

# MATERIAL TRANSFER AGREEMENT

**By and between**

## **PROVIDER INSTITUTION**

**Le Centre Européen de Recherche en Biologie et en Médecine, (« CERBM »),**

a French Economic Interest Group, organized under the laws of France,

1, rue Laurent FRIES, BP 10142, 67404 ILLKIRCH cedex

Represented by **Mr Alain BERETZ**, Delegate Director,

acting on behalf and in the name of its sole members as follows :

*L'Université de Strasbourg ("UNISTRA"), a public establishment of a scientific, cultural and professional nature, having its principal office at, 4 rue Blaise Pascal, CS90032, F-67081 Strasbourg Cedex,*

*Le Centre National de la Recherche Scientifique ("CNRS"), a public establishment of a scientific and technical nature, having its principal office at, 3 rue Michel-Ange, F-75794 Paris cedex 16,*

*L'Institut National de la Santé et de la Recherche Médicale ("INSERM"), a public establishment of a scientific and technical nature, having its principal office at, 101 rue de Tolbiac, F-75654 Paris cedex 13,*

who have delegated to **CERBM** the management and servicing, of all research projects with institutional and industrial partners to be carried out by scientists of its research institutes, and especially "**Institut de Génétique et Biologie Moléculaire et Cellulaire**" ("**IGBMC**"),

Hereinafter referred to as the "**PROVIDER**"

## **PROVIDER SCIENTIST:**

**Name : Yann HERAULT**

**Title : Researcher**

**And**

## **RECIPIENT INSTITUTION**

**Name:**

**Address:**

Hereinafter referred to as the "**RECIPIENT**"

## **RECIPIENT SCIENTISTS:**

**Name:**

**Title:**

The **PROVIDER** and the **RECIPIENT** are hereinafter individually referred to as the "Party", and collectively as the "Parties".

## **Recitals**

This Material Transfer Agreement (the "Agreement") is entered into in response to the RECIPIENT's request for the ORIGINAL MATERIAL identified as:

and to be used for the RESEARCH identified as:

and further described in Appendix , which is integral part of this Agreement.

The PROVIDER makes available to the RECIPIENT the ORIGINAL MATERIAL on a non-exclusive basis for the purpose of academic in-house research only, subject to the RECIPIENT's acceptance of the terms and conditions set forth herein.

## **The Parties hereby agree on the following:**

### **DEFINITIONS**

- a. "BIOLOGICAL MATERIAL" as used herein shall mean ORIGINAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.
- b. "PROGENY" as used herein, shall mean unmodified descendant from the BIOLOGICAL MATERIAL, such as virus from virus, cell from cell, or organism from organism, by breeding pairs of the BIOLOGICAL MATERIAL.
- c. "MODIFIED PROGENY": Modified descendant from the BIOLOGICAL MATERIAL, i.e. descendant from the BIOLOGICAL MATERIAL that express new genetic characteristics obtained by RECIPIENT. This includes but is not limited to the results of any cross breeding of the BIOLOGICAL MATERIAL to other occurring lines or strains, and any offspring or other materials derived there from, such as cells, cell lines, tissues, sperm, zygotes, embryos, fluids, genetic material, blood, proteins or other compositions contained in or components of any such modifications of the BIOLOGICAL MATERIAL.
- d. "UNMODIFIED DERIVATIVES" as used herein shall mean substances created by the RECIPIENT which constitute an unmodified functional sub-unit or an expression product of the BIOLOGICAL MATERIAL, including but not limited to cells, cell lines, tissues, sperm, zygotes, embryos, fluids, genetic material, blood, proteins or other compositions contained in or components of the BIOLOGICAL MATERIAL.
- e. "MODIFICATIONS": Substances created by the RECIPIENT which contain/incorporate the BIOLOGICAL MATERIAL.
- f. "CONFIDENTIAL INFORMATION" means all information disclosed by a Party in connection with the RESEARCH, prior to or after signature of this Agreement, regardless of its way of transmission, including but not limited to product characteristics, processes of making and patent applications, other similar information as well as business information, and marked as CONFIDENTIAL. Any CONFIDENTIAL INFORMATION orally conveyed will be reduced to written form and likewise marked CONFIDENTIAL within thirty (30) days after disclosure.
- g. "COMMERCIAL PURPOSES": The sale, lease, license, or other transfer of the BIOLOGICAL MATERIAL or MODIFICATIONS or MODIFIED PROGENY to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the BIOLOGICAL MATERIAL or MODIFICATIONS or MODIFIED PROGENY by any organization, including RECIPIENT, to perform research contract, to screen compound libraries, to produce or manufacture product for general sales, or to conduct research activities that result in any sale, lease, license, or transfer of the BIOLOGICAL MATERIAL or MODIFICATIONS or MODIFIED PROGENY to a for-profit organization.

