**MATERIAL TRANSFER AGREEMENT**

**MTA#**

**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 **Pr. Brigitte KIEFFER Delegate Director**,

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

1. - 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,
2. - 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,
3. - 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,

which 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**”) and for benefit of its research infrastructure, **“Institut Clinique de la souris (ICS)”**,

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

**PROVIDER SCIENTIST**:

Name: Yann HERAULT

Title: Director ICS

**And**

**RECIPIENT INSTITUTION**

Name: <corporate name>,

situated at <the company’s head >,

state of incorporation <state>,

represented by <Legal Representant>,

Hereinafter referred to as the “**RECIPIENT**”

**RECIPIENT SCIENTIST:**

Name:

Title:

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

**Recitals**

In response to the RECIPIENT’s request for the ORIGINAL MATERIAL identified as:

**“Description of the Material”**

and to be used for the RESEARCH identified as **“Title of research”**, as described in the Appendix, 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 terms and conditions of this agreement:**

**DEFINITIONS**

a. “BIOLOGICAL MATERIAL” as used herein shall mean ORIGINAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.

The BIOLOGICAL MATERIAL shall not include:

(i) MODIFICATIONS, or

(ii) Other substances created by the RECIPIENT through the use of the BIOLOGICAL MATERIAL which are not MODIFICATIONS, PROGENY or 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” as used herein, shall mean any information, data or BIOLOGICAL MATERIAL belonging to the PROVIDER, disclosed by the PROVIDER to the RECIPIENT under or during the preparation or the course of the Agreement or disclosed after its signature, in any form including, without limitation, oral, graphic and written form, software stored and samples provided. CONFIDENTIAL INFORMATION include without limitation, documents clearly marked “confidential”, information relating to the BIOLOGICAL MATERIAL, any information describing the BIOLOGICAL MATERIAL or the BIOLOGICAL MATERIAL’s method of use, any information relating to regulatory documentation, clinical studies and tests performed on the BIOLOGICAL MATERIAL, any information relating to the MODIFICATIONS or the RESULTS and reports.

g. “COMMERCIAL PURPOSES”: The sale, lease, license, or other transfer of the BIOLOGICAL MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the BIOLOGICAL MATERIAL or MODIFICATIONS 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 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, collaborations with third parties. Specifically, the PROVIDER agrees to give access to the BIOLOGICAL MATERIAL, inside of its entity, only by its salaries who need to use them for the purpose of the RESEARCH and to make sure that they respect individually the commitment of the PROVIDER in accordance with the present agreement. NEITHER THE BIOLOGICAL MATERIAL NOR MODIFICATIONS MAY BE USED IN RESEARCH, DIAGNOSIS OR TREATMENT INVOLVING HUMAN SUBJECTS. Research using the BIOLOGICAL MATERIAL will be carried out under appropriate containment conditions and in accordance with all applicable local, state rules and regulations. Specifically the PROVIDER authorizes the RECIPIENT and RECIPIENT SCIENTIST to use the BIOLOGICAL MATERIAL for its exclusive internal research use purposes such as described in the RESEARCH. 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.

2.4. The RECIPIENT and the RECIPIENT SCIENTIST shall not be authorized to transport or send the BIOLOGICAL MATERIAL to a destination other than the RECIPIENT SCIENTIST laboratory, or the authorized laboratories as referred to in the Appendix.

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

3.1. On a regular basis and confidentially, 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 communicate anything concerning the RESEARCH, including the BIOLOGICAL MATERIAL, the MODIFIED PROGENY, the MODIFICATIONS, or its RESULTS, the RECIPIENT and RECIPIENT SCIENTIST agree to proceed with joint publications, which shall recognize the PROVIDER SCIENTIST who contributed to the making of the material as co-authors.

Any publication or other public disclosure relating to the BIOLOGICAL MATERIAL, the MODIFIED PROGENY, the MODIFICATIONS, or its RESULTS, will be provided to PROVIDER and PROVIDER SCIENTIST sufficiently in advance of publication or other public disclosure (but in any event at least two months prior to submission of publication’s text to the editor or disclosure) in order to allow reasonable opportunity for the PROVIDER to evaluate with the RECIPIENT, and eventually file a patent application thereon.

3.3. The provisions of this Article shall remain effective during the term of this Agreement and for 5 (five) years subsequent to its expiry or termination.

**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 (copyrights, trademarks...) 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.

4.3. Any and all combination, mixture or incorporation of the BIOLOGICAL MATERIAL with/into any and all other material by the RECIPIENT shall be forbidden, unless this is for the purposes of the work set forth in the Appendix.

4.4. The RECIPIENT acknowledges that the BIOLOGICAL MATERIAL is or may be the 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.

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

4.6. In the event that the MODIFIED PROGENY, the MODIFICATIONS or the RESULTS obtained are able to lead to the filing of an application for industrial property title, the RECIPIENT shall immediately inform the PROVIDER, the Parties shall decide, by joint agreement, on the strategy to follow as regards the protection and use of said MODIFIED PROGENY, MODIFICATIONS or RESULTS and, where applicable, the persons authorized to carry out such filing formalities and/or such use. The Parties shall then discuss so as to decide, by joint agreement, the terms and conditions for protection under an industrial property title.

