



Registration of a Charge

Company name: **MESOBLAST UK LIMITED**

Company number: **07596260**



X71KVTJE

Received for Electronic Filing: **12/03/2018**

Details of Charge

Date of creation: **06/03/2018**

Charge code: **0759 6260 0003**

Persons entitled: **HERCULES CAPITAL, INC.**

Brief description: **NOT APPLICABLE**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PHILIPP HAGENBUCH**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7596260

Charge code: 0759 6260 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th March 2018 and created by MESOBLAST UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th March 2018 .

Given at Companies House, Cardiff on 14th March 2018

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

Quota Pledge Agreement

dated as of March 6, 2018

by and between

Mesoblast UK Limited

(the Pledgor)

5 New Street Square, London, EC4A 3TW, United Kingdom

and

the Pledgees
(as defined below)

(the Pledgees)

represented by

HERCULES CAPITAL, INC.

400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301, USA

acting as Pledgee in its own name and on its own behalf as well as administrative agent and collateral agent under the Loan Documents (as defined below) in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*)

(the Collateral Agent)

I certify that, save for material redacted pursuant to section 859G of the Companies Act 2006, the enclosed copy of the security instrument delivered as part of this application for registration under section 859A of the Companies Act 2006 is a true and correct copy of the original security instrument.

Signature: 

Date: 12 March 2018

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This quota pledge agreement (the **Agreement**) is made as of the date hereof, by and between:

- (a) Mesoblast UK Limited, a company incorporated and organized under the laws of England, registered with the Registrar of Companies for England and Wales under company number 07596260, with registered office 5 New Street Square, London, EC4A 3TW, United Kingdom, as pledgor (the **Pledgor**); and
- (b) the Pledgees (as defined below), represented by:
- (c) HERCULES CAPITAL, INC., a company incorporated and organized under the laws of Maryland, registered with the Department of Assessments & Taxation under registration number D07705197, with registered office SUITE 820, 7 ST. PAUL STREET, BALTIMORE, MD 21202, USA, acting as Pledgee in its own name and on its own behalf as well as administrative agent and collateral agent under the Loan Documents (as defined below) in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*) (the **Collateral Agent**, and together with the Pledgor and the Pledgees, the **Parties**, and each individually a **Party**).

Whereas

- A. On March 6, 2018, the Pledgor entered into a loan and security agreement between, among others, Mesoblast Limited as Parent and Guarantor and the Pledgor, the Company (as defined below), Mesoblast, Inc. and Mesoblast International (UK) Limited. as Borrowers, on the one side, and the Collateral Agent and several banks and other financial institutions or entities as Lenders on the other side (the **Loan and Security Agreement**);
- B. in order to satisfy certain conditions precedent of the Loan Documents and in order to provide security for each of the Pledgees, the Pledgor wishes to pledge as first-ranking security for the Secured Obligations (as defined below) the Quotas (as defined below);
- C. the Pledgor owns the whole stated quota capital (*Stammkapital*) of CHF 100,000 Mesoblast International Sàrl (the **Company**), a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated and organized under the laws of Switzerland, registered with the Commercial Register of the Canton of Geneva under registration number CHE-473.592.248, with registered office at route de Pré-Bois 20, c/o Accounting & Management Services SA, 1217 Meyrin, Switzerland;
- D. As of the date hereof, the stated quota capital of the Company is consisting of 1,000 company quotas (*Stammanteile*) with a nominal value of CHF 100.00, each represented by one single registered security (*Namenpapier*) in the aggregate amount of CHF 100,000 (the **Quota Certificate**); and
- E. the Collateral Agent has been duly appointed pursuant to the Loan and Security Agreement to act as Pledgee in its own name and on its own behalf as well as Collateral Agent

under the Loan Documents (as defined below) in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*).

Now, therefore, the Parties hereto agree as follows:

1. Definitions and References

1.1 Definitions

Unless defined otherwise herein and except to the extent that the context requires otherwise, capitalized terms used in this Agreement shall have the meanings assigned to them in the Loan and Security Agreement.