h. "RESULTS" as used herein, shall mean, without limitation, any ideas, inventions, discoveries, know-how, data, documentation, reports, materials, writings, designs, computer software, processes, principles, methods, techniques and other information, recorded in any form, that are discovered, conceived, reduced to practice or otherwise generated as a result of or in connection with the use of the BIOLOGICAL MATERIAL by or on behalf of the RECIPIENT, and any patent, trade secret, copyright or other intellectual property rights pertaining to any of the foregoing, which are not BIOLOGICAL MATERIAL, MODIFIED PROGENY or MODIFICATIONS.

### **Article 1 – Purpose**

1.1. The PROVIDER makes available to the RECIPIENT the ORIGINAL MATERIAL on a non-exclusive basis, so that it may complete the RESEARCH set forth in the Appendix hereto, to the exclusion of any and all other use.

1.2. The above BIOLOGICAL MATERIAL is the property of the PROVIDER and is made available as a service to the research community.

### **Article 2 – Conditions of use of the BIOLOGICAL MATERIAL**

2.1. The BIOLOGICAL MATERIAL will be held in strictest confidence and in a safe manner, and used for internal teaching and academic research purposes only. The BIOLOGICAL MATERIAL will be used solely for laboratory research under the RECIPIENT SCIENTIST'S immediate and direct control and not for any COMMERCIAL PURPOSES. The RESEARCH using the BIOLOGICAL MATERIAL will be carried out in accordance with all applicable local, state rules and regulations. The BIOLOGICAL MATERIAL shall not be used for any other purpose without the prior written permission of the PROVIDER.

2.2. The BIOLOGICAL MATERIAL shall not be further distributed to others and no other person or entity shall be allowed to use the BIOLOGICAL MATERIAL for any purpose without the PROVIDER's prior written consent. The RECIPIENT and RECIPIENT SCIENTIST shall promptly refer any request for the BIOLOGICAL MATERIAL to the PROVIDER.

2.3. The RECIPIENT SCIENTIST may generate PROGENY of the BIOLOGICAL MATERIAL provided that the PROGENY are used only as described in the RESEARCH and not provided or sold to third parties.

### **Article 3 – Obligation to provide Information – Publications**

3.1. On a regular basis and subject to the confidentiality obligations under Article 5, the RECIPIENT shall inform the PROVIDER and the PROVIDER SCIENTIST of the results of its work, obtained by using, or from, the BIOLOGICAL MATERIAL.

3.2. If the RECIPIENT or RECIPIENT SCIENTIST wishes to publish or disclose anything concerning the RESEARCH, including the BIOLOGICAL MATERIAL, the MODIFIED PROGENY, the MODIFICATIONS, or the RESULTS, the RECIPIENT and RECIPIENT SCIENTIST shall communicate to the PROVIDER manuscripts of all proposed publications, prior to the publication thereof. In accordance with current practices in the scientific community, and unless the PROVIDER requests otherwise, the contributions of those who made the BIOLOGICAL MATERIAL available or of collaborators, if any, from the PROVIDER, will be reflected expressly in all written or oral public disclosures relating to the RESEARCH, by acknowledgment or co-authorship, as appropriate.

Any publication or other public disclosure relating to the BIOLOGICAL MATERIAL, the MODIFIED PROGENY, the MODIFICATIONS, or its RESULTS, will be provided to PROVIDER thirty (30) days prior to the submission for publication thereof. If requested by the PROVIDER and within thirty (30) days from receipt by PROVIDER, the Recipient shall (a) delete any confidential Information proprietary to the PROVIDER and (b) delay publication of the proposed publication for a maximum of three (3) months from the date of the request in order to permit to prepare and file any appropriate patent applications with respect to the information contained in such proposed publication.

