Optional contractual provision: (provisions marked as "optional contractual provision" can be kept at user´s option or omitted without replacement)

[\_\_\_\_] alternative clauses and comments of industrial partners / research institutes

[\_\_\_\_] options, alternatives to be chosen directly within the agreement

\_\_\_\_\_\_\_\_\_\_\_ (to be completed by the user)

(\_\_\_\_) assistance for fill in areas, options, alternatives

**HUMAN BIOMATERIALS MATERIAL TRANSFER AGREEMENT**

concluded between

\_\_\_\_\_\_\_\_\_\_\_\_\_(university) (research institute)

represented by \_\_\_\_\_\_\_\_\_\_\_(name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)

(hereinafter referred to as “[Recipient] [Provider]”)(choose alternative)

as the party of the first part

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name/company name)

a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law

\_\_\_\_\_\_\_\_\_\_\_\_\_\_(commercial register number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), having its registered office in \_\_\_\_\_\_\_\_\_\_(place)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)

(hereinafter referred to as “[Recipient] [Provider]”)(choose alternative)

as the party of the second part.

(hereinafter referred to as the “Parties”)

1.

DEFINITIONS

* 1. Original Material:

**Original Material** shall refer to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Description of the material delivered by the Provider) [pursuant to Annex ./1.1.].

* 1. Option: [Progeny:

Progeny shall refer to unmodified descendant of the Original Material, e.g. cells from cells, or virus from virus, or organism from organism, including stem cells derived from Original Material.]

* 1. Option: [Unmodified Derivatives:

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

* 1. Option: [**Data:**

Data shall refer to data and information (description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) as described in Annex ./1.4. relating to the Material[pursuant to Annex ./1.4.] and **Modifications**.]

* 1. Material:

Material shall be Original Material [, Progeny, Unmodified Derivatives and **Data**.]

* 1. Modifications:

Modifications are substances created by the Recipient (description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), which contained, incorporated or changed the Material – in whatever form.

* 1. Purpose:

Purpose is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(specific and extensive description of what exactly the Recipient may do with the Material, definition of the respective projects and specific description of the Purpose or products incorporating or developed with the Material) [as described in greater detail in the study plan attached as Annex ./1.7.].

[Option: **Purpose** is to make available the Material or Modifications exclusively for **Research** [Alternative: **Research** except (add exceptions e.g. contract research)] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (add specific and extensive description of the projects) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [as described in greater detail in the study plan attached as Annex ./1.7.]] [for in-vitro experiments]

* 1. **Prohibited Use**:

**Prohibited Use** shall refer to any use outside the **Purpose**.

* 1. **Results**:

**Results** shall refer to any data, information, any **Intellectual Property Rights**, including any new and/or useful process, composition of matter, method, and improvement of any of the foregoing or resulting from the evaluation and/or use of the **Material**, conceived or reduced to practice in the course of the **Purpose** or outside the **Purpose** during the term of this **Agreement** that uses or incorporates **Material**, and all reports which relate thereto.

* 1. **Research**:

**Research** shall include the use of the **Material** for research including clinical research, [teaching and patient care] as well as commercial research (including, without limitation, contract research for companies, research co-operations with companies).

* 1. **Pre-Existing Intellectual Property**:

**Pre-Existing Intellectual Property** shall include any and all **Intellectual Property Rights** of one **Party**, which came into existence before the **Effective Date** or which came into existence independently of the use of the **Material**.

* 1. **Intellectual Property Rights (IPRs):**

**Intellectual Property Rights (IPRs)** shall refer to intellectual property rights including but not limited to patents, trademarks, design rights, copyright, database rights, trade secrets and know-how, in all cases whether registered or not registerable, and including all registrations and applications for registrations of any of these rights and rights to apply for the same.

* 1. **Informed Consent:**

**Informed Consent** shall refer to the consent of the donor of the **Original Materials** and/or **Data** in its scope required under the **Purpose**.

* 1. Third Parties:

Third Parties shall refer to all legal or natural persons excluding the Parties.

* 1. Effective Date:

Effective Day shall refer to the day when the Parties sign this Agreement.