Agreement means this quota pledge agreement.

Borrower has the meaning set forth in the Loan and Security Agreement.

Business Day means a Business Day as defined in the Loan and Security Agreement and the Securities Purchase Agreement, provided that Business Day shall only include any such day commercial banks in Geneva are open for normal business transactions.

CC means the Swiss Civil Code (*Schweizerisches Zivilgesetzbuch, ZGB*) of December 10, 1907, as amended from time to time (*SR 210*).

Clause means any of the clauses of this Agreement.

CO means the Swiss Code of Obligations (*Schweizerisches Obligationenrecht, OR*) of March 30, 1911, as amended from time to time (*SR 220*).

Collateral Agent has the meaning set forth in the introductory paragraph of this Agreement.

Company has the meaning set forth in Whereas Clause C.

DEBA means the Swiss Federal Debt Enforcement and Bankruptcy Act (*Bundesgesetz über Schuldbetreibung und Konkurs, SchKG*) of April 11, 1889, as amended from time to time (*SR 281.1*).

Dividends means dividends relating to the Quotas either in cash or in kind, including in the form of additional quotas or Participation Rights or any other form.

Event of Default has the meaning assigned to it in the Loan and Security Agreement.

Existing Quota means the fully paid quotas (*Stammanteile*) and Participation Rights (if any) of the Company with a nominal value of CHF 100,000, representing 100% of the equity capital of

the Company, held by the Pledgor as of the date of this Agreement, together with all Related Rights.

FISA means the Swiss Federal Act on Intermediated Securities (*Bucheffektengesetz, BEG*) of October 3, 2008, as amended from time to time (*SR 957.1*).

Future Quotas means any quota ("*Stammanteile*") or Participation Rights issued in addition to or in exchange of or as a surrogate for the Existing Quota by the Company in whatever nominal value, which the Pledgor may acquire by way of subscription or otherwise subsequent to the date of this Agreement, together with all Related Rights.

Loan and Security Agreement has the meaning set forth in Whereas Clause A.

Loan Document(s) has the meaning assigned to it in the Loan and Security Agreement.

Participation Rights means "*Genussscheine*" within the meaning of article 774a CO of the Company issued as of the date hereof or issued in the future.

Parties or **Party** has the meaning set forth in the introductory paragraph of this Agreement.

Pledge has the meaning set forth in Clause 2.1.

Pledgees means the Lenders and any other party which is a creditor of Secured Obligations as defined in the Loan and Security Agreement.

Pledgor has the meaning set forth in the introductory paragraph of this Agreement.

Quota Certificate has the meaning set forth in Whereas Clause D.

Quotas means any Existing Quota and any Future Quotas owned by the Pledgor from time to time.

Related Rights means, in relation to any Quotas, all Dividends, Subscription Rights, interest and other distributions paid or payable after the date hereof, *i.e.*, whether in cash or in kind and all securities (including any convertible debt instruments, warrants and the dividends, interest and other distributions thereon), rights, money and property accruing or offered at any time by way of redemption, bonus, preference, option rights or otherwise to or in respect of a Quota, including any present or future right to purchase, subscribe or otherwise have shares|quota issued in the Company, or in substitution or exchange for a part of a Quota and any and all administrative and financial rights related to any Quotas, including but not limited to, voting rights and other participation and monetary rights in respect of any Quotas.

Secured Obligations has the meaning assigned to it in the Loan and Security Agreement.

Subscription Rights means the Pledgor's preemptive rights (*Bezugsrechte*) in connection with the issuance of Quotas by the Company.

Voting Rights means the voting rights and any other non-monetary participation rights in relation to the Quotas.

1.2 References

References to any agreement or document shall be construed as references to such agreements or documents as amended, novated, supplemented, extended or restated from time to time.