#### **Article 4 – Ownership - Exploitation**

4.1. The BIOLOGICAL MATERIAL, including any BIOLOGICAL MATERIAL contained or incorporated in MODIFICATIONS, shall remain the property of the PROVIDER.

4.2. The RECIPIENT and the PROVIDER shall jointly own the MODIFIED PROGENY, the MODIFICATIONS and the RESULTS. Any patent application or intellectual property rights claiming MODIFIED PROGENY or MODIFICATIONS or RESULTS, or method(s) of production or use(s) of the MODIFIED PROGENY or MODIFICATIONS or RESULTS, or claiming inventions made through the use of MODIFIED PROGENY or MODIFICATIONS or RESULTS shall be jointly owned by the PROVIDER and the RECIPIENT.

Neither Party may commercialise the MODIFIED PROGENY, MODIFICATIONS and RESULTS without the prior written consent of the other. The Parties undertake to negotiate and conclude the terms and condition of a co-ownership agreement concerning the use, patenting and commercial exploitation of the MODIFIED PROGENY, the MODIFICATIONS and the RESULTS, that shall take into account and preserve the rights granted to third parties or the rights that may be granted to third party.

4.3. The RECIPIENT acknowledges that the BIOLOGICAL MATERIAL is or may be subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the BIOLOGICAL MATERIAL made by the PROVIDER.

4.4. The RECIPIENT agrees not to describe or claim the BIOLOGICAL MATERIAL in any patent application or equivalent right.

4.5. RECIPIENT and PROVIDER agree to inform one another of any request of (i) MODIFIED PROGENY or (ii) MODIFICATIONS or (iii) RESULTS by a third party.

4.6. If the RECIPIENT desires to use or license the BIOLOGICAL MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial license to others, or sell or assign all or part of the rights in the BIOLOGICAL MATERIAL to any third party (ies), subject to pre-existing rights held by others.

#### **Article 5 – Confidentiality**

5.1. The RECIPIENT undertakes to keep confidential all the CONFIDENTIAL INFORMATION which is transmitted orally, in writing, or in any and all other manner, pursuant to this Agreement, and relating to the BIOLOGICAL MATERIAL.

5.2. This CONFIDENTIAL INFORMATION may not be disclosed to third parties without the PROVIDER's prior and written authorization.

5.3. RECIPIENT's non-disclosure obligations hereunder shall not apply to CONFIDENTIAL INFORMATION:

- Which were in the public domain prior to being transferred to the RECIPIENT, or following such transfer, without negligence by the RECIPIENT;
- for which it can be proven that they were legally received from a third party without any and all restriction, and that there was no breach of this Agreement;
- Which were already in the possession of the RECIPIENT prior to the execution of the Agreement, or independently developed by the member staff 'RECIPIENT in which case the latter shall provide proof of this fact, or disclosed with the written authorization of the PROVIDER;
- which is required to be disclosed by law, regulation, order or other requirement of a court, administrative agency, or other governmental body provided that RECIPIENT gives advance notice to PROVIDER allowing PROVIDER to seek a protective order or otherwise contest or limit such disclosure.

5.4 This non-disclosure obligation shall remain effective during the term of the Agreement and for 5 (five) years subsequent to its expiry or termination.

#### **Article 6 – Warranties – Liability**

6.1. NO WARRANTIES -- THE BIOLOGICAL MATERIAL IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF IDENTITY, PURITY, ACTIVITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE SUCH AS RESEARCH, DIAGNOSIS OR TREATMENT ON HUMAN SUBJECTS OR ANY WARRANTY THAT THE USE OF BIOLOGICAL MATERIAL WILL NOT INFRINGE OR VIOLATE ANY PATENT OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY. RECIPIENT acknowledges that the BIOLOGICAL MATERIAL may have unpredictable or unknown biological and/or chemical properties, and that the BIOLOGICAL MATERIAL is to be used with caution. In no event shall the PROVIDER or its officers or employees be liable for any use by RECIPIENT of the BIOLOGICAL MATERIAL.

To the extent permitted by law, RECIPIENT assumes all liability for damages which may arise from RECIPIENT's use, handling or storage of the BIOLOGICAL MATERIAL, or from a breach by RECIPIENT of its obligations under this Agreement. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT due to or arising from the use of the BIOLOGICAL MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

6.2. The RECIPIENT and the RECIPIENT SCIENTIST agree to comply with all applicable laws, rules and regulations relating to the care, welfare, handling, breeding, storage, transfer and disposal of animal(s), including all applicable import/export regulations relating to shipment to and from PROVIDER's facilities in Strasbourg, France.