[Effective Date shall be \_\_\_\_\_\_\_\_(date).]

* 1. Agreement:

Agreement shall refer to this Biomaterials Material Transfer Agreement.

* 1. Personal Data:

**Personal Data** are any information relating to an identified or identifiable natural person pursuant to Article 4 item 1 GDPR (General Data Protection Regulation).

2.

PREAMBLE

2.1. The **Provider** has **Material** in which he holds all necessary rights including, without limitation, [ownership rights, ]intellectual property rights or rights of use, if applicable, in order to make such **Material** available to the **Recipient** by way of this **Agreement** for the **Purpose** of this **Agreement**.

2.2. The Recipient is interested in the Material within the scope of the Purpose. [The Recipient shall [not] receive ownership in the **Material**.]

[Alternative: 2.3. The Provider is prepared to provide the Material to the Recipient subject to the following prerequisites and conditions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

3.

OBJECT OF THE AGREEMENT

3.1. The Provider makes the Material available to the Recipient and grants the latter the right to use the Material for the Purpose of this Agreement.

3.2. The Recipient shall use the Material or Modifications exclusively for the Purpose of this Agreement. To the extent that the Recipient intends to use the Material or Modifications for **Prohibited Use**,[ in particular \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (add description e.g. contract research)]] the conclusion of a separate agreement on this use shall be required. [The Recipient undertakes to refrain from pursuing any activities under **Prohibited Use** prior to the conclusion of such an agreement. The Provider and the Recipient shall negotiate said agreement in good faith; said agreement shall contain provisions on appropriate compensation for the Provider for the use by the Recipient. The Provider shall, however, not be obliged to conclude such an agreement.]

4.

OBLIGATIONS OF RECIPIENT

4.1. The Recipient shall use the Material or Modifications exclusively through [lab] personnel under its supervision [and in no other laboratory than in Recipient**’s** laboratory]. The **Recipient** shall not make available the Material or Modifications, or grant access thereto, to persons other than [lab] personnel under its supervision, and the Recipient shall ensure that the Material or Modifications are not made available or accessible to unauthorised Third Parties without prior written consent granted by the Provider. Unauthorised Third Parties shall also refer to any and all personnel of other departments,[ institutes] that are not entrusted with the fulfilment of the obligations set forth in this Agreement.

The **Recipient** shall store the **Material** or **Modifications** in a safe place and shall change the location of the **Material** or **Modifications** only to the extent required by the **Purpose** of this **Agreement**. Upon the **Provider’s** request, the **Recipient** shall disclose, at any time, where the **Material** or **Modifications** are located at that particular moment. If the **Recipient** uses storage facilities that are also used by **Third Parties**, the **Recipient** shall take all reasonable steps to ensure that the **Material** or **Modifications**[may be made accessible to Third Parties to the required extent] [are not made accessible to Third Parties]. (choose alternative)

4.2. The Recipient shall forward all enquiries or any queries concerning the Material to the Provider. [Alternative: If enquiries or any queries concerning the **Material** are made, the **Recipient** may refer the enquiring person to the **Provider**.]

[4.3. 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.]

4.4. The Recipient shall not distribute the Material to any **Third Party** to use them without prior written permission from Provider. Notwithstanding the preceding clause the **Recipient** shall have the right, without restriction, to distribute substances created by the **Recipient** through the use of the Material[, but only if those substances are not **Progeny**, **Unmodified Derivatives**, or **Modifications**].

Other than for and within the **Purpose** the **Material** shall not be transferred, offered for sale or otherwise used, without the prior written agreement of Provider.

Alternative: [4.4. The Recipient may distribute the Material to any **Third Party** to use them within the **Purpose** provided that the **Third Party** is bound by **Recipient** to comply with the terms of this **Agreement**. The **Recipient** shall have the right, without restriction, to distribute substances created by the **Recipient** through the use of the Material. Other than for and within the **Purpose** the **Material** shall not be transferred, offered for sale or otherwise used, without the prior written agreement of Provider.]