2. Pledge

2.1 Object of Pledge

- (a) The Pledgor hereby agrees to pledge and hereby unconditionally pledges the Quotas pursuant to articles 899 *et seq.* CC to each of the Pledgees as a first-ranking continuing pledge (*i.e.*, each of the Pledgees' pledge being equally in the first rank) (the **Pledge**), effective as of the date hereof, as security for the Secured Obligations.

The Pledge shall encompass any Related Rights.

- (b) The Collateral Agent hereby accepts the Pledge as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*).
- (c) Additionally, the Collateral Agent hereby accepts the Pledge for and on behalf of each person becoming a secured party after the date hereof, acting, to the extent necessary, as proxy without power of attorney (*Vertreter ohne Vertretungsmacht*).

2.2 Secured Obligations

The Pledge shall serve as a first ranking and continuing security for prompt and complete payment, discharge and performance of any and all Secured Obligations, irrespective of any intermediate discharge of any but not all of the Secured Obligations.

2.3 Perfection of Pledge

The Pledgor shall perfect the Pledge over the Existing Quota concurrently with the execution of this Agreement by transfer and delivery to the Collateral Agent of the original Quota Certificate representing the Existing Quota duly assigned in blank.

3. Delivery of Additional Documents

On the date of this Agreement, the Pledgor shall deliver to the Collateral Agent, acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*), the following documents:

- (a) copies of (i) a resolution of the board of directors of the Pledgor and (ii) a resolution of the shareholder of the Pledgor, in each case wherein the entry into this Agreement and the granting of the Pledge as provided for hereunder has been duly approved;
- (b) a copy of a resolution of the managing directors of the Company (i) approving the issuance of the Quota Certificate, provided certificates representing the Existing Quota have not yet been issued, (ii) acknowledging the Pledge; (iii) approving the entry of the Pledge in the quota register (*Anteilbuch*) of the Company; and (iv) irrevocably approving in advance the registration in the quota register (*Anteilbuch*) of the Company upon enforcement of the Pledge any future acquirer of the Quotas as quotaholder with Voting Rights;
- (c) a copy of the quota register (*Anteilbuch*) of the Company, evidencing (i) that the Pledgor is registered as quotaholder with voting rights with respect to the Existing Quota and (ii) that the Existing Quota is subject to the Pledge, together with an officer's certificate confirming that the copy is true and correct as the date of this Agreement; and
- (d) a copy of the register of the beneficial owners of the Company.

The certificate representing the Existing Quota shall be delivered to the Collateral Agent in accordance with Clause 2.3.

For so long as the Pledge shall remain in effect, the Pledgor shall continue to be registered as the quotaholder with voting rights in the quotaholder register of the Company with respect to the Quotas.

4. Perfection of Pledge on Future Quotas

- (a) The Pledgor undertakes to issue any Future Quotas in certificated registered form (*Namenpapiere*) and to transfer or to procure the transfer of any Future Quotas to the Collateral Agent, promptly upon, but in any case no later than 20 (twenty) Business Days after, the accrual, offer or issue and after receipt by the Pledgor of any Future Quotas. This is to be effected by delivery of the originals of all certificates representing such Future Quotas duly assigned in blank.

The Pledgor undertakes to procure the entry of the Pledge into the quota register (*Anteilbuch*) of the Company in accordance with article 790 CO in case of issuance of any Future Quotas and for so long as the Pledge remains in effect, the Pledgor shall continue to

be registered as the quotaholder with voting rights in the quota register of the Company with respect to the Future Quotas.

The Pledgor undertakes to deliver to the Pledgees (represented by the Collateral Agent), a copy of the register of uncertificated securities (*Wertrechtbuch*) of the Company in case of Future Quotas in uncertificated form within the meaning of article 973c CO (*Wertrechte*).

- (b) The Future Quotas shall serve, and continue to serve, as security for any and all Secured Obligations, irrespective of the value of the Future Quotas in relation to the Secured Obligations.