4.7. 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. As regards requests of (i) MODIFIED PROGENY or (ii) MODIFICATIONS or (iii) RESULTS for COMMERCIAL PURPOSES, RECIPIENT and PROVIDER will consult together to define the best strategy to undertake.

4.8. 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.

Should either the PROVIDER or the RECIPIENT desire to obtain an exclusive commercial license under (i) MODIFIED PROGENY or (ii) MODIFICATIONS or (iii) RESULTS, then the PROVIDER and the RECIPIENT agree to negotiate in good faith access rights to the other party ownership interest in respectively (i) the MODIFIED PROGENY or (ii) the MODIFICATIONS or (iii) the RESULTS.

**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 Party;

- 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 Party prior to the execution of the Agreement, in which case the latter shall provide proof of this fact;

- Which were used or disclosed with the written authorization of the issuing Party;

- for which it can be proven that they were developed by the RECIPIENT Party, independently, and in good faith, by its members of staff who did not have access to said CONFIDENTIAL INFORMATION and BIOLOGICAL MATERIAL.

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. Any BIOLOGICAL MATERIAL delivered pursuant to this Agreement is provided “AS IS” and is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE BIOLOGICAL MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES. Except to the extent prohibited by law, the RECIPIENT and the RECIPIENT SCIENTIST assume all liability for damages which may arise from their use, storage or disposal of the BIOLOGICAL MATERIAL. The PROVIDER will not be liable to the RECIPIENT or the RECIPIENT SCIENTIST for any loss, claim or demand made by the RECIPIENT or the RECIPIENT SCIENTIST, or made against the RECIPIENT or the RECIPIENT SCIENTIST by any other party, due to or arising from the use of the BIOLOGICAL MATERIAL by the RECIPIENT or the RECIPIENT SCIENTIST, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER. RECIPIENT and RECIPIENT SCIENTIST hereby agree to waive all claims against the PROVIDER and PROVIDER SCIENTIST and to indemnify, defend and hold harmless the PROVIDER, their employees and agents (including, without limitation, the PROVIDER SCIENTIST) from and against all claims, damages and liability that may be asserted by third parties (including, without limitation, employees and agents of the RECIPIENT) arising out of RECIPENT or RECIPENT SCIENTIST’s use, care, handling, disposal, transfer, breeding and shipment of the BIOLOGICAL MATERIAL.

6.2. The RECIPIENT shall be solely liable for any and all risks or loss which may arise during performance of this Agreement, in particular in the event of injury, death, physical damage, or any and all other incident or loss that may be occasioned by the use, testing or manipulation of the BIOLOGICAL MATERIAL.

6.3. 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.

**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) 3 years from the date of signing this Agreement, or (b) on completion of RECIPIENT's current RESEARCH with the BIOLOGICAL MATERIAL, or (c) 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 At the expiration date of said period or at the effective expiration date, 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 MODIFICATIONS or remain bound by the terms of the Agreement related to MODIFICATIONS.

8.3 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, negotiations, oral or written communications, acceptances, understandings and 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**

This Agreement shall be governed by the laws of France.

In the event of disputes regarding the terms on execution of this Agreement, the Parties shall endeavor to settle their differences out of court.

Any and all disputes between the Parties concerning the existence, validity, interpretation, performance and termination of this Agreement (or any of its clauses), which the Parties are unable to settle out-of court, shall be referred to the French Courts having jurisdiction.

Executed in two (2) originals on

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| --- | --- |
| For the **PROVIDER** | For the **RECIPIENT** |
| **PROVIDER Authorized official** | **RECIPIENT Authorized official** |
| Name: Brigitte KIEFFER | Name: |
| Title: CERBM-GIE Delegate Director | Title: |
| Date: | Date: |
| Signature: | Signature |
| READ, UNDERSTOOD AND AGREED TO BY THE **PROVIDER Scientist**: | READ, UNDERSTOOD AND AGREED TO BY THE **PROVIDER Scientist**: |
| Name: Yann Hérault | Name: |
| Title: ICS Director | Title: |
| Date: | Date: |
| Signature: | Signature: |

**APPENDIX**

**Specifications regarding the ORIGINAL MATERIAL provided and the RESEARCH**

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| --- | --- |
| **Recipient’s Institution legal name and place of business (RECIPIENT)** |  |
| **Recipient authorised official’s name, full address, telephone number and email** |  |
| **RECIPIENT SCIENTIST’s name, full address, telephone number and email**  Asking for ORIGINAL MATERIAL |  |
| **Site of investigation**  Address where RESEARCH shall be conducted |  |
| **ORIGINAL MATERIAL**  description and quantity |  |
| **RESEARCH**  Which shall be carried out by the RECIPIENT SCIENTIST through the use of ORIGINAL MATERIAL |  |