4.5. The **Material** or **Modifications** shall not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of Provider.

[Option: 4.6. Human derived **Material** will be provided by the Provider to the **Recipient** without identity information of the individuals / donors. The **Recipient** agrees that the **Material** will not be used either alone or in conjunction with any other information, in any effort whatsoever to establish the individual identities of any subjects from which the **Material** was derived.]

4.7. Donors from whom the **Material** has been derived and provided to the Provider and who are still identifiable may decide to withdraw consent for use of the **Material**. In this event, the Provider will then notify the **Recipient** of such **Material** for which consent has been withdrawn and request that the **Recipient** either destroy the **Material** and information if not already destroyed or returned to the Provider or immediately make anonymous any personal data. In case the **Recipient** destroys such **Material** which was provided, **Recipient** shall provide the Provider with certification including sufficient supporting documentation stating that the **Material** had been destroyed.

5.

OWNERSHIP RIGHTS AND RIGHTS IN THE MATERIAL

5.1. The Recipient shall be the owner of the Material including the Material that is contained in or has been incorporated into Modifications, including all intellectual property rights therein.

Alternative: 5.1. The Provider shall retain ownership of the Material, including all Material that is contained in or has been incorporated into Modifications. The Provider shall be entitled to all intellectual property rights in said Material. The Provider hereby grants **Recipient** the right to use the **Material** for the **Purpose**. Except as expressly provided in this **Agreement**, no express or implied licenses or other rights are granted to **Recipient**.

5.2. The Recipient shall have no rights of use in the Material regarding **Prohibited Use**.

5.3. [The Recipient acknowledges that patent protection for the Material has been filed for [and granted].]

Alternative: [5.3. The Recipient acknowledges that patent protection for the Original Material has been filed for [and granted].]

6.

RESULTS

6.1. The Recipient shall be the owner of any and all **Results** also with respect to Modifications developed within the **Purpose** and only the Recipient shall be entitled to[If only employees of the Recipient contributed to the results, only the Recipient shall be entitled to] register **Intellectual Property Rights** for these **Results** in its name [subject to Item 5. (For clarification: This shall not affect the Provider’s exclusive ownership of the Material nor the related **Intellectual Property Rights** it is entitled to pursuant to Item 5)]. If employees of the Provider have any rights in these **Results**, the Provider shall take all legally possible measures that are necessary in order for the **Intellectual Property Rights** for these **Results** to be acquired by the Provider and transferred to the Recipient; any compensation to which the employees might be entitled under the law (“Erfindervergütung”) in this connection shall be reimbursed by the Recipient. The Provider shall have the right to use these **Results** for **Research** [except: (add exceptions e.g. contract research)] free of charge and for an unlimited period of time. Should the Recipient decide to refrain from further using the results, it shall immediately notify the Provider of this decision and, upon the Provider’s request, transfer all rights, titles and claims regarding said results including the use of required pre-existing intellectual property to the Provider [free of charge] [subject to a compensation of EUR \_\_\_\_] [subject to a compensation as laid down in more detail in a separate agreement].

6.2. Any **Results** developed in course of **Prohibited Use** (however, for sake of clarity it is generally not permissible to develop **Results** in course of **Prohibited Use**) will also be owned by the Recipient however subject to an separate adequate payment which would have been payable in case the Results would have been purchased from a **Third Party**.

Alternative: [6.2. Any **Results** developed in course of **Prohibited Use** shall be the property of Provider and shall be treated in all respects as Provider’**s** **Intellectual Property Rights**. Recipient will reasonably cooperate with and provide assistance to Provider in connection with executing all documents, and performing all acts reasonably necessary, to assign to Provider its interest in a patentable invention or any other **Intellectual Property Rights** arising from the **Prohibited Use**. In case of any claims arising from **Prohibited Use** Recipient will completely indemnify and hold harmless Provider.]

Option 6.3. (return of results): **Recipient** shall provide **Provider** access to all data and **Results** including a protocol free of charge.