5. Quotaholder Rights

5.1 Subscription Rights

Until the occurrence of an Event of Default, any Subscription Rights shall remain with the Pledgor, provided, however, that a Pledge pursuant to Clause 2 shall be deemed to be created over all Quotas and other rights and interests acquired by the Pledgor upon exercise of Subscription Rights and transfer pursuant to Clause 4. The Pledgor shall notify the Collateral Agent promptly of any grant of Subscription Rights.

The Pledgor undertakes not to sell and assign any Subscription Rights to any third party. In case the Pledgor does not intend to exercise the Subscription Rights, the Pledgor shall resolve in the capital increase resolution that any Subscription Rights not exercised shall expire.

Upon the occurrence of an Event of Default and for so long as the same is continuing, the Collateral Agent shall be entitled, but not obligated, to exercise the Subscription Rights in its own name and on its own behalf as well as in the name and on behalf of each of the other Pledgees and at its own discretion or the discretion of the other Pledgees.

5.2 Dividends and other Related Rights

Until the occurrence of an Event of Default, the Pledgor shall be entitled to receive and retain all Dividends and other Related Rights to the extent permitted under the Loan Documents.

Upon the occurrence of an Event of Default and for as long as the same is continuing, the Collateral Agent in its own name and on its own behalf as well as in the name and on behalf of each of the other Pledgees and the other Pledgees shall be entitled to receive and retain all Dividends in relation to the Quotas, including Dividends that were approved and became due but have not been paid out prior to the occurrence of such Event of Default, and shall apply such dividends toward satisfaction of the Secured Obligations.

5.3 Voting Rights

Until the occurrence of an Event of Default, all Voting Rights remain with the Pledgor. The Pledgor shall exercise its Voting Rights in a manner that will not have a Material Adverse Effect.

Upon or after the occurrence of an Event of Default and for as long as the same is continuing, the Pledgor shall no longer exercise its Voting Rights related to the Quotas without the prior written consent of the Collateral Agent and the Collateral Agent shall have the right to exercise the Voting Rights at its reasonable discretion.

With effect as from the occurrence of an Event of Default and for as long as the same is continuing, the Pledgor hereby grants a power of attorney to the Collateral Agent to exercise the Voting Rights pursuant to the previous paragraph and hereby undertakes to promptly (i) execute and issue any and all proxies in favor of the Collateral Agent and the other Pledgees and (ii) do all acts and things and permit all acts and things to be done which are necessary for the Collateral Agent or any other Pledgee to exercise the Voting Rights pursuant to the previous paragraph. The Pledgor undertakes to issue a separate document evidencing such power of attorney at any time upon request of the Collateral Agent upon or after the occurrence of an Event of Default.

6. Representations and Warranties

The Pledgor hereby represents and warrants to each of the Pledgees that as of the date of this Agreement:

- (a) all consents, approvals and authorizations of the Pledgor and the Company have been duly obtained and corporate resolutions duly passed to enable the Pledgor to enter into, and perform its obligations under this Agreement and except as described on Schedule 5.3 to the Disclosure Letter, the execution, delivery and performance of the Pledgor of its obligations under this Agreement does not violate any material contract or agreement or require the consent or approval of any other Person which has not already been obtained and is not in breach of the corporate powers of the Pledgor;
- (b) This Agreement (i) constitutes legal and valid obligations binding on the Pledgor, (ii) creates an effective and perfected first ranking Pledge, and (iii) is enforceable against the Pledgor in accordance with its terms;
- (c) no agreements relating to the Quotas have been made, and no shareholders' meeting or board meeting of the Pledgor or the Company has been held, is called for or planned in which resolutions were, or are proposed to be, passed or approved that would constitute a Material Adverse Effect;
- (d) there are no silent partnership agreements, profit and loss pooling agreements, domination agreements or similar arrangements by which a person is entitled to a participation in the profits or revenue of the Company;

