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| 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 / public research institutes[\_\_\_\_] options, alternatives(\_\_\_\_) assistance for fill in areas, options, alternatives\_\_\_\_\_\_\_\_\_\_\_ (to be completed by the user)PATENT LICENCE OPTION AGREEMENTconcluded between\_\_\_\_\_\_\_\_\_\_\_\_\_(university, research institute)represented by \_\_\_\_\_\_\_\_\_\_\_(name)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)(hereinafter referred to as “Licensor“)as the party of the first partand[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 “Licensee“)as party of the second part(hereinafter jointly referred to as “Parties”)No gender preference is intended by the use of either the male or female forms in this document. Any references made shall refer equally to all genders. |

1.

PREAMBLE

1.1. The Parties intend to enter into a patent license agreement. The Licensor is the owner of the patent relating to \_\_\_\_(brief description of the patent) which provides protection for \_\_\_\_(list of countries to which the property right applies), applied for with \_\_\_\_(e.g. the Austrian Patent Office) on \_\_\_\_ (date), disclosed on \_\_\_\_(date), and granted on \_\_\_\_ (date).

1.2. The Licensor also has secret technical knowledge and know-how in the field of \_\_\_\_ (brief description of the know-how).

1.3. The future Licensee is interested in obtaining a license for the patent which is the subject matter of this agreement and in secrete technical knowledge and in the know-how. In order to enable the Licensee to verify the subject matter of the license, the Parties agree as follows.

2.

OPTION

2.1. The Licensor shall grant to the Licensee the option of concluding a license agreement as set out in Annex ./2.1.

2.2. The Licensee may exercise the option within a period of \_\_\_\_(e.g. 6 (six)) months from the signing of this agreement, by way of notification in writing as set out in Annex ./2.2.

2.3. During said option period, the Licensor shall not have the right to grant to third parties any licences for the contemplated material and territorial scope of the patent or options for concluding a license agreement.

3.

TRANSFERABILITY

The rights under this option agreement shall not be transferred to third parties [with the exception of affiliated companies of the Licensee] without the prior written consent of the Licensor.

4.

OBLIGATION TO KEEP LICENSED KNOW-HOW CONFIDENTIAL

4.1. TheLicensor shall make available to the Licensee secret technical knowledge and know-how as set out in Annex ./4.1. in respect of the production of the subject matter of the license in the licensed territory.

4.2. The Licensee undertakes to keep the secret technical knowledge transferred and the know-how conveyed strictly confidential during the option period and also in the event of the non-exercise of the option and to ensure that no unauthorised third parties can get access to any of the foregoing.

4.3. This confidentiality obligation shall include, without limitation, the duty to refrain from using secret technical knowledge and know-how in any way for any purposes other than the purposes set out in this agreement without the explicit prior consent in writing by the Licensor, in particular, from using the secret technical knowledge and know-how to produce the subject matter of the license as set out Annex ./4.1. when not exercising the option.

4.4. The Licensee undertakes to disclose secret technical knowledge and know-how only to employees who need to have access to it in order to meet the purposes set out in this agreement. The Licensee undertakes to ensure that such confidentiality obligation shall be imposed, in writing, upon any and all persons to whom secret technical knowledge and know-how within the meaning of this agreement is disclosed on a need-to-know basis and shall, without delay, indemnify and hold harmless the Licensor in respect of any loss or damage arising from such obligation being breached. At the request of the Licensor, the Licensee shall at any time supply evidence of such confidentiality agreements having been concluded. In the case of employees, the confidentiality obligation shall survive the term of employment.

4.5. As far as written documents containing secret technical knowledge and know-how are handed over or such knowledge and know-how is transferred in any other form (e.g. on a data carrier), the making copies thereof shall be allowed only for the purpose of fulfilling the purposes set out in this agreement.

4.6. Any documents handed over, copies made or records manufactured relating to secret technical knowledge and know-how shall be either returned without delay or verifiably destroyed by the Licensee upon non-exercise of the option.