Alternative 1 (zu 6.1., 6.2.): [6.1. The Recipient undertakes to regularly inform the Provider on all **Results** generated by and in the course of fulfilling the Purpose of this Agreement in strict compliance with all confidentiality obligations. Should such **Results** be protectable as intellectual property rights (e.g. patent), notification on the relevant **Results** shall be made immediately.

Both **Parties** shall refrain from all actions, in particular all actions that could be prejudicial to novelty, and take all possible precautions in order to ensure that intellectual property rights can be properly registered. In order to duly take into account any **Party’s** publication interest; intellectual property rights shall be registered in any case within \_\_\_\_(e.g. 2 (two) months.

6.2. The Provider shall be the owner of any and all **Results** and only the Provider shall be entitled to register **Intellectual Property Rights** for these **Results**.[ Should the **Results** contain potentially patentable inventions, the **Results** shall be transferred to the Provider subject to the payment of a compensation as laid down in more detail in an agreement to be concluded separately but at least in the amount of EUR \_\_\_\_(excluding VAT) for each potentially patentable invention.] If employees of the Recipient have any rights regarding these results, the Recipient shall take all measures that are necessary in order for intellectual property rights for these results to be acquired by the Recipient and transferred to the Provider; [the Provider shall reimburse the Recipient for any compensation to which the employees might be legally entitled in this connection (“Erfindervergütung”), as long as the Purpose of this Agreement is fulfilled free of charge and the intellectual property rights are transferred free of charge to **Provider**.]

6.3. The **Recipient** shall be entitled to use the **Results** free of charge for **Research** [except: (add exceptions e.g. contract research)]. Alternative: The Recipient shall be entitled to use these results on the basis of an agreement which the Provider and the Recipient shall negotiate the compensation in good faith, taking into account the contributions they made to the results.

Alternative 2 (zu 6.1., 6.2.): [6.1. Any and all **Results**[If employees of both the Recipient and the Provider contributed to the results, these results] shall be jointly owned by the Provider and the Recipient [subject to Item 5. For clarification: This shall not affect the Provider’s or Recipient´s exclusive ownership of the Material nor the related intellectual property rights it is entitled to pursuant to Item 5.]. The Provider and the Recipient shall negotiate, in good faith, the roles and the conditions for the exercise of this joint ownership, in particular with respect to protection through **Intellectual Property Rights** (e.g. patent) and the right of use, taking into account their respective contributions to the **Results**. Should the Recipient decide to refrain from further using the **Results**, it shall immediately notify the Provider of this decision and, upon the Provider’s request, transfer all rights, titles and claims regarding said **Results** including the use of required **Pre-Existing Intellectual Property** to the Provider [free of charge] [subject to a compensation of EUR\_\_\_\_].

6.4. Should the Provider decide to refrain from further using the **Results**, it shall immediately notify the Recipient of this decision and, upon the Recipient**’s** request, transfer all rights, titles and claims regarding said results to the Recipient [free of charge] [subject to a compensation of EUR \_\_\_\_.](choose alternative)

**7.**

**CONFIDENTIALITY**

7.1. The Recipient undertakes to keep confidential all **Information** related to the Material and, subject to Item 6., to keep confidential all **Results** related to the Material for the entire duration of the Agreement and for a period of \_\_\_\_(e.g. 3 (three) years) thereafter, with the exception of such pieces of information that verifiably

(a) already were in the public domain before they were made available to the Recipient or that entered the public domain afterwards – other than through breach of this Agreement by the Recipient;

(b) were known to the Recipient prior to the provision of the Material;

(c) were received by the Recipient from a Third Party which itself obtained the relevant piece(s) of information in a lawful manner without any breach of this Agreement;

(d) were independently developed by the Recipient’s staff without access to the Information or the Material.

The Recipient shall be responsible for providing the corresponding proof.

7.2. Publications within the meaning of Item 6. do not constitute a violation of this obligation to maintain confidentiality.

7.3. **Information** related to the **Material** shall be disclosed only to such internal (employee) or external (consultant) persons who have a need to know for the **Purpose** and who are bound by similar obligations of confidentiality and restrictions on use as contained in this **Agreement** to have access to the **Material**.

