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SAMPLE

**DEED OF SETTLEMENT
AND RELEASE**

between

ROCK SALTS PTY LTD
(ACN 303 278 095)
(in liquidation)

and

OMEGA 3 PHARMACEUTICALS PTY LTD
(ACN 340 412 833)
acting as the trustee of
the **SALMON SKIN TRUST** (ABN 04 242 087 442)

&

FINN & ROE LAWYERS PTY LTD
(ACN 314 088 354)

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SAMPLE

Date

Parties

Payer	ROCK SALTS PTY LTD (ACN 303 278 095) (in liquidation) Address: 20 Saxa Avenue, Rocky Point NSW 2001 Email: salt@sodiumchloride.com.au (the <i>Payer</i>)
Recipients	OMEGA 3 PHARMACEUTICALS PTY LTD (ACN 340 412 833) acting as the trustee of the SALMON SKIN TRUST (ABN 04 242 087 442) Address: 4 Gill Street, Blue Bay NSW 3144 FINN & ROE LAWYERS PTY LTD (ACN 314 088 354) Address: 100 Pesce Court, Scale Hill NSW 3430 Fax: 98082344 Email: admin@frl.com.au (together, the <i>Recipients</i> and each a <i>Recipient</i>)

Recitals

- A The Payer and Recipients are parties to legal proceedings in the Supreme Court of NSW (*Court*) with matter number 2020/341085 (the *Proceedings*).
- B Without admission, the parties have agreed to settle the dispute that is the subject of the Proceedings (*Dispute*) in accordance with the terms of this deed.
- C This deed is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this deed unless the context requires otherwise:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Claims means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort, at law or in equity or under statute) and including any causes of action or rights to bring or make any such claim.

Confidential Information means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) Intellectual Property Rights,of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information.

Controller has the meaning given in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Court has the meaning given in Recital A.

Default Rate means a rate of interest of 5.50% per annum.

Disclosing Party means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

Dispute has the meaning given in Recital B.

Effective Time means the time at which the Recipient have received the Settlement Amount, together with any Default Interest (if applicable), in full in accordance with the terms of this deed.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Insolvency Event means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
 - (i) except for the purpose of a solvent reconstruction or amalgamation:
 - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
 - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (C) a resolution that it be wound up is passed or proposed;
 - (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
 - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
 - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
 - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
 - (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
 - (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
 - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
 - (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
 - (i) a bankruptcy notice is issued against the person;

- (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
- (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
- (iv) the person proposes or effects a moratorium involving any of the person's creditors;
- (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
- (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Liquidators means the persons listed in Schedule 1.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) all amounts paid in settlement of any Claim.

Proceedings has the meaning given in Recital A.

Recipient means, in respect of any particular Confidential Information, any party that has acquired or acquires that Confidential Information (whether directly or indirectly) from another party.

Released Claim means any Claim that a party has, or may have had but for this deed, against the other party (or against any Representative of the other party) under, or in relation to:

- (a) the Dispute;

- (b) the Proceedings; and
- (c) anything arising from, or in connection with, the Dispute or the Proceedings, whether or not in the contemplation of the parties at the time of execution of this deed and whether or not raised in the Proceedings,

including any facts asserted, allegations made and/or matters pleaded in connection therewith, but excluding:

- (d) any such Claims arising in connection with any fraudulent or dishonest conduct on the part of the other party (or any of the other party's Representatives) of which the first-mentioned party first becomes aware after the date of this deed; and
- (e) any Claim to enforce a provision of this deed.

Relevant Trust means, in respect of any Trustee, the trust in respect of which the Trustee is expressed to have entered into this deed as trustee.

Representatives means, in respect of a person, its officers, employees, consultants and agents.

Settlement Amount means the amount of AUD 800,000.00.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Trustee means any party to this deed that is expressed to have entered into this deed in its capacity as a trustee of any trust.

Interpretation

1.2 The following rules of interpretation apply in this deed unless the context requires otherwise:

- (a) headings in this deed are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this deed is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;

- (d) a reference to a document (including this deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this deed;
- (f) in each schedule to this deed, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a liability includes a present, prospective, future or contingent liability;
- (m) the word "*month*" means calendar month and the word "*year*" means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by "*include*", "*includes*", "*including*", "*for example*", "*in particular*", "*such as*" or similar expressions;
- (o) a reference to a "*party*" is a reference to a party to this deed (including any person that executes a deed of adherence to this deed), and a reference to a "*third party*" is a reference to a person that is not a party to this deed;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

2. Payment of Settlement Amount

On or before the date that is 14 days after the date of execution of this deed, the Payer must pay the Settlement Amount to the Recipients.

3. Mutual releases

- 3.1 Subject to receipt by the Recipients of the Settlement Amount, together with any Default Interest (if applicable), in full in accordance with the terms of this deed, with effect on and from the Effective Time, to the maximum extent permitted by law, each party hereby irrevocably:
- (a) waives any right to bring or pursue, and covenants not to bring or pursue, any Released Claim; and
 - (b) releases, discharges and forgives the other party and its Representatives from any liability for any Losses in respect of any Released Claim.
- 3.2 Each party holds the benefit of clause 3.1 on its own behalf and as agent and trustee for and on behalf of each of its Representatives.
- 3.3 This deed may be pleaded as a bar and complete defence to any Released Claims commenced at any time after the date of this deed by any party that are in any way contrary to, or inconsistent with, the releases and waivers contained in clause 3.1.

4. Court orders

Subject to receipt of the Settlement Amount by the Recipients, together with any Default Interest (if applicable), in full in accordance with the terms of this deed, with effect on and from the Effective Time, to the maximum extent permitted by law, each of the parties agrees:

- (a) to take all necessary steps to ensure that the consent orders in the form annexed hereto as Annexure 1 are executed, filed and made by the Court immediately after the Execution Date, thereby disposing of the Proceedings; and
- (b) subject to clause 13.4, each party must pay its own costs in connection with the Proceedings.

5. Mutual warranties

As at the time of execution of this deed and as at the Effective Time, each party represents and warrants to each other party that each of the following statements is true, accurate and not misleading by reference to the facts, matters and circumstances existing at the relevant time:

- (a) **(due incorporation)** if the party is a company, it is a duly incorporated company validly existing under the laws of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted on that date;
- (b) **(powers)** it has the power and authority to execute, deliver and perform its obligations under this deed and the transactions contemplated by this deed, and no limit on its powers will be exceeded as a result of the entry into and/or performance of this deed;
- (c) **(authorisations)** it has taken all necessary actions, and obtained all required consents, to enable it to execute, deliver and perform its obligations under this deed, and any such authorisations are in full force and effect;
- (d) **(non-contravention)** its execution and performance this deed does not, and will not, contravene or conflict with:
 - (i) its constitutional documents, if the party is a company; or