

MATERIALS TRANSFER AGREEMENT

This Agreement is between the «Commissariat à l'Energie Atomique», a French state-owned research entity with a scientific, technical or industrial activity duly organised under the laws of France and having its registered office located Bâtiment Le Ponant D - 25, rue Leblanc - Paris 15ème, France (hereinafter "CEA"), and [name of recipient contractor] (hereafter "RECIPIENT") having an address at [address of Recipient].

This Agreement shall govern the conditions of disclosure by CEA to RECIPIENT of certain materials developed by CEA and relating to [complete the topic] (hereafter "CEA MATERIALS").

The CEA MATERIALS are provided to RECIPIENT for use by [name of Recipient scientist] ("RECIPIENT SCIENTIST") in SCIENTIST'S laboratory ("SCIENTIST'S LAB").

The SCIENTIST'S LAB shall be identified as following:

Name of Laboratory

Address

The following definitions shall apply to this Agreement:

1. CEA MATERIALS: shall be identified as [description of material transferred by CEA to RECIPIENT].
CEA MATERIALS shall be construed as including all such samples actually provided to RECIPIENT, plus any information and/or know-how allowing RECIPIENT to use the CEA MATERIALS and to conduct the STUDY, plus progeny, extract, replication, and/or any unmodified derivatives of the original samples.
Progeny: unmodified descendant from the CEA MATERIALS.
Unmodified derivatives: substances created by RECIPIENT that constitute an unmodified functional sub-unit or an expression product of the CEA MATERIALS.
2. STUDY: authorized use of the CEA MATERIALS by RECIPIENT SCIENTIST to [Description of the experimentations RECIPIENT will make out of/with the CEA MATERIALS].
3. MODIFICATION: substance created by RECIPIENT that contains or incorporates the CEA MATERIALS, as well as information and/or know-how allowing a new application of such CEA MATERIALS.
6. COMMERCIAL PURPOSES: the sale, lease, license, or other transfer of the CEA MATERIALS or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the CEA MATERIALS or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license or transfer of the CEA MATERIALS or MODIFICATIONS to

a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the CEA MATERIALS or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

7. EFFECTIVE DATE: this Agreement shall become effective on the date of the last signature by the Parties.

Terms and conditions of this Agreement:

A. Use of CEA MATERIALS. RECIPIENT agrees:

1. that the CEA MATERIALS and MODIFICATIONS will be used only in SCIENTIST'S LAB and only by SCIENTIST and SCIENTIST'S LAB personnel under SCIENTIST'S immediate and direct control. Such use shall strictly fall within the scope of the STUDY;
2. not to transfer CEA MATERIALS or MODIFICATIONS to any others (except to its employees, agents or consultants who are bound to RECIPIENT by like obligations conditioning and restricting access, use, and continued use of CEA MATERIALS) without the prior written consent of CEA. RECIPIENT SCIENTIST shall refer any request for the CEA MATERIALS to CEA;
3. not to seek, either by reverse engineering or by any analyze whatsoever, for knowing the method or process for obtaining the CEA MATERIALS, and composition, formula or any other information relating to such CEA MATERIALS without CEA's prior written consent;
4. not to conduct the STUDY for or on behalf of any third party;
5. that neither CEA MATERIALS nor MODIFICATIONS shall be used in research that is subject to licensing or consulting obligations to any third party;
6. that CEA MATERIALS will not be administered to human subjects or in clinical trials involving human subjects, nor will any animals or plants exposed to CEA MATERIALS, or products of such animals or plants, be used for food without the written permission of CEA;
7. to promptly and confidentially disclose MODIFICATIONS to CEA;
8. to provide CEA with a final report on the STUDY and MODIFICATIONS within 2 (two) months from the termination or expiration date of this Agreement.
9. to use CEA MATERIALS for the sole purpose of teaching and academic research and not for any COMMERCIAL PURPOSES;
10. not to provide MODIFICATIONS for COMMERCIAL PURPOSES without prior written consent of CEA.
11. not to apply for a patent or any other property titles on the MODIFICATIONS without the prior written consent of RECIPIENT;
12. to use the CEA MATERIALS in compliance with both national and international applicable statutes and regulations;
13. that the CEA MATERIALS are provided without a fee;

14. to treat as highly confidential and hold in confidence any and all part of the CEA MATERIALS and MODIFICATIONS. As such and except from provisions of clause C hereunder, RECIPIENT will not disclose any information relating to the CEA MATERIALS and/or MODIFICATIONS to any other persons than SCIENTIST'S LAB personnel under SCIENTIST'S immediate and direct control and who have a need to know as regards the STUDY.

This provision, however, shall not apply to information for which RECIPIENT can prove in written:

- it was in its rightful possession prior to its disclosure by RECIPIENT, or
- it was readily available to the public prior to the time of disclosure, or became publicly available after such time of disclosure without RECIPIENT's gross negligence or wrongful misconduct, or
- was lawfully obtained from a third party having the right to disclose it.

This non-disclosure obligation shall survive expiration or termination of this Agreement during a period of 5 (five) years.