7.4. The Parties acknowledge the fundamental task on the part of a research institute and its staff to regularly publish information on the nature, object and results of its research activities.

Notwithstanding the confidentiality provisions above, the Parties shall have the right to independently publish on the Results in the form of academic publications subject to the following provisions. The relevant Party shall notify the other in writing of the planned publication. If the other Party fails to comment, within a period of \_\_\_\_(e.g. 2 (two)) weeks from receipt of the notification on the planned publication in writing [e-mail shall be deemed sufficient], consent to the relevant publication shall be deemed to have been given after expiry of the \_\_\_\_ (e.g. 2 (two)-)week period. If any of the other Party raise well-founded objections within \_\_\_\_\_\_ (e.g. 2 (two) weeks) in writing and suggests changes, the affected Party shall immediately look for a joint solution that takes these well-founded objections into consideration (e.g. immediate registration of an IP Right, adjustment of the content of the publication, withholding of access to diploma, master’s or doctoral theses). Upon expiry of a period of \_\_\_\_ (e.g. 3 (three)) months from becoming aware of the objections, the publication can be published in any case.

In light of the justified interests in academic publications, the registration of IP Rights and claiming of employee inventions should be arranged in a timely manner prior to publication.

Moreover, the Recipient undertakes to acknowledge the fact, in every publication or presentation, that the Material was provided by the Provider[ and mention the employees of the Provider who contributed to the **Results** and/or the Material].

8.

WARRANTY AND LIABILITY

8.1. The Material is of experimental nature and of potential hazardous nature and is provided “as is” without any warranties or guarantees, in particular with respect to the marketability or fitness for a specific purpose, or that the use of the Material will not infringe any **Intellectual Property Rights** of **Third Parties** [nor does the **Provider** warrant or guarantee that the Material or Modifications does/do not represent a safety or health risk] except as expressly otherwise provided herein.

8.2. The **Recipient** and the **Provider** alone are responsible for damage caused by or claims arising from their performing this **Agreement**, including, in particular, transport, use, handling, storage or disclosure of the **Material**, of **Modifications** and/or the **Results**, to the extent that they are at fault and to the extent that this activity forms part of their relevant scope of responsibility.

8.3. [Option: The **Recipient** shall indemnify and hold harmless the **Provider** for all damage incurred due to any action of the **Recipient** (except in cases of fault (negligence or intent) on the part of the **Provider**) up to an amount of EUR \_\_\_\_(add amount).].

Any liability [of the **Provider**] [**Recipient**](choose alternative) for slight negligence, loss of profit and indirect damages – except in the cases of personal injury of a person – shall be excluded in any case. Generally the liability is limited up to an amount of EUR \_\_\_\_(add amount).

8.4. The Recipient undertakes to use and dispose (including without limitation those governing disposal of hazardous materials) the Material and Modifications in compliance with all applicable legal provisions and norms including guidelines for work with animals or recombinant genetic material. **Recipient** will obtain all permits, licenses or other approvals required by governmental authorities in connection with the receipt, handling, use, disposal and storage of the Material.

Recipient shall comply with all standards of Good Clinical Practice.

8.5. Should the Material be unfit for the Purpose or have other defects, the Provider shall be notified thereof within \_\_\_\_\_\_\_\_(e.g. 3 (three))business days (notification by e-mail shall suffice), the relevant defect or fault being described in as much detail as possible. [The **Provider** has in any case a right of correction (“Verbesserung”) in case of material unfitness or defects. Immaterial unfitness or defects shall not be considered a case of warranty.]

8.6. The Recipient represents and warrants that the **Purpose** has been approved by its local ethics committee and all other relevant authorities, as applicable.

8.7. **Provider** represents and warrants that for the Purpose (1) it is entitled to supply the **Material** to the **Recipient** (2) sufficient informed consent have been obtained from the relevant donors (including ownership if necessary).