6.3 The RESULTS of the RESEARCH, including any and all data, findings and results, are provided to the PROVIDER "AS-IS" and without any warranty, express or implied, including any warranty of merchantability, title, or fitness for a particular purpose. RECIPIENT shall not be liable for any damages suffered by the PROVIDER arising out of, or in connection with the use by the PROVIDER, of the results of the RESEARCH, data, findings or any uses thereof, except insofar as such damages result from the gross negligence or wilful misconduct of RECIPIENT.

#### **Article 7 – Assignment of the Agreement**

This Agreement may not be assigned to a third party without the Parties' prior and written authorization.

#### **Article 8 – Duration and Termination**

8.1 This Agreement shall become effective as from the date of its signature by all the Parties and shall expire, at the latest, at the same time that the RESEARCH defined in the Appendix will finish (a) three (3) years from the date of signing this Agreement, or (b) on completion of RECIPIENT's current RESEARCH with the BIOLOGICAL MATERIAL, or (c) thirty (30) days after sending by either Party to the other of a termination written notice, provided that:

- if termination should occur under (a) or (b), RECIPIENT shall discontinue its use of the BIOLOGICAL MATERIAL and shall, according to PROVIDER instructions, return or destroy any remaining BIOLOGICAL MATERIAL. RECIPIENT shall, at its own discretion, also either destroy the MODIFICATIONS or remain bound by the terms of this Agreement related to MODIFICATIONS, and
- in the event PROVIDER terminates the Agreement under (c) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, PROVIDER will defer the effective date of termination for a period of up to one year, upon request from RECIPIENT, to permit completion of RESEARCH in progress.

8.2 Notwithstanding the Agreement's expiry or termination, the provisions set forth in Articles 2, 3, 4, 5, 6 and 11 shall remain effective.

**Article 9 – Entirety and limitations of the Agreement**

All the provisions of this Agreement and its Appendix represent the entirety of the Parties' agreements regarding its purpose. They replace the prior commitments, representations, and negotiations, oral or written agreements between the Parties relating to the same purpose.

Any modifications to the present Agreement must form the subject of an amendment signed by the authorized representatives of the Parties, and said amendment shall form an integral part thereof.

**Article 10 – Invalidity of a clause**

Should one or several provisions of this Agreement be held to be null and void, or declared as such under a treaty, law or regulations, or following a final decision handed-down by a Court having jurisdiction, the other provisions shall retain all their effect and scope. In this case, the Parties shall immediately make the required changes, complying, insofar as possible, with the original intention at the time when this Agreement was executed.

**Article 11 – Governing law - Disputes**

In case of any dispute over the interpretation or the execution of this Agreement, the Parties undertake to make every effort to settle their dispute by amicable agreement.

If the Parties are unable to settle a dispute arising out of or in connection with this Agreement, the territorially competent court shall be that of the place where the defendant resides.

The applicable law will be the national law of the defendant court.

For the **PROVIDER**  
**PROVIDER Authorized official**

Name:

Title:

Date:

Signature:

READ AND UNDERSTOOD BY THE **PROVIDER Scientist:**

Name: **Yann HERAULT**

Title: **Researcher**

Date:

Signature:

For the **RECIPIENT**  
**RECIPIENT Authorized official**

Name:

Title:

Date:

Signature:

READ AND UNDERSTOOD BY THE **RECIPIENT Scientist:**

Name:

Title:

Date:

Signature:

## APPENDIX

<b><u>RECIPIENT's Institution</u></b> legal name and place of business	
<b><u>RECIPIENT authorised official's name, full address, telephone number and email</u></b>	
<b><u>RECIPIENT Scientist's</u></b> name, full address, telephone number and email Asking for ORIGINAL MATERIAL	
<b><u>Site of investigation</u></b> Address where RESEARCH shall be conducted	
<b><u>ORIGINAL MATERIAL</u></b> description and quantity	



<p><b>RECIPIENTS's Institution</b> legal name and place of business</p>	
<p><b>RESEARCH</b> Which shall be carried out by the RECIPIENT Scientist through the use of ORIGINAL MATERIAL</p>	