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Higher Education Research Commercialisation IP Framework

Consultation Paper – October 2021

Submission by Telix Pharmaceuticals Limited

About Telix Pharmaceuticals Limited

Telix Pharmaceuticals Limited (Telix) is a clinical-stage biopharmaceutical company focused on the development of diagnostic and therapeutic products using Molecularly Targeted Radiation (MTR). A key focus of Telix is the development of products that use antibodies as targeting agents. Telix is headquartered in Melbourne, with over 150 staff across offices in Belgium, Switzerland, Japan, and the United States. Telix is developing a portfolio of clinical-stage products that address significant unmet medical needs in oncology and rare diseases. Telix is listed on the Australian Securities Exchange (ASX: TLX) with a market cap of over AU$1.6 billion. For more information visit www.telixpharma.com.

Telix's lead investigational product, Illuccix® (TLX591-CDx) for prostate cancer imaging, has been accepted for filing by the U.S. FDA, and has been granted Priority Review status by the Australian TGA. Telix is also progressing marketing authorisation applications for Illuccix® in the European Union and Canada.

Telix collaborates extensively with universities and medical research institutions, both in Australia and internationally. As an Australian-headquartered company we have a deep interest in ensuring Australian institutes are at the global forefront of technology commercialisation.

Consultation Paper

In the Introduction of the Consultation Paper, the problem that is sought to be addressed is set out as follows:

> In the 2020-21 Budget the Australian Government provided $5.8 million to scope a University Research Commercialisation Scheme to better translate and commercialise university research outputs. Over 80 per cent of University Research Commercialisation Scheme public consultation submissions raised IP-related issues such as difficulties in negotiating IP terms and agreements.

The solution considered by the Consultation Paper is set out as follows:

> This consultation paper sets out a vision for a HERC IP Framework to build trusted relationships between universities and industry that will deliver economic and social benefits

for Australia. IP includes IP rights such as patents, designs, trade marks, plant breeder's rights and copyright, as well as trade secrets.
The HERC IP Framework will provide standardised IP licensing and contractual agreements to establish a strong foundation for negotiating and managing successful university-industry collaboration and partnerships. The HERC IP Framework will facilitate the initiation, development, and sustainability of commercialisation connections between universities and businesses.

The paper then elaborates on this vision and includes a series of questions seeking information on how the vision will be best achieved.

Telix's position

Telix disagrees with the premise of the Consultation Paper. It does not consider that a set of standardised IP licensing and contractual agreements will establish a strong foundation for negotiating and managing successful university-industry collaboration and partnerships. This is particularly the case where the use of such agreements will be a mandatory condition of Commonwealth research funding as is proposed in the section "Scope of HERC IP Framework coverage". Such a mandatory requirement reduces the flexibility of tech transfer offices within universities to deal with commercial partners in a manner that can best realise the interests of both parties. Instead, it is liable to impose a cookie cutter approach to such arrangements which will deter commercial partners from dealing with universities and will reduce the ability of tech transfer offices to respond dynamically to the relevant commercial environment.

Section 2.6 states that "the default position for standardised agreements within the HERC IP framework is that universities will have ownership of foreground IP....". However, no rationale is provided for why university ownership is the optimal default structure, where the stated objective is technology commercialisation. Why is university ownership assumed to be preferable to industrial ownership? Whilst university IP ownership may be appropriate for some collaborations, it is merely one possible avenue for a university to earn a commercial return.

This position may also inhibit formation of the collaboration (as other potential partners, including competing commercial providers or overseas institutes, may be less rigid about IP ownership) or subsequent commercialisation (due to uncertainty or risk in the necessary licensing terms). It is also less appropriate where the industrial partner is adopting the majority of the financial risk, or contributing the substantive background IP (as in a contract research arrangement).

This position also restricts the flexibility that allows commercial positions to be negotiated and can also create problems when multiple research institutes collaborate with a commercial partner or, indeed, collaborate between themselves.

Lastly, universities by their nature cover a vast array of different technologies, which may be of interest to a wide range of industry partners, each with their own commercial interests and ways of doing business. The proposed suite of contracts would therefore either be inadequate in capturing

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this diversity or would need to be enormously expansive in order to capture the range of options. How, for example, are these contracts to be drafted in a commercial vacuum, and by whom? Telix is aware of no other jurisdiction where national mandatory standardised IP contracts have smoothed the path of commercialisation of university developed IP.

This discussion leaves open the question of whether a suite of entirely optional template IP contracts and licenses could be developed that would help smooth the way for negotiating arrangements between universities and industry. Telix is aware of a number of such template agreements that are already available to universities and medical research institutions. There is an argument that it is unnecessary to spend resources on an entirely new set.

Ultimately, Telix's view is that while standardisation of some key principles could help in execution, overall standardisation may well become a barrier to delivering research projects and driving innovation.

Telix fundamentally believes that Australian companies are more than capable of fully commercialising Australian-developed technologies worldwide, and we want to see Australian universities play a major role in this task. We value the wide diversity of institutions, universities, expertise, tech transfer offices and people across the Australian academic landscape – and we believe this diversity, rather than standardisation, will be a key ingredient in driving commercialisation outcomes.

We would suggest a more effective approach would be to invest in the Universitys' tech transfer offices, for example, by providing further resourcing to the offices themselves, and looking to set minimal educational standards, commercial experience and/or training for their personnel.

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