[8.8. **Material** will be provided to the **Recipient** without identity information of the donors in completely [anonymized form] [pseudonymized](choose alternative). **Recipient** agrees that the **Material** will not be used either alone or in conjunction with any other information, in any effort whatsoever to establish the individual identities of any donor from which the **Material** was derived. Donors from whom the **Material** has been derived and provided to **Provider** may decide to withdraw consent for use of the **Material**. In this event, **Provider** will then notify **Recipient** of such **Material** for which consent has been withdrawn and request that the **Recipient** destroy the **Material** if not already destroyed or to make anonymous the personal data. **Recipient** shall destroy such **Material** which was provided, and shall provide Provider with certification including sufficient supporting documentation stating that the **Material** had been destroyed.]

**9.**

**DURATION**

9.1. This Agreement shall be concluded for the duration of \_\_\_\_(period of time, e.g. 2 (two) years) from the Effective Date. Each Party shall be entitled to terminate it in writing, at any time, for any reason, subject to a notice period of \_\_\_\_(e.g. 90 (ninety)) calendar days. The Agreement shall terminate automatically, provided that the Purpose of this Agreement has been achieved prior to the expiration of the term as defined above or upon expiry or non- renewal of the ethics approval, if applicable. Should the Purpose of this Agreement not have been completed prior to the end of the duration of this Agreement, the duration of the Agreement shall not be extended automatically. If one Party wishes to continue pursuing the Purpose of this Agreement, the Parties shall negotiate, in good faith, an agreement regarding such further use; however, the Provider shall not be obliged to conclude such an agreement.

9.2. In the event that this Agreement terminates for any reason whatsoever or if the Recipient does not use the Material for the Purpose of this Agreement and does not intend to use it, the Recipient shall be obliged[ at its own costs], to return the Material[, the Modification] [and retransfer ownership in the **Material**] and all Information relating thereto to the Provider, to the extent that this is possible, or – upon the Provider’s request – to destroy the above with the necessary care.

9.3. Item 7 shall remain in force regardless of any termination of this Agreement.

9.4. Upon termination, Recipient will (a) undertake an audit of the remaining Material and within \_\_\_\_(e.g. 60 (sixty)) calendar days provide the **Provider** with a complete list of all Material which remain in existence at the date of termination (“Extant Materials”); and (b) discontinue its use of the Extant Material and either return to **Provider** or, at the option of **Provider**, destroy any Extant Material and certify that destruction to **Provider**; and (c) either destroy any Modifications or remain bound by the terms of clause 9 as they apply to Modifications.

9.5. The ownership in **Results** as defined under this **Agreement** shall remain unaffected by the termination of **Agreement**.

**10.**

**Materials Remuneration**

The Material shall be provided free of charge with the exception of related [biobanking, processing and] transport costs, which shall be borne by the Recipient. [Alternative: The Material shall be provided against payment of a compensation of EUR\_\_\_\_ by the Recipient] [plus payment of the following amounts upon completion of the Milestones as defined under Annex ./10.1: EUR [amount] upon completion of Milestone 1, EUR [amount] upon completion of Milestone 2, […], payable […] days after completion of each Milestone.]

Option price list: [The cost of [sample retrieval, biobanking, processing –including DNA extraction– packaging and shipment] will be charged by **Provider** to the Recipient at the latest rate posted on **Provider´s** website.]

Option agreed unit price: [The cost of [sample retrieval, biobanking, processing –including DNA extraction– packaging and shipment] will be charged by **Provider** to the Recipient at the following agreed rate. [list unit price below]]

Option lump sum amount: The cost of [sample retrieval, biobanking, processing –including DNA extraction– packaging and shipment will be charged by **Provider** to the Recipient for the total lump sum amount of \_\_\_\_(e.g. Euro).

Invoice is payable within \_\_\_\_(e.g. 30 (thirty)) calendar days upon receipt. On exceedance of the agreed term of payment default interest at the 3-month EURIBOR rate plus \_\_\_\_(e.g. 9,2)% will be charged.

**11.**

**JURISDICTION AND APPLICABLE LAW**

11.1. [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 \_\_\_\_\_\_\_(place).

11.2. 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.

Alternative: Arbitration:

Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules.

