Material transfer agreement

**By and between**

The **Centre national de la recherche scientifique**, a Public Scientific and Technological Establishment, having its registered office at 3 rue Michel-Ange 75794 Paris cedex 16, represented by its managing director, Mr Alain FUCHS who has delegated signing authority for this agreement to the Regional Delegate of the Midi-Pyrénées Delegation, Mr Christophe GIRAUD

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

Acting on behalf of the Institut de Pharmacologie et de Biologie Structurale, UMR 5089, 205 route de Narbonne, 31077 Toulouse cedex (France)

managed by Prof. Jean-Philippe GIRARD

hereinafter referred to as the “**Laboratory**”,

**And**

**X**……………. *[provide the partner’s details and the capacity of the person representing it and signing the Agreement]*

Hereinafter referred to as **“X”**

The CNRS and X are hereinafter individually referred to as the “Party”, and collectively as the “Parties”.

**Recitals**

*[This section enables the Parties’ motivation and the aims which they are pursuing to be specified. The Recitals therefore contribute to the protection of the material by strictly defining the context of both its transfer and use].*

*Example:* - Through its LABORATORY, the CNRS possesses ……………………………

(*description of the material)*,

*hereinafter referred to as the “MATERIAL”.*

- *X is interested in the MATERIAL pursuant to ………..[complete: e.g.: its research and development work], and specifically for completing the work schedule set forth in the Appendix.*

*- The CNRS hereby agrees to provide the MATERIAL to X, and any and all information required for it to conduct its work, under the terms and conditions set forth herein.*

[*The information set forth in the Recitals has the same legal value as the main provisions*].

**The Parties hereby agree:**

**Article 1 – Purpose**

1.1. The CNRS undertakes to provide the MATERIAL to X within \_\_\_\_\_\_\_\_\_\_\_\_\_\_(complete deadline) as from the execution of this Agreement, and hereby grants to X, which accepts such, a temporary, non exclusive right to use the MATERIAL so that it may complete the work schedule set forth in the Appendix hereto, to the exclusion of any and all other use.

1.2. Consequently, X shall not be authorised to use the MATERIAL subsequent to the expiry date of this Agreement and for different purposes, without the CNRS’ further, prior and written consent.

In particular, the MATERIAL may not be used pursuant to research involving the participation of a third party without the prior consent of the CNRS.

1.3. The MATERIAL shall not be transmitted to any and all third party other than to staff involved in implementing the work schedule, and who work directly under the authority of the manager of the recipient laboratory, in accordance with the Appendix hereto; X hereby guarantees the acceptance and compliance with the provisions of this Agreement by its staff.

1.4. Nobody shall be authorised to transport or send the MATERIAL to a destination other than the recipient laboratory, or the authorised laboratories as referred to in the Appendix.

1.5. The authorised laboratories, as set forth in the Appendix, may possibly be changed at X’s request, should this be agreed by the CNRS, and only by means of a rider executed by the Parties.

**Article 2 – Obligation to provide information**

2.1. On a regular basis and confidentially, X shall inform the CNRS of the results of its work, obtained by using, or from, the MATERIAL. A final report on the work carried out and the results obtained during the term of the Agreement shall be provided to the CNRS within two (2) months of the expiry or termination date of this Agreement.

2.2. In the event of publication or communication concerning the MATERIAL, the work carried out, and/or the results obtained, whatever their nature may be, and on any medium whatsoever, the preliminary text relating to such publication or communication shall be submitted for the CNRS’ written authorisation, thirty (30) days prior to the disclosure of this information, or the submission of said publication’s text to the editor, at the latest.

2.3. In accordance with effective scientific practices, all publications or communications relating to the use of the MATERIAL shall refer to the fact that such MATERIAL originated from the CNRS. Similarly, the contribution of CNRS staff to making the MATERIAL accessible shall be expressly mentioned in any and all publications or communications, either by thanking such staff, or mentioning them as co-authors.

2.4. 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 3 – Ownership of the material**

3.1. The CNRS is hereby acknowledged as being the sole owner of the MATERIAL and the related intellectual property rights.

3.2. The Parties hereby expressly agree that the right to use the MATERIAL, as granted under this Agreement, may not, under any circumstances, be construed as expressly or implicitly providing X with any ownership right or title, or option or licence, whatsoever, over the MATERIAL supplied by the CNRS.

3.3. X is hereby expressly forbidden from manipulating or transforming the MATERIAL in such a manner as to compromise the CNRS’ rights over said MATERIAL, without the latter’s prior and written agreement.