- (e) the documents referred to in Clauses 3(c) and 3(d) are accurate, complete and up-to-date;
- (f) the resolutions referred to in Clauses 3(a) and 3(b) have been duly passed in meetings duly convened or otherwise in the manner set forth therein, accurately reflect the resolutions and other matters reflected therein and are in full force and effect and have not been revoked or amended;
- (g) the Existing Quota does not constitute intermediated securities (*Bucheffekten*) pursuant to the FISA.
- (h) the Existing Quota is duly and validly issued by the Company, is fully paid and non-assessable and constitutes all issued and outstanding quota of the Company;
- (i) the Pledgor is the sole legal and beneficial owner of the Existing Quota, and the Existing Quota is free and clear of any pledges, liens, charges, encumbrances, or other security interests or third party rights of any nature (whether *in rem* or *in personam*) other than the Pledge created hereunder;
- (j) The Pledgor has not assigned, transferred or otherwise disposed of any of its rights, title and interest in the Quotas;
- (k) no quotaholders' resolutions regarding changes in the articles of association (*Statuten*) of the Company have been passed which are not entered into the commercial register in relation to the Company; and
- (l) the Company has not granted any options for the acquisition of Quotas or Participation Rights.

7. Undertakings

Except in accordance with the terms of the Loan and Security Agreement, the Pledgor hereby undertakes for as long as this Agreement and the Pledge remain in effect:

- (a) not to cause or approve the resolutions referred to in Clauses 3(a) and 3(b) to be revoked or amended;
- (b) to promptly take all action required to constitute a valid and binding Pledge;
- (c) to ensure that no action is taken the effect of which would be any of the Quotas becoming intermediated securities (*Bucheffekten*) pursuant to the FISA;
- (d) without the Collateral Agent's prior written consent, not to enter into any legal instrument relating to, or granting any form of security interest, lien, encumbrance or other interest or

third party right over, or dispose of, transfer or assign the Quotas, or take any other action having a Material Adverse Effect;

- (e) without the Collateral Agent's prior written consent, not to cause or approve the distribution, payment or delivery of any Related Rights other than ordinary and interim dividends except as explicitly permitted by this Agreement or the Loan and Security Agreement;
- (f) to promptly enter into, execute and perfect, and to procure the prompt entry into, execution and perfection of, any additional agreement or document required to create or maintain a valid security interest in any of the Quotas or Related Rights;
- (g) not to take any action or vote in favor of any resolution with regard to the Company whereby:
 - (i) the Company's legal form (*inter alia*, by merger, liquidation or transformation) or substance (e.g., by spin-off) would be modified or altered;
 - (ii) the Company's articles of association (*Statuten*) would be amended and such amendment would have a Material Adverse Effect; or
 - (iii) any term of this Agreement or the Loan Documents would be violated.
- (h) in case of a realization of the Pledge, to do all acts and things, and procure that any acts and things be done, to effect any transfer of the Quotas or the Related Rights to a new owner, free of any pledge, lien, encumbrance, or other interest or third party right and to procure that the managing directors of the Company register any new owner of the Quotas as new quotaholder of the Company with Voting Rights;
- (i) to remain registered as the quotaholder in the quota register of the Company with regard to all Quotas; and
- (j) upon the reasonable request of the Collateral Agent, acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*), in order to assess the Pledge's value, to promptly deliver to the Collateral Agent all information, financial statements and other documents with regard to the Company which are at the Pledgor's disposal or which the Pledgor can reasonably acquire.

8. Enforcement of Pledge

- (a) Upon the occurrence of an Event of Default and for as long as the same is continuing, the Collateral Agent, acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*), shall have the right, but not the obli-

gation, to enforce the Pledge, at its or their discretion and without giving the Pledgor prior notice, by either:

