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| concluded betweenIST AustriaInstitute of Science and Technology AustriaAm Campus 13400 KlosterneuburgAustria*(hereinafter referred to as “PROVIDER”)*and(Research Organization/University)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Address/Street)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Address/Zip Code and Town)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Address/Country)\_\_\_\_\_\_\_\_\_\_\_\_*(hereinafter referred to as the "RECIPIENT")* |



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**MATERIAL TRANSFER AGREEMENT**

*[This template of the MTA shall be used for Materials provided free of charge or charge only for material preparation and distribution costs]*

1. DEFINITIONS

1.1 **Provider** shall mean the Organization providing the Original Material.

1.2. **Recipient** shall mean the Organization receiving the Original Material.

1.3. Original Material shall mean the Biological Material provided by IST Austria as described in Attachment 1 of this Agreement.

1.4. Material: Original 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.

1.5. Progeny shall mean unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism.

1.6. Unmodified Derivatives shall mean substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Original Material. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the Original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.

1.7. Modifications shall mean substances created by the **R**ecipient, which contained or incorporate the Material – in whatever form.

1.8. Purpose shall mean the purpose of use of the Material as described in Attachment 1 of this Agreement.

1.9. **Commercial Purpose** shall mean 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. However, industrially sponsored academic research shall not be considered a use of the **Material** or **Modifications** for **Commercial Purposes** per se, unless any of the above conditions of this definition are met.

1.10. Agreement shall refer to this Material Transfer Agreement.

2.

PREAMBLE

2.1. The Provider has developed Material in the course of scientific research.

2.2. The Recipient is interested in the Material within the scope of the Purpose. The **Recipient** does not intend to use the **Material** for **Commercial Purposes** in any case.

3.

OBJECT OF THE AGREEMENT

3.1. The Provider donates the Material to the Recipient and the Recipient accepts the Material as donation. The Provider grants the latter the right to use the Material for the Purpose of this Agreement. The Material shall be provided at no cost or with an optional transmittal fee solely to reimburse the Provider for its preparation and distribution costs. If a fee is requested by the Provider, the amount will be indicated in Attachment 1.

3.2. The Recipient shall use the Material exclusively for the Purpose of this Agreement. To the extent that the Recipient intends to use the Material for purposes other than the Purpose of this Agreement the conclusion of a separate agreement on this use shall be required.

3.3. The Recipient shall use the Material exclusively through Recipient Scientists personnel under its supervision. The Recipient shall not make available the Material or Modifications, or grant access thereto, to persons other than Recipient Scientists personnel under its supervision, and the Recipient shall ensure that the Material or Modifications are not made available or accessible to third parties without prior written consent granted by the Provider.

3.4. This Agreement does not limit the Provider’s right to make the Material available to other commercial or non-commercial institutions, nor limit the Provider’s right to publish documents relating to the Material.

3.5. The **Recipient** and the **Recipient Scientist** agree to refer to the **Provider** any request for the **Material** from anyone other than those persons working under the Recipient Scientist´s direct supervision.

4.

RIGHTS IN THE MATERIAL

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

4.2. The Recipient shall have no rights of use in the Material exceeding the Purpose of this Agreement.

4.3. 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**. In particular, no express or implied licenses or other rights are provided to use the **Material**, **Modifications**, or any related patents of the **Provider** for **Commercial Purposes**.

4.4. The **Recipient** retains ownership of (a) **Modifications** (except that, the **Provider** retains ownership rights to the **Material** included therein), and (b) 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 **Original Material**, **Progeny**, **unmodified Derivatives**). If either 4.4 (a) or 4.4 (b) results from the collaborative efforts of the **Provider** and the **Recipient**, joint ownership may be negotiated.

4.5. The **Recipient** and/or the Recipient Scientist shall have the right, without restriction, to distribute substances created by the **Recipient** through the use of the **Original Material** only if those substances are not **Progeny**, **unmodified Derivatives**, or **Modifications**.

4.6. Without written consent from the **Provider**, the **Recipient** and/or the Recipient Scientist may not provide **Modifications** for **Commercial Purposes**. It is recognized by the **Recipient** that such **Commercial Purposes** may require a commercial license from the **Provider** and the **Provider** has no obligation to grant a commercial license to its ownership interest in the **Material** incorporated in the **Modifications**. Nothing in this paragraph, however, shall prevent the **Recipient** from granting commercial licenses under the **Recipient´s** intellectual property rights claiming such **Modifications**, or methods of their manufacture or their use.

