**MATERIAL TRANSFER AGREEMENT**

This material transfer agreement (hereinafter the «**Agreement**») is by and between the:

[Name of Institution and address]

(hereinafter the «***Provider***»)

and

[Name of Institution and address]

(hereinafter the «***Recipient***»)

The Provider and the Recipient are hereinafter collectively referred to as «***Parties***» or individually as «***Party***».

By this Agreement, the Parties wish to establish conditions for the transfer and use of the Materials. The Agreement has an effective date of [date] (hereinafter the «***Effective Date***»).

# introduction

## Definitions

***“Material”***: Material, Progeny, and Unmodified Derivatives. The Material shall not include

a) Modifications or,

b) Other substances created by the Recipient through the use of the Material which are not Modifications, Progeny or Unmodified Derivatives.

***“Progeny”***: Unmodified descendant from the Material, such as virus from virus, cell from cell or organism from organism.

***“Unmodified Derivatives”***: Substances created by the Recipient that constitute an unmodified functional subunit or product expressed by the Material. Some examples include: Subclones of unmodified cell lines, purified or fractionated subsets of the Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal secreted by a hybridoma cell line.

 ***“Modifications”***: Substances created by the Recipient that contain or incorporate the Material.

***“Commercial Purposes”***: The sale, lease, license or other transfer of the Material or Modifications to a for-profit organization. Commercial Purposes shall also include uses of the Material or Modifications by any organization, including Recipient, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license or transfer of the Material or Modifications to a for-profit organization.

***“Personal Data”***: Any information relating to an identified or identifiable natural person («data subject»); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, or to one or more factors specific to the physical, physiological, genetic, or mental identity of that natural person. Personal Data refers to the information relating to data subjects that have donated or in other ways provided the Materials. The Personal Data is described in **Appendix 3**. The use of Personal Data is regulated by the Regulation (EU) 2016/679 (General Data Protection Regulation; hereinafter «GDPR»).

Unless other provisions in the Agreement specifically states otherwise, the term Materials also covers Personal Data.

## Purpose of the Agreement

The Provider agrees to transfer Material, meaning [Description of the material the Provider will make available for the Recipient]. The Material is described and quantified in **Appendix 1**.

The Provider agrees to make the Material available to the Recipient, on a royalty free and on a non-exclusive basis, for the Research (defined below) only and on the terms and conditions set in the Agreement. The Material will be made available for the Recipient without any direct personal identification to any human subjects.

The Recipient hereby agrees to use the Material for the internal non-commercial research project only(hereinafter the «***Research***»), limited to the following procedures, purpose and/or time period, defined as:

* [Description of the Research] A brief summary of the Research is included in **Appendix 2**.

## Transportation

The Recipient will reimburse the Provider for its costs of shipping the Material in the amount of NOK [Insert amount]. The Provider will arrange the shipping of the Material to the Recipient and will be responsible for the Material until the Material is delivered.

# use of the material

## General obligations

The Recipient will hold the Material on the terms of this Agreement and solely for the purpose of the Research as described in **Appendix 2** and within the relevant research group working with the Research, cf. section 2.2.

The Recipient agrees that the Material is to be used solely for teaching and academic research purposes. The Recipient agrees that the Material will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the Provider.

## Limitation of use and access to the Material

The Recipient agrees that the Material or any data derived from the Material will be used only by employees or individuals working within the Recipient’s institution as identified below for the sole purpose of conducting the Research.

Recipient shall only permit access to the Material to those individuals within its organisation who have a strict need for such access in connection with the Research, cf. section 1.2 and 2.1. The Recipient shall ensure that said persons are bound by the regulations set forth in this Agreement.

## Commercial utilisation of the Material

The Recipient agrees that the Material or any data derived from the Material will not be used for any Commercial Purposes.

No Party shall use the other Party’s name in any marketing material without its prior express and written consent.

## Third parties

The Material or any data derived from the Material shall not be duplicated, transferred, distributed or supplied to any third party, for any purpose or use without the prior written consent of the Provider and provided that the terms of this agreement are maintained.

# intellectual property

## Ownership

The Provider retains ownership of the Material, including any Material contained or incorporated in Modifications.

The Recipient retains ownership of:

1. Modifications, except that the Provider retains ownership rights to the Material included therein, and
2. Those substances created through the use of the Material or Modifications, but which are not Progeny, Unmodified Derivatives or Modifications (i.e., do not contain the Material, Progeny or Unmodified Derivatives).

If either a) or b) results from the collaborative efforts of the Provider and the Recipient, joint ownership may be negotiated.

## Intellectual property

All intellectual properties existing prior to the Effective Date, shall remain the full and exclusive property of the Party owning the relevant intellectual property in question.