- (i) private enforcement (*private Verwertung*) without regard to the provisions of the DEBA;
 - (ii) enforcement proceedings pursuant to the DEBA; or
 - (iii) enforcement proceedings for fair market value pursuant to other applicable laws.
- (b) In the course of private enforcement (*private Verwertung*), the Pledgees and/or the Collateral Agent, acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*), may either sell the Quotas to a third party or acquire any and all or part of the Quotas on their own or the Pledgees' behalf (*Selbsteintritt*), in each case on arm's length terms, i.e., at the fair market value (*Marktwert*) of the Quotas as agreed between the Pledgor and the Collateral Agent. The Pledgees and/or the Collateral Agent, acting in the name and on behalf of the Pledgees, shall render an account to the Pledgor regarding the private enforcement. If the Pledgor and the Collateral Agent do not reach an agreement on the fair market value (*Marktwert*) within 10 (ten) Business Days after the Collateral Agent has made a first indication of the fair market value (*Marktwert*) to the Pledgor in writing (including telefax and e-mail), the fair market value (*Marktwert*) shall be determined by an independent expert to be mutually appointed by the Parties on the basis of a valuation of the Company using methods customarily used at that time to establish the value of businesses in the industry of the Company. The expert's determination of the fair market value (*Marktwert*) shall be binding and final to the Parties (*Schiedsgutachten*). If the Parties cannot agree on the appointment of the expert within 10 (ten) Business Days after the Collateral Agent has made a first proposal of an independent expert to the Pledgor in writing (including telefax and e-mail), the independent expert shall be appointed by the president of *EXPERTsuisse - Schweizer Expertenverband für Wirtschaftsprüfung, Steuern und Treuhand* (formerly *Treuhand-Kammer Schweizerische Kammer der Wirtschaftsprüfer, Steuerexperten und Treuhandexperten*), Zurich, Switzerland at the request of the Collateral Agent.
- (c) With regard to private enforcement (*private Verwertung*), the Pledgor hereby authorizes the Collateral Agent to be its attorney and in the Pledgor's name and on its behalf to execute, deliver and perfect all documents and to do all things that are required in this respect.
- (d) The Parties agree in advance that a sale according to article 130 DEBA (*Freihandverkauf*) shall be permissible.
- (e) Notwithstanding the foregoing and notwithstanding the provision of article 41 DEBA, following the occurrence and during the continuance of an Event of Default the Collateral Agent, acting as Pledgee in its own name and on its own behalf as well as Collateral

Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*), is at liberty to institute or pursue the enforcement of the Secured Obligations pursuant to regular debt enforcement proceedings without having first realized the Pledge (waiver of the *beneficium excussionis realis*).

9. Application of Proceeds

Any proceeds received by the Pledgees or any of them (represented by the Collateral Agent or otherwise) under this Agreement, in particular in connection with the enforcement of the Pledge, shall be applied towards satisfaction of the Secured Obligations.

10. Waiver of Legal Subrogation and Defences

If and to the extent the Secured Obligations are not only owed by the Pledgor but also by third parties, and if and to the extent the Pledgor satisfies the Secured Obligations in full or in part (including by enforcement of the Pledge), the following provisions shall apply:

- (a) Until satisfaction of the Secured Obligations in full, the legal subrogation (*gesetzlicher Forderungsübergang*) pursuant to article 110 CO and article 149 CO (or any other applicable provision) or under any other applicable law shall not apply. For the avoidance of doubt, the claim for indemnity (article 148 para. 2 CO) shall not be affected thereby.
- (b) The Pledgor may request the transfer to it of non-accessory security rights (*nicht-akzessorische Sicherungsrechte*) which have not been provided by the Pledgor only upon satisfaction of the Secured Obligations in full and only if and to the extent the respective security provider has approved the transfer to the Pledgor.
- (c) The Pledgor hereby expressly waives its defences based on defences the Borrower might have against any of the Secured Obligations (*Einreden des Hauptschuldners*).