4.7. The Licensee undertakes to continue keeping the secret technical knowledge and know-how confidential even if the option is not exercised and shall ensure that such confidentiality obligation shall be imposed, in writing, upon any and all persons to whom secret technical knowledge and know-how within the meaning of this agreement is disclosed on a need-to-know basis and shall indemnify and hold harmless the Licensor in respect of any loss or damage arising from such obligation being breached.

4.8. The Parties take any adequate measures in order to keep confidential secret technical knowledge and know-how.

4.9. With respect to the scope of the confidentiality obligation, the Licensee shall bear the burden of prove that secret technical knowledge and know-how disclosed to it under this agreement was already in the public domain.

5.

TECHNICAL SUPPORT AND INTRODUCTORY TRAINING

5.1. The Licensor shall, for a duration of \_\_\_\_ (e.g. 6 (six)) months make technical staff available in the required numbers to provide support in trying out the \_\_\_\_\_\_ (description of what is being tried out). The Licensor shall, where necessary, provide introductory training to employees of the Licensee at its own premises on the subject of \_\_\_\_ (description).

5.2. The fees and expenses payable for this are set out in more detail in Annex ./5.2.

6.

OPTION PRICE

The Licensee shall pay to the Licensor an option price in the amount of EUR \_\_\_\_\_ (amount) as a one-off lump-sum payment. Such amount shall not be repayable even if the option is not exercised. If the option is exercised, such amount shall [not] be offset against the license fee.

7.

ENTICING AWAY OF EMPLOYEES

Each **Party** is obliged during the life of this option agreement and for a period of \_\_\_\_(e.g. 6 (six)) months after the expiry of the option period and also in case the option has not been exercised, not to entice away the employees of the other **Party** nor to establish an employment with them without the prior written consent of the other **Party**.

8.

**CONTRACTUAL PENALTY**

For each breach of a contractual obligation **Licensee** is obliged to pay without delay to **Licensor** a contractual penalty – irrespective of any damage caused or any fault on the part of **Licensor** - in the amount of EUR \_\_\_\_(amount) . **Licensor**is entitled to claim damages that go beyond this contractual penalty.

9.

JURISDICTION, GOVERNING LAW

[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). This agreement shall be governed by \_\_\_\_\_\_\_ (e.g. 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 shall be decided in accordance with the law of \_\_\_\_\_(country).

10.

**DATA** PROTECTION

10.1 If – within the ambit of this option agreement – a **Party** (**Disclosing Party**) discloses to the other **Party** (**Receiving Party**) personal data pursuant to Article 4 Sec 1 of the General Data Protection Regulation (GDPR) 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 option 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.

10.2 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 option agreement.

10.3 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.

10.4 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.

11.

FINAL PROVISIONS

11.1 This agreement shall constitute the entire agreement between the Parties regarding the subject matter of the agreement. There are no supplementary arrangements. [Drafts, correspondence exchanged prior to signing, etc. may not form the basis for interpreting this agreement.]

11.2 Any changes or amendments of this agreement must be made in writing, such document being signed by a person authorised to represent either Party in order to take effect; transmission via fax or e-mail shall not suffice. This shall also apply to any waiver of this requirement of written form.

11.3 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).

11.4 [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 obligated to do so pursuant to statutory provisions. This shall not apply to the fact of the conclusion of this agreement as such.]

11.5 Any legal fees or similar charges that may be related to this agreement shall be borne by the [Licensor] [Licensee](choose alternative). Each Party shall bear the costs for its own legal representation.

11.6 2 (two) counterparts of this agreement shall be signed and each shall be deemed an original, with one being handed out to each of the Parties.

12.

CONTACT

Any and all correspondence shall be addressed to:

For the Licensor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name, position, address details, e-mail, telephone)

For the Licensee \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name, position, address details, e-mail, telephone)

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

13.

ANNEXES

Annex ./2.1. Patent Licence Agreement

Annex ./2.2. Informed consent

Annex ./4.1. Know-how and secret technical knowledge

Annex ./5.2. Prices and fees

14.

SIGNATURES

For the Licensor

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

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

[Name and title/position] [Signature]

For the Licensee

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

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

[Name and title/position] [Signature]