The Recipient acknowledges that the 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 Material made by the Provider.

## Indemnification and discharge of liability

The Recipient bears liability for ensuring that its performance of the Research does not violate the rights of any third parties, including the third party’s copyrights and other intellectual property rights, or can in any other way lead to claims from a third party.

The Recipient shall indemnify the Provider against any claims resulting from the Recipient’s performance of the Research, including claims related to infringements of intellectual property rights. The Provider bears no legal or financial liability for injuries or losses ensuing from e.g. defects in or non-proficient use of equipment, methods or programmes associated with the project.

# personal data and data protection

## General obligations

If the GDPR applies to the Recipient’s processing of Personal Data, the Personal Data or any data derived from the Materials shall be processed and/or used only within the Recipient computational infrastructure and handled in accordance to the GDPR, including GDPR Art. 5: Principles relating to processing of personal data and GDPR chapter 3 about the rights of the data subject.

The Parties are independently responsible for the processing of Personal Data transferred under this Agreement, as each party determines the purpose of the processing of Personal Data and the means to be used in connection with their respective processing, cf. GDPR article 4 (7).

## Specific obligations

By signing the Agreement, the Parties agree that:

* The Parties shall comply with all requirements of applicable privacy legislation with respect to the processing of Personal Data in relation to this Agreement, including the obligation to conduct risk assessments, and to enter into data processor agreements with subcontractors/data processors.
* The Parties confirm that, in accordance with article 32 of the GDPR, they have implemented appropriate technical, physical and organizational security measures to protect Personal Data covered by this Agreement against unauthorized or unlawful access, alteration, deletion, damage, loss or inaccessibility.
* If a party discovers security breaches or errors or calls for errors in connection with the transfer of Personal Data under this Agreement, the Party who discovers the error shall immediately inform the other party.
* The Personal Data will only be made available in a pseudonymized form, i.e. after all direct and indirect personnel identification has been replaced by a code. The Recipient must under no circumstances attempt to re-identify the data subjects.
* Each Party has a sufficient basis for processing its respective processing of Personal Data.
* Each Party shall respect the rights of the data subjects, as regulated in Chapter 3 of the GDPR.
* Each Party shall ensure that clear and adequate information about the processing of Personal Data is made available to the registered individuals, in accordance with articles 12-14 of the GDPR.

## Withdrawal of consent

The Recipient will delete any Materials within 30 days if the Provider informs the Recipient that the receival of the Materials is based on a consent from the research participant, and the consent is withdrawn.

## Transfer of Personal Data to countries outside the EU/EEA (Third Countries)

Personal Data transferred from the Provider to the Recipient in accordance with this Agreement will be transferred to, or accessed from, the following recipient countries outside the European Union and the European Economic Area (hereinafter «***Third Country/Countries***»):

* [name of recipient country]

The legal basis for the transfer of Personal Data to the mentioned Third Country is:

* [brief description of the transfer basis]

In addition to the terms in the Agreement section and relevant legal basis for transfer to Third Countries, the Personal Data and any data derived from the Material must be processed as Personal Data in accordance with the Recipient’s jurisdiction.

Either Party shall be entitled to demand renegotiation of this Agreement because of changed legislation applicable to it, including entry into codes of conducts according to article 40 in the GDPR.

# confidentiality

Unless other provisions in the Agreement permit it, the disclosure of the Material or any data derived from the Material is in strictest confidence. The Recipient will:

* not disclose the Material;
* restrict disclosure of the Material solely to those employees or individuals working within the Recipient’s institution who require such access to the Material in order to conduct the Research and provided that the Recipient ensures that they are bound by the confidentiality and non-disclosure obligations contained in this Agreement;
* make sure that the Material is protected from unauthorized access,
* promptly informing and assisting the Provider immediately and in writing about any deviation concerning access to the Material (both accidental and unauthorized);
* if necessary, take any reasonable steps to regain access control and confidentiality;
* without undue delay, revoke authorizations and accesses for employees or individuals who no longer need such authorization or access to conduct the Research;
* without undue delay notify the Provider about any legally binding request for disclosure of the Materials,

This Agreement imposes no obligation on the Recipient with respect to any information which:

* at the time of the disclosure is generally available to the public or thereafter becomes generally available to the public otherwise than through the fault or negligence of the Recipient; or
* can be shown by written records to have been in the Recipient's possession prior to the time of the disclosure and was not acquired, directly or indirectly, from the Provider; or
* is rightfully given to the Recipient by a third party under no obligation of confidentiality; or
* is independently developed by the Recipient without the aid or use of such information, as established by a substantial written evidence; or
* has been identified as no longer confidential by the Provider; or
* is required to be disclosed in order to comply with applicable laws or regulations or by a court decision or administrative order or decision or order of the regulatory body or arbitration award.