11. Release of Pledge

- (a) The Quotas or, in case of an enforcement of the Pledge, the remainder thereof, shall be released from the Pledge and – together with the original Quota Certificate and the originals of any certificates representing Future Quotas delivered to the Collateral Agent – returned to the Pledgor at its cost and risk if and when all Secured Obligations have been irrevocably paid and discharged in full in accordance with the terms of the Loan Documents and no further Secured Obligations are capable of arising.
- (b) Neither of the Collateral Agent nor the other Pledgees will make, and neither of them shall be deemed to have made, any representation or warranty, whether express or implied, with respect to any Quotas released from the Pledge and returned to the Pledgor under this Clause 11, except that at the date of such release of the Quotas from the Pledge, such Quotas are free and clear, on such date, of any third-party rights arising from the acts of any Pledgee and/or the Collateral Agent.

12. Role of Collateral Agent

The Collateral Agent shall be acting in accordance with the applicable provisions of the Loan Documents as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*).

13. Reinstatement

Where any discharge in respect of the Secured Obligations is made, in whole or in part, and any amount paid pursuant to any such discharge must be repaid, by the Pledgees or any of them, the respective Pledgees will have or continue to have a Secured Obligation and, in case the Quotas have been released from the Pledge, the Pledgor shall undertake all actions that are necessary for the reinstatement of the Pledge, in particular the Pledgor shall redeliver the Quotas to the Collateral Agent. Such reinstatement shall, to the extent required, include a reinstatement of this Agreement and the Pledge shall continue as if there had been no discharge.

14. Duration; Independence

The Pledge shall not cease to exist if the Secured Obligations have been discharged only partially or temporarily.

This Agreement shall create a continuing Pledge and no change, amendment, restatement or supplement whatsoever in the Loan Documents or in any document or agreement related to any of the other Loan Documents shall affect the validity or the scope of this Agreement and the Pledge nor the obligations which are imposed on the Pledgor pursuant to it.

This Agreement and the Pledge are independent from any other security or guarantee which may have been or will be entered into for the benefit of any one or more Pledgees and/or the Collateral Agent. None of such other security or guarantee shall prejudice, or shall be prejudiced by, or shall be merged in any way with this Agreement or the Pledge.

15. Further Assurance by Pledgor

The Pledgor, at its own expense, shall promptly do all things and execute all documents that are required for the purpose of creating or perfecting or protecting the security created or purported to be created pursuant to this Agreement, or otherwise implementing this Agreement including enabling the Collateral Agent and the other Pledgees to exercise their respective rights and remedies hereunder and facilitating the realisation of the security upon and after the occurrence of an Event of Default.

16. General Provisions

16.1 No Waiver

No failure or delay by any Party in exercising any right, power or privilege granted under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16.2 Notices

All notices or other communications to be given under or in connection with this Agreement shall be made pursuant to and in accordance with the relevant form and addresses provided for in the Loan and Security Agreement.

16.3 Entire Agreement

This Agreement, including annex 1 and any other documents referred to herein, constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof, and shall supersede all prior oral and written agreements or understandings of the Parties relating hereto. All references to this Agreement shall be deemed to include annex 1 hereto.

Notwithstanding anything to the contrary in this Agreement, to the extent that the terms of this Agreement are inconsistent with the terms of the Loan and Security Agreement, the terms of the Loan and Security Agreement shall prevail.

16.4 Amendments and Waivers

This Agreement (including this Clause 16.4) may only be modified or amended by a document signed by all Parties. Any provision contained in this Agreement may only be waived by a document signed by the Party waiving such provision.

16.5 Transfer of Rights and Obligations

The Pledgor may not transfer or assign this Agreement or any rights or obligations hereunder without prior written consent of the Collateral Agent.

The Collateral Agent or the other Pledgees may transfer and assign this Agreement or any rights or obligations hereunder without the consent of the Pledgor or any other person to any third party in accordance with the applicable provisions of the Loan and Security Agreement.

Each person which has become a Pledgee subsequent to this Agreement shall automatically become a party hereto (*Vertragspartei*), and thereby assume all rights and obligations of the Pledgees under this Agreement.

To the extent that a Pledgee has transferred all or parts of its rights and obligations under any of the Loan Documents to a new Pledgee, such new Pledgee automatically accepts its representation by the Collateral Agent pursuant to Clause 12. In case of a complete transfer of all of a Pledgee's rights, benefits and obligations in accordance with the Loan Documents, the transferring Pledgee shall cease to be a party to this Agreement.