5.

PUBLICATION

5.1. The Recipient Scientist agrees to provide appropriate acknowledgment of the source of the **Material** in all publications.

6.

WARRANTY AND LIABILITY

6.1. Any **Material** delivered pursuant to this **Agreement** is understood to be experimental in nature and may have hazardous properties. The **Provider** makes no representations and extends no warranties of any kind (including any statutory warranty) , either expressed or implied. There are no express or implied warranties of merchantability or fitness for a particular purpose, or that the use of the material will not infringe any patent, copyright, trademark, or other proprietary rights.

6.2. Except to the extend prohibited by law, the **Recipient** assumes all liability for damages which may arise from its transport, use, storage or disposal of the **Material.** The **Provider** will not be liable to the **Recipient** for any loss, claim or demand made by the **Recipient**, or made against the **Recipient** by any other party, due to or arising from the use of the **Material** by the **Recipient** or by any other party, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the **Provider**.

6.3. The Recipient undertakes to use the Material and Modifications in compliance with all applicable legal provisions and norms.

7.

DURATION

7.1. This **Agreement** will terminate on the earliest of the following dates:

(a) when the **Material** becomes generally available from third parties, for example, through reagent catalogs or public depositories or

(b) on completion of the **Recipient´s** current research with the **Material**, or

(c) on thirty (30) days written notice by either party to the other, or

(d) on the date specified in Attachment 1 , provided that:

1. if termination should occur under 7.1. (a), **the Recipient** shall be bound to the **Provider** by the least restrictive terms applicable to the **Material** obtained from the then-available resources; and
2. if termination should occur under 7.1.(b) or 7.1.(d) above, the **Recipient** will discontinue its use of the **Material** and will, upon discretion 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**; and
3. in the event the **Provider** terminates this Agreement under 7.1. (c) 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, the **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**.

8.

JURISDICTION AND APPLICABLE LAW

8.1. Exclusive Jurisdiction for any dispute, controversy or claim arising out of and relating to this Agreement, also with regard to its existence and after its termination, shall lie with the court competent for commercial matters in Vienna, Austria.

8.2. The Agreement shall be governed by Austrian law excluding its conflict-of-law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be explicitly excluded.

9.

FINAL PROVISIONS

9.1. Paragraphs 4 and 6 shall survive termination.

9.2. Any and all rights and obligations arising from this Agreement must not be transferred to third parties without the Provider‘s prior written consent.

9.3. This Agreement shall constitute the entire agreement between the Parties regarding the Material. There are no supplementary arrangements. Drafts, correspondence exchanged prior to signing, etc. may not form the basis for interpreting this Agreement.

9.4. Any changes or amendments of this Agreement must be made in writing (transmission via fax or e-mail shall not suffice) in order to take effect. This shall also apply to any waiver of this requirement of written form.

9.5. Should individual provisions of this Agreement be or become invalid, void, illegal or unenforceable, this shall not affect the validity of the remaining provisions of this Agreement. The invalid, void, illegal or unenforceable provision(s) shall be replaced by (an) alternative provision(s) which most closely correspond(s) to the original intent of the Parties to the extent that this is legally possible and whose economic effect best correspond(s) to the effect intended by the invalid, void, illegal or unenforceable provision(s).

9.6. 2 (two) copies of this Agreement shall be signed and each shall be deemed an original, with one being handed out to each of the Parties.

For the PROVIDER

Institute of Science and Technology

Am Campus, 3400 – Klosterneuburg

Austria

 **Signed by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **Date:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The Principal Investigator**:

**Signed by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For the RECIPIENT

**The Recipient Scientist**:

**Signed by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The Recipient Organization**:

**Signed by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature of Authorized Signatory)

 **Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attachment 1

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| **Provider Institution** | *Institute of Science and Technology**Am Campus, 3400 – Klosterneuburg* *Austria* |
|  | *Name of Authorized Signatory* | Dr. Georg Schneider |
|  | *Title, Department* | Managing Director |
| **Provider Scientist** |  |
|  | *Name:* |  |
|  | *Title, Department* |  |
| **Recipient Institution** |  |
|  | *Name of Authorized Signatory* |  |
|  | *Title, Department* |  |
| **Recipient Scientist** |  |
|  | *Name:* |  |
|  | *Title, Department* |  |
| **Material** | *Name* |  |
|  | *Quantity*  |  |
| **Purpose of Use of Material** |  |
| **Fee** |  |