The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be \_\_\_\_\_\_\_(place). The language to be used in the arbitral proceedings shall be \_\_\_\_\_\_\_(e.g. German). The dispute, controversy or claim shall be decided in accordance with the law of \_\_\_\_\_(country).

Alternative: Arbitration and Mediation:

Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be \_\_\_\_\_\_\_(place). The language to be used in the mediation shall be \_\_\_\_\_\_\_(e.g. German).

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 (sixty) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules.

Alternatively, if, before the expiration of the said period of 60 (sixty) days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator.

The place of arbitration shall be \_\_\_\_\_\_\_(place). The language to be used in the arbitral proceedings shall be \_\_\_\_\_\_\_(e.g. German). The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of \_\_\_\_\_(country).

12.

DATA PROTECTION

12.1. If a **Disclosing Party** discloses to the **Receiving Party** **Personal Data** or the **Receiving Party** got otherwise knowledge of personal data of the **Disclosing Party** and – provided the **Personal Data** are not processed by the **Receiving Party** as a data processor – these **Personal Data** may exclusively processed in performance of this **Agreement** and not processed for any other purposes, except as provided by the law. Specifically, these **Personal Data** may not be disclosed to **Third Parties** nor analysed for own purposes or used for profiling purposes.

12.2. The **Receiving Party** ensures that **Personal Data** of the **Disclosing Party** are only provided to those of his employees who have a need to know them in the performance of this **Agreement**.

12.3. The **Receiving Party** establishes its internal organisation in a way that it can ensure compliance with the applicable data protection laws, including but not limited to technical and organisational measures taken to prevent **Personal Data** from misuse or loss. Employees that have access to **Personal Data** must be made subject to a confidentiality obligation that continues to apply after termination of the employment.

12.4. The **Receiving Party** does not acquire any rights in the **Personal Data** disclosed and is obliged to correct, delete and/or restrict as provided by law the processing of **Personal Data**. Any retention rights in **Personal Data** are prohibited.

13.

FINAL PROVISIONS

13.1. Any and all rights and obligations arising from this Agreement must not be transferred to Third Parties without the Provider‘s prior written consent.

13.2. 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.

13.3. 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.

13.4. Should individual provisions of this Agreemen**t** 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).

12.5. Without the other Party’s prior consent, no Party may inform any Third Parties of this Agreement, any parts thereof or any related matter, unless such Party is obliged to do so based on statutory provisions. This shall not apply to the fact of the conclusion of this Agreement on the transfer of material as such.

13.6. Any legal fees or similar charges that may be related to this Agreement shall be borne by the [Provider] [Recipient] (choose alternative). Each Party shall bear the costs for its own legal representation.

13.7. 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.

14.

CONTACT PERSONS

Contact person with the Recipient:

Name:\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_

E-mail:\_\_\_\_\_\_\_\_\_\_\_\_

Telephone:\_\_\_\_\_\_\_\_\_\_\_\_

Contact person with the Provider:

Name:\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_

E-mail:\_\_\_\_\_\_\_\_\_\_\_\_

Telephone:\_\_\_\_\_\_\_\_\_\_\_\_

Any change of the contact persons is to be communicated to the respective other Party without delay. Otherwise, any and all communications shall be deemed duly delivered in any case.

15.

ANNEXES

Annex ./1.1.(description of the Material delivered by the Provider).

Annex ./1.4. Data disclosed to the Recipient by the Provider relating to the Material.

Annex ./1.7. study plan

**Annex ./10.1.** Milestone payments

All annexes form an integral part of this Agreement.

16.

SIGNATURES

For the Recipient

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name and title/position] [Signature]

For the Provider

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name and title/position] [Signature]

ANNEX ./[...] study plan

1) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Title, first and family name of the researcher, address, office telephone number, mobile telephone number, e-mail address)

2) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Planned date of commencement of work)

3) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Objectives of the Material Transfer Agreement, backgrounds, scientific context, details on how the provided material is used, further partners involved, subcontractors)

4) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Necessary information, material required from the Provider)

5) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Planned duration of the activity/evaluation)

6) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Milestones)

7) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Number of full-time equivalents involved, persons involved)