The Pledgor hereby explicitly consents to such a transfer of a contractual position (*Vertragsübernahme*).

16.6 Severability

Should any part or provision of this Agreement be, be held, or become illegal, invalid or unenforceable in any respect by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the legality, validity or enforceability of the remaining provisions of this Agreement shall nonetheless remain valid and not in any way be affected or impaired. In such case, the Parties shall replace the illegal, invalid or unenforceable provision with such valid and enforceable provision which best reflects the commercial and legal purpose of the replaced provision and shall execute all agreements and documents required in this connection.

17. Governing Law and Jurisdiction

17.1 Governing Law

This Agreement and the Pledge (including matters as to the transfer and possession of any share | quota certificates representing the Quotas) shall be governed by and construed in accordance with the substantive laws of Switzerland.

17.2 Place of Jurisdiction

The exclusive place of jurisdiction for any dispute, claim or controversy arising under, out of or in connection with or related to this Agreement (or subsequent amendments thereof), including, without limitation, disputes, claims or controversies regarding its existence, validity, interpretation, performance, breach or termination, shall be the City of Zurich, venue being Zurich 1.

The Collateral Agent and each of the other Pledgees shall have the right to institute legal proceedings against the Pledgor before any other competent court or authority, in which case Swiss law shall nevertheless be applicable as provided in Clause 17.1.

The Pledgor designates the Company as its representative for the service of judicial documents pursuant to article 140 of the Swiss Civil Procedure Code, and elects special domicile pursuant to article 50 DEBA at the registered seat of the Company.

[Signature page follows]

Pledgor:

Place and Date
Mesoblast UK Limited

Name:
Function:

Name:
Function:

Pledges and Collateral Agent:

Boston, Massachusetts, March 6, 2018

Place and Date
HERCULES CAPITAL, INC.

in its capacity as Collateral Agent under the Loan and Security Agreement, and acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledges as their direct representative (*direkter Stellvertreter*)

REDACTED

Name: Jennifer Choe
Function: Assistant General Counsel

Name:
Function:

Acknowledged and Agreed by:

Place and Date
Mesoblast International Sàrl

Name:
Function:

Name:
Function:

Pledgor:

Place and Date
Mesoblast UK Limited

Name:
Function:

Name:
Function:

Pledges and Collateral Agent:

Place and Date
HERCULES CAPITAL, INC.

in its capacity as Collateral Agent under the Loan and Security Agreement, and acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledges as their direct representative (*direkter Stellvertreter*)

Name:
Function:

Name:
Function:

Acknowledged and Agreed by:

Geneva, March 6, 2018

Place and Date
Mesoblast International Sàrl

REDACTED

Name: *Challanck Ralph*
Function: *Director*

Name:
Function:

Pledgor:

Melbourne, March 6, 2018

Place and Date

Mesoblast UK Limited

REDACTED

Name: *Silvia Hosen*
Function: *Director*

Name:
Function:

Pledgees and Collateral Agent:

Place and Date

HERCULES CAPITAL, INC.

in its capacity as Collateral Agent under the Loan and Security Agreement, and acting as Pledgee in its own name and on its own behalf as well as Collateral Agent under the Loan Documents in the name and on behalf of the other Pledgees as their direct representative (*direkter Stellvertreter*)

Name:
Function:

Name:
Function:

Acknowledged and Agreed by:

Melbourne, March 6, 2018

Place and Date

Mesoblast International Sàrl

REDACTED

Name: *Silvia Hosen*
Function: *Director*

Name:
Function:

Annex 1

Details of Existing Quota

Quota Issuer	Type of Quota	Number of Certificates	Number of Company Quotas (<i>Stamman-teile</i>)	Nominal Value of each Quota
Mesoblast International Sàrl	Registered security (<i>Namenpapier</i>)	1	1,000	CHF 100.00