B. Intellectual property.

1. The CEA MATERIALS are and at all times will remain the exclusive property of CEA. As such, nothing shall prevent CEA from using freely any of its rights on the CEA MATERIALS.
And except as expressly provided in this Agreement, the furnishing of CEA MATERIALS to RECIPIENT is strictly dedicated to the conduct of the STUDY, and shall not constitute any grant or license to RECIPIENT under any legal rights now or later held by CEA other than as stated in this Agreement.
2. If the use of the CEA MATERIALS results in an Invention (any technology, invention, or material, or any patent thereon, resulting directly from RECIPIENT's use of CEA MATERIALS) or a MODIFICATION that may be commercially useful, RECIPIENT shall promptly disclose such Invention or MODIFICATION to CEA.
It is acknowledged that RECIPIENT and CEA shall have equal co-ownership of all rights, title and interest in and to such Invention or MODIFICATION.
3. If CEA and/or RECIPIENT desire to develop, use, commercialize, and/or file patent application claiming such Invention or MODIFICATION, they agree to negotiate in good faith to establish the terms of such use by separate agreement.

C. Publication. In case RECIPIENT wishes to communicate or publish on the STUDY and/or the RESULTS, it shall seek for CEA's prior written approval by sending CEA a copy of any such communications or publications at least thirty (30) days in advance of submission for publication.

Appropriate acknowledgment of the source of the CEA MATERIALS (CEA/ Direction des Sciences du Vivant) in all publications and communication shall be made.

D. Warranties - Liabilities.

1. Any CEA MATERIALS delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. CEA makes no representation and extends no warranties of any kind, either express or implied, as to the CEA MATERIALS. There are no express or implied warranties of their performance, merchantability, fitness for a particular purpose (either commercial, technical or regulatory), novelty or security, or that the use of the CEA MATERIALS will not infringe any patent, copyright, trademark, or other proprietary rights.
2. RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the CEA MATERIALS. CEA will not be liable to RECIPIENT for any loss, claim or demand made by RECIPIENT, or made against RECIPIENT by any other party, due to or arising from the use of the MATERIALS by RECIPIENT, except to the extent caused by the gross negligence or willful misconduct of CEA.
3. RECIPIENT shall use the CEA MATERIALS in compliance with both national and international laws and regulations.
It warranties it has all statutory authorizations necessary to perform the Experiments.

E. Term. This Agreement shall come into force as of the EFFECTIVE DATE for a period of 1 (one) year.

On expiration or termination of this Agreement, CEA may require return or destruction of the CEA MATERIALS by RECIPIENT upon 30 (thirty) days written notice. In case of destruction thereof, RECIPIENT shall provide CEA (Direction des Sciences du Vivant) with a certificate of destruction of such CEA MATERIALS.

On expiration or termination of this Agreement, RECIPIENT will discontinue its use of the CEA MATERIALS.

Upon the expiration of this Agreement, the Parties may discuss the opportunity of renewing and such renewal shall be implemented only by a written amendment to this Agreement.

Provisions of clauses A.8, A.10, A.11, A.14, C and D shall survive expiration or termination of this Agreement during a period of 5 (five) years.

F. Termination. In the event that RECIPIENT defaults or breaches any of the provisions in this Agreement, CEA will have the right to terminate said Agreement by giving written notice to RECIPIENT, provided, however, that if said RECIPIENT cures such default or breach within 90 (ninety) days after said notice will have been given, this Agreement will continue in full force and effect. The failure on the part of CEA to exercise or enforce any right conferred upon it hereunder will not be deemed to be a waiver of any such right nor operate to bar the enforcement thereof at any time or times thereafter.

Termination of this Agreement for any reason does not affect the right and obligations of the Parties which occurred prior to the effective date of termination.

G. Assignment. RECIPIENT shall not assign, transfer nor convey its rights, interests and obligations under this Agreement without the prior written consent of CEA.

H. Severability. The provisions of this Agreement are severable and in the event any provisions of this Agreement are determined to be held invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity and enforceability of the remaining provisions hereon.

The Parties will attempt in good faith to replace that severed part with a legally acceptable alternative clause that meets the Parties' original intention.

I. Interpretation and jurisdiction. The interpretation, validity, construction and performance of this Agreement as well as the rights of the Parties shall be governed and construed in accordance with the French laws.

Any dispute arising out of or in connection with this Agreement, which cannot be settled by amicable negotiations between RECIPIENT and CEA within two (2) months of its occurrence, including any question regarding its existence, validity, construction or termination, and regardless of whether the question arose before or after termination or expiration shall be referred to and finally settled by the competent courts of Paris, France.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the latest date indicated below.

SIGNATURES

Signed.....
For and on behalf of **RECIPIENT**

Date 

Name: 
Title: 

Signed.....
By the **RECIPIENT SCIENTIST** receiving/using the CEA MATERIALS

Name: 

Signed..... Date _____
For and on behalf of **COMMISSARIAT A L'ENERGIE ATOMIQUE**

Name:

Title: Head of the Institute of Biology Frédéric Joliot of Saclay

Signed..... Date _____
by the **CEA Scientist** supplying the CEA MATERIALS

Name: Carl MANN