Lessee for the then ending Sales Tax Reporting Period showing the Sales and Use Tax collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment certificate) by Lessee for the sale of Taxable Items by Lessee Consummated at the Leased Premises, including any supporting work papers;
- (c) A copy of all direct payment and self-assessment returns, including amended returns, filed by Lessee for the previous ending Sales Tax Reporting Period showing the Sales and Use Tax paid for the sale of Taxable Items by Lessee Consummated at the Leased Premises;
- (d) Information concerning any refund or credit received by Lessee of the Sales or Use Taxes paid or collected by Lessee which has previously been reported by Lessee as Sales and Use Tax paid or collected; and information concerning any Sales and Use Tax adjustments made pursuant to any sales and use tax audits by the State of Texas of either Lessee and its customers involving amounts reported by Lessee as subject to this Agreement;
- (e) A schedule detailing the total sales of Taxable Items by Lessee Consummated at the Lessee for the then ending Sales Tax Reporting Period.

## **Article V Termination**

5.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the Parties;
- (b) Expiration Date;
- (c) upon written notice, by either Party in the event the other Party breaches any of the terms or conditions of this Agreement, or a Related Agreement, and such breach is not cured within thirty (30) days after the nonbreaching Party sends written notice to the breaching Party of such breach;

- (d) upon written notice, by the City, if Lessee suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice, by the City, if any Impositions owed to the City or the State of Texas by Lessee shall become delinquent (provided, however, the Lessee retains the right to timely and properly protest and contest any such Impositions); or
- (f) upon written notice, by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event the Agreement is terminated by the City pursuant to Section 5.1 (c), (d), (e) or (f), the Lessee shall immediately refund to the City an amount equal to the Annual BPP Grants paid by the City to the Lessee preceding the date of such termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate) from the date on which each Grant is paid by the City until each such Grant is refunded by the Lessee. The repayment obligation of Lessee set forth in this section shall survive termination.

5.3 Right of Offset. The City may, at its option, offset any amounts due and payable under this Agreement or a Related Agreement against any debt (including taxes) lawfully due to the City from the Lessee, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

## **Article VI Miscellaneous**

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the express written consent of the City Manager.

6.2 Limitation on Liability. It is understood and agreed between the Parties that the Lessee, in satisfying the conditions of this Agreement, has acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Lessee agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses of any nature whatsoever by a third party arising out of the Lessee's failure to perform its obligations under this Agreement.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager  
City of Coppell, Texas  
P. O. Box 478  
Coppell, Texas 75019

With a copy to:

Peter G. Smith  
City Attorney  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201

If intended for Lessee, to:

ATP Science  
Attn: Dr John Kapeleris  
2220 Meridian Blvd., Suite Z6907  
Minden, Nevada 89423

With a copy to:

ATP Science  
Jeffrey Doidge  
CEO  
Unit 2, 9-11 Babdoyle Street,  
Loganholme QLD 4129  
Australia

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination. For the avoidance of doubt, it is expressly agreed by the Parties that the right of Lessee to make any Payment Request and the obligation of City to verify employment and pay any Grant to which Lessee may have otherwise been entitled prior to the termination of this Agreement shall survive termination of this Agreement.

6.13 Employment of Undocumented Workers. During the term of this Agreement the Lessee agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Lessee shall repay the amount of the Annual BPP Grants and any other funds received by the Lessee from City as of the date of such violation within one hundred twenty (120) days after the date the Lessee is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. The Lessee is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of the Lessee or by a person with whom the Lessee contracts.

6.14 Conditions Precedent. This Agreement is expressly subject to and contingent upon: (i) the Lessee entering into the Lease on or before January 31, 2019; and (ii) the Lessee occupying the Leased Premises on or before January 31, 2019.

*(signature page to follow)*

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
Karen Hunt, Mayor

**Attest:**

By: \_\_\_\_\_  
Christel Pettinos, City Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
City Attorney

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**ATP SCIENCE**

By: \_\_\_\_\_  
Jeffrey Doidge, CEO