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

**Article 4 – Results obtained from use of the material**

4.1. In the event that the results obtained are able to lead to the filing of an application for industrial property title, the Parties shall decide, by joint agreement, on the strategy to follow as regards the protection and use of said results and, where applicable, the persons authorised to carry out such filing formalities and/or such use. In particular, should the results relate to an improvement or the discovery of a new effect or new potential use, whether able to be patented or not, which is made by X as regards the MATERIAL, the latter shall immediately inform the CNRS. The Parties shall then discuss so as to decide, by joint agreement, upon ownership of said results, and the terms and conditions for protection under an industrial property title and for right of use.

4.2. No licence shall be implicitly granted as a result of the CNRS providing the MATERIAL to X. Consequently, in the event that a licence for the MATERIAL were to be required for the commercial use of the results referred to in Article 4.1, the Parties shall negotiate, in good faith, the terms and conditions of a licence to use the MATERIAL in favour of X.

**Article 5 – Confidentiality**

5.1. X undertakes to keep confidential all the information which is transmitted orally, in writing, or in any and all other manner, pursuant to this Agreement, and relating to the MATERIAL.

5.2. This INFORMATION may not be disclosed to third parties without the CNRS prior and written authorisation.

5.3. X’s non-disclosure obligations hereunder shall not apply to INFORMATION and MATERIAL:

- which were in the public domain prior to being transferred to X, 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 authorisation of the issuing Party;

- which were disclosed by 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 INFORMATION and 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. As the MATERIAL is of an experimental nature, the CNRS shall not provide any and all warranty as regards its condition, activity, usefulness, efficiency, purity, harmlessness, non-toxicity, safety, or as regards its use, market value or suitability in respect of any and all objective.

6.2. X 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 MATERIAL.

6.3. X undertakes to use the MATERIAL in accordance with the effective legislation of the country in which it is used.

**Article 7 – Confidentiality of the agreement**

The Parties shall keep the execution, existence and performance of this Agreement confidential and such elements shall not be disclosed by either Party without the other Party’s prior, written agreement.

**Article 8 – Notices**

Exchanges between the Parties pursuant to this Agreement shall be in writing and shall be sent to the following addresses:

For the CNRS

Mme Malika PARES

IPBS/CNRS

205 route de Narbonne

31077 Toulouse cedex

For X

Mr. …………

**Article 9 – Assignment of the agreement**

This Agreement may not be assigned to a third Party without the Parties’ prior and written authorisation.

**Article 10 – Term**

10.1 This Agreement shall become effective as from the date of its signature by all the Parties and shall be concluded for a term of …. months/years.

10.2 When this Agreement ends, for any reason whatsoever, X undertakes, during the following 15 days, to either return or destroy, at its expense, the MATERIAL, and all the INFORMATION relating thereto, which it possesses, not to keep any and all reproduction or copy, and to provide a certificate of destruction.

10.3 Notwithstanding the Agreement’s expiry or termination, the provisions set forth in Articles 2, 3, 4, 5, 6, 7, 15 and 16 shall remain effective.

**Article 11 – Termination**

11.1. This Agreement may be automatically terminated by either Party in the event of the other Party’s breach of one or several of the obligations set forth in any of its Articles.

11.2. Such termination shall only become effective three (3) months following the sending, by the injured Party, of a registered letter with acknowledgment of receipt, setting forth the grounds for the complaint, unless, during said period, the injured Party [also] breaches its obligations, or fails to provide proof of circumstances preventing performance due to an event of force majeure.

11.3. The exercising of this entitlement shall not discharge the defaulting Party from meeting its contractual obligations until the effective termination date, without prejudice to any loss which may be suffered by the injured Party as a result of the early termination of the Agreement.

11.4. Notwithstanding said termination, and in accordance with the provisions of Article 2.2 hereof, a report on the work carried out and the results obtained during the term hereof shall be provided to the CNRS by X.

**Article 12 – Entirety and limitations of the agreement**

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

**Article 13 – 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 14 – Language of the agreement**

*(In the event that X is a foreign partner)*

This Agreement shall be drafted in two versions, to wit, in French and in English. In the event of problems as regards interpretation, both versions shall be deemed authentic].

**Article 15 – Governing law**

This Agreement shall be governed by French legislation and regulations.

**Article 16 – Jurisdiction**

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 ………., on….

In two originals.

|  |  |
| --- | --- |
| For the **CNRS**DateFonctionSignature | For **X**DateCapacitySignature |

**APPENDIX**

**Specifications regarding the MATERIAL, the *INFORMATION provided* and the work schedule**

1. Nature of the MATERIAL and **INFORMATION provided by the CNRS** to X

2. Recipient Laboratory

3. Authorised Laboratories

4. X’s Work Schedule

5. Technical Managers