# Duty to confirm compliance and allow audits

Upon request from the Provider, the Recipient makes available to the Provider all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by the Provider or another auditor mandated by the Provider.

# publications

The Recipient is entitled to publish research results resulting of the use of the Material in the Research. All publications or dissemination of research results shall refer to the origin of the Material as an acknowledgement in accordance to the Vancouver Guidelines. Based on the nature of the Material and if applicable, the Provider can request the Recipient to facilitate co-authorship in connection with the publication of results.

However, Provider shall have the right to postpone any kind of publication of the results. The Recipient shall submit their plan for publication to the Provider before publication. The Provider has a deadline of 45 business days, from the submission of such notification to the Provider, to request temporary deferral of publication. Any deferment of publication shall be justified on the basis that the Provider has legitimate commercial interests that would be harmed by the potential publication.

Postponement shall not be a period longer than required to file a patent application or any other protection of the results, and in any event not for more than 90 days after Provider has received a draft publication, draft abstract, summary report or likewise.

Nothing contained in the Agreement prevents the Provider to publish any documents relating to its Material.

# liability

The Provider has collected the Material in a competent and professional manner. However, the Provider does not provide any guarantee regarding the obtainment of specific research results regarding the use of the Material.

The Recipient shall bear all risks and assume all liability due to or arising from, but not limited to, the processing, use, storage or disposal of the Material by the Recipient.

Under no circumstances, including, but not limited to, negligence, shall any of the Parties be liable for any indirect, special, incidental, punitive, or consequential damages, including, but not limited to, loss of data or loss of profits arising out of the use of the Material

# Duration of the agreement

This Agreement comes into force as of the Effective Date and will remain in force for the duration of the Research [or other specific point in time].

Upon completion of the Research or other termination of this Agreement, cf. section 10, the Recipient shall discontinue its use of the Materials and of any data derived from the Materials, and 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. The Recipient may keep a copy to the extent it is required to keep, archive or store such Materials because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations in the Agreement. On termination of this Agreement, the Recipient shall inform the Provider of the degree of success of the Research by written communication.

The expiry or termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to expiry or termination. The provisions in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding its expiry or termination.

# termination of the agreement

The Provider may terminate this Agreement on one month’s written notice to the other Party which can be given at any time.

Provider may terminate this Agreement by written notice to Recipient at any time if Recipient commits a substantial breach of this Agreement and, in the case of a breach capable of remedy, Recipient fails to remedy the breach within 30 working days of being required to do so in writing.

In the event the Provider terminates this Agreement other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the Provider will defer the Effective date of termination for a period of up to one year, upon request from the Recipient, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, Recipient will discontinue its use of the Material and will, upon direction of the Provider, return or destroy any remaining Material. The Recipient, at its discretion, will also either destroy the Modifications or remain bound by the terms of this agreement as they apply to Modifications.

Upon termination of the Agreement, section 9, second and third paragraph, will apply.

# Notices and communication

Upon request, the Parties shall be able to provide documentation concerning notices, requests, agreements, consents, acceptances, approvals or communications that are necessary in accordance with this Agreement, or which are associated therewith.

Communication may be made by electronic mail as long as its source and destination can be demonstrated.

# Governing law and jurisdiction

The Agreement shall be governed and construed in accordance with Norwegian law without regard to its conflict of law rules. All disputes arising out of or in connection with this Agreement shall be submitted to the jurisdiction of the ordinary courts of Norway with Oslo as legal venue. The language of the proceedings shall be Norwegian or English.

Any legal action by the Recipient must be brought within six (6) months after the claim or cause of action arises.

**\*\*\***

Communications between the Parties relating to the Agreement shall be made to the following contact persons:

|  |  |
| --- | --- |
| **Recipient** | **Provider** |
| **Name and surname:****Title:****Address:****Email:** | **Name and surname:****Title:****Address:****Email:** |

***Signatures***

|  |  |
| --- | --- |
| On behalf of the Recipient: | On behalf of the Provider: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: Date:  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: Date: |

# Appendix 1: Description of the materials Provider will make available for the Recipient

# Appendix 2: Description of the Research

**APPENDIX 3 - SPECIFICATION OF THE PERSONAL DATA**

## Purpose

The Provider’s purpose of the transfer and use of Personal Data under the Agreement is:

The Recipient’s purpose of the receipt and use of Personal Data under the Agreement is:

## Types of personal information

The following types of Personal Data will be transferred from the Provider to the Recipient under the Agreement:

## Categories of registered persons

The Personal Data transferred under the Agreement relates to the following categories of data subjects: