

MATERIAL TRANSFER AGREEMENT

This material transfer agreement (**Agreement**) has been concluded on [insert date] (**Effective Date**) by and between [insert name], a Transferor established and existing under the laws of [insert country], commercial registry code [insert code], located at [insert address] (**Transferee**), represented by [insert position and name], and [insert name], a Transferor established and existing under the laws of [insert country], commercial registry code [insert code], located at [insert address] (**Transferor**), each also a **Party** and jointly the **Parties**.

1. DEFINITIONS

In this Agreement the following expressions have the meaning set opposite:

- Academic Publication:** the publication of an abstract, article or paper in a journal, or its presentation at a conference or seminar; and in clauses 5 and 6 "to Publish" and "Publication" are to be construed as references to Academic Publication;
- this Agreement:** this document including its Schedule, as amended from time to time in accordance with clause 9.9;
- a Business Day:** Monday to Friday (inclusive) except bank or public holidays in [COUNTRY];
- Confidential Information:** in the case of the Transferor, the Materials and in the case of the Transferee, the Results, the Improvements and the Project;
- the Field:** [insert business area];
- Intellectual Property:** patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;
- Know-how:** unpatented technical information (including, without limitation information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
- an Improvement:** a material enhancement to the functionality of any of the Materials created in the course of the Project, except a new use discovered for any of the Materials;

the Materials:	the materials described in Part A of the Schedule and all Know-how supplied by the Transferor to the Transferee relating to any of the Materials;
the Price:	[insert amount] EUR;
the Principal Investigator:	[insert name];
the Project:	the academic research project(s) described in Part B of the Schedule;
the Results:	all information, Know-how, results, inventions, software and other Intellectual Property (except an Improvement) identified or first reduced to practice or writing as a result of using the Materials in the Project;
the Term:	[insert figure] [months][years] beginning on the date of this Agreement, or the end of the Project (whichever is earlier); and
the Territory:	[worldwide] OR [insert geographical area].

2. TERMS AND CONDITIONS FOR USE

- 2.1 The Transferor will provide the Materials to the Transferee on the terms and conditions of this Agreement.
- 2.2 The Transferee will use the Materials only for the Project, and not for any commercial purpose or commercially-sponsored research (even if these activities are being pursued in the Transferee's laboratory) without first obtaining the Transferor's written consent.
- 2.3 The Transferee will not supply the Materials to any person, except the Principal Investigator and people under the Principal Investigator's direct supervision, or allow them to be removed from the Transferee's premises unless it first obtains the Transferor's written consent.
- 2.4 The Transferee will use the Materials in accordance with all applicable laws, regulations, and governmental guidelines.
- 2.5 The Transferee will provide the Transferor with [monthly][annual][quarterly] reports summarising the progress of the use of the Materials in the Project and a final report within [X] months after the completion of the use of the Materials in the Project and a copy of all of the Results and Improvements.
- 2.6 The Term may be extended only by the written agreement of the Transferor and the Transferee.

3. PAYMENT

The Transferee will pay the Transferor the Price in full on the date of this Agreement. All amounts payable to the Transferor under this Agreement are exclusive of VAT

(or any similar tax) which the Transferee will pay at the rate from time to time prescribed by law.

4. USE AND EXPLOITATION OF INTELLECTUAL PROPERTY

- 4.1 No licence under any Intellectual Property owned or controlled by the Transferor is granted or implied by this Agreement other than the right for the Transferee to have possession of, and use, the Materials in accordance with the terms of this Agreement.
- 4.2 The Transferee will own the Intellectual Property in the Results, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Results.
- 4.3 The Transferor will own the Intellectual Property in the Improvements and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Improvements.
- 4.4 Where any third party such as a student or contractor is involved in the Project, the Transferee or the party engaging that contractor (as the case may be) will ensure that that student and that contractor assign any Intellectual Property they may have in the Results and in the Improvements in order to be able to give effect to the provisions of this clause 4.
- 4.5 The Transferee will notify the Transferor promptly after identifying any Result or any Improvement that the Transferee believes is patentable, and will supply the Transferor with copies of that Result or Improvement as the case may be. The Transferee will notify other Results and Improvements to the Transferor in the reports provided under clause 2.5.
- 4.6 The Transferee grants to the Transferor a non-exclusive, indefinite licence to use the Intellectual Property in any of the Results for any purpose within the Field in the Territory.
- 4.7 The Transferor grants the Transferee a royalty-free, non-exclusive licence to use the Improvements for the purpose of carrying out the Project, but for no other purpose. The Transferee may not grant any sub-licence to use the Improvements.

5. ACADEMIC PUBLICATION

- 5.1 Any employee or student of the Transferee (whether or not involved in the Project) may, provided the Transferee has not received a Confidentiality Notice under clause 5.2:
 - 5.1.1 discuss work undertaken as part of the Project in Transferee seminars, tutorials and lectures; and
 - 5.1.2 Publish any of the Results and any of the Improvements.
- 5.2 The Transferee will submit to the Transferor, in writing, details of any Results or Improvements that any employee or student of the Transferee intends to Publish, at least [X] days before the date of the proposed Publication. The Transferor may, by giving written notice to the Transferee (a Confidentiality Notice) require the Transferee to delay the proposed Publication for a maximum of [X] months after receipt of the Confidentiality Notice if, in the Transferor's reasonable opinion, that

delay is necessary in order to seek patent or similar protection for any of the Results or Improvements that are to be Published. The Transferor must give that Confidentiality Notice within [X] days after the Transferor receives details of the proposed Publication. If the Transferee does not receive a Confidentiality Notice within that period, its employee or student may proceed with the proposed Publication.

6. **CONFIDENTIALITY**

- 6.1 Subject to clause 5, neither party will[, either during the Term or for [X] years after the end of the Term,] disclose to any third party, nor use for any purpose except as expressly permitted by this Agreement, any of the other party's Confidential Information.
- 6.2 Neither party will be in breach of any obligation to keep any information confidential or not to disclose it to any other party to the extent that it:
- 6.2.1 is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;
 - 6.2.2 is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
 - 6.2.3 has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other party;
 - 6.2.4 has been independently developed by the party making the disclosure;
 - 6.2.5 is disclosed pursuant to the requirement of any law or regulation; or
 - 6.2.6 is approved for release in writing by an authorised representative of the other party.
- 6.3 The Transferee will not be in breach of any obligation to keep any information confidential, or not to disclose it to any third party, by Publishing any of the same if the Transferee has followed the procedure in clause 5.2 and has received no Confidentiality Notice within the period stated in that clause.

7. **LIMITATION OF LIABILITY**

- 7.1 The Materials are experimental in nature and the Transferor makes no representation and gives no warranty, condition or undertaking in relation to them. Without limiting the foregoing, the Transferor gives no warranty or condition that the Materials and their use will not infringe any third-party rights or that they have been tested for and are free from pathogens that they are viable, safe, or non-toxic.
- 7.2 Neither party accepts any responsibility for any use which may be made by the other party of any of the Results or the Improvements, nor for any reliance which may be placed on any Results or Improvements, nor for advice or information given in connection with any Results or Improvements.
- 7.3 Subject to clause 7.5, the liability of either party to the other for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project, the Results and the Improvements, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data,

loss of contracts or opportunity, whether direct or indirect, even if even if the party bringing the claim has advised the other of the possibility of those losses or if they were within the other party's contemplation.

- 7.4 Subject to clause 7.5, the aggregate liability of each party to the other for all and any breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project, the Results and the Improvements, will not exceed *[insert amount]*.
- 7.5 Nothing in this Agreement limits or excludes either party's liability for:
- 7.5.1 death or personal injury;
- 7.5.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or
- 7.5.3 any loss or damage caused by a deliberate breach of this Agreement.
- 7.6 The express undertakings and warranties given by the parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

8. **TERMINATION**

- 8.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- 8.1.1 the other party is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within days after receipt of written notice specifying the breach and requiring its remedy; or
- 8.1.2 the other party becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the other party's assets, or if the other party makes any arrangement with its creditors.
- 8.2 Unless terminated under clause 8.1, this Agreement, and the Transferee's right to use the Materials, will come to an end on the expiry of the Term.
- 8.3 On the termination or expiry of this Agreement the Transferee will, at its expense, [return the Materials to the Transferor at such address as the Transferor may notify to the Transferee for that purpose][destroy the Materials and certify to the Transferor that this has been done].
- 8.4 Clauses 1, 4 (except clause 4.7 if the Transferee terminates this Agreement under clause 8.1), 5, 6, 7, 8.3, 8.4 and 9 will survive the expiry of the Term or the termination of this Agreement for any reason and continue indefinitely.

9. **GENERAL**

- 9.1 **Notices:** Any notice to be given under this Agreement must be in writing, may be delivered to the other party by any of the methods set out in the left hand column

below, and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service	Deemed day of receipt
By hand or courier	the day of delivery
By e-mail	the next Business Day after sending or, if sent before 16.00 (sender's local time) on the Business Day it was sent

The parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

For the Transferee:	For the Transferor:
Name:	Name:
Address:	Address:
Fax number:	Fax number:

- 9.2 **Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 9.3 **Assignment:** Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party. That consent may not be unreasonably withheld or delayed.
- 9.4 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 9.5 **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 9.6 **Formalities:** Each party will take any action and execute any document reasonably required by the other party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the requesting party pays the other party's reasonable expenses.
- 9.7 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.
- 9.8 **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.
- 9.9 **Governing law:** This Agreement is governed by, and is to be construed in accordance with, [COUNTRY]. [Name of Court] will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with,

this Agreement, except that either party may bring proceedings for an injunction in any jurisdiction.

9.10 **Escalation:** If the parties are unable to reach agreement on any issue concerning this Agreement within 14 days after one party has notified the other of that issue, they will refer the matter to [*insert officer*] in the case of the Transferee, and to [*insert officer*] in the case of the Transferor in an attempt to resolve the issue within 14 days after the referral. Either party may bring proceedings in accordance with clause 9.9 if the matter has not been resolved within that 14 day period, and either party may apply to the court for an injunction whether or not any issue has been escalated under this clause.

SIGNED for and on behalf of the Transferee: **SIGNED** for and on behalf of the Transferor:

Name

Name

Position

Position

Signature

Signature

THE SCHEDULE

Part A – The Materials

Part B – the Project