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

TRANSFER OF OWNERSHIP OF HUMAN SAMPLES

concluded between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(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 “Provider”)

as the party of the first part

and

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

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

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

(hereinafter referred to as “Recipient”)

as party of the second part

(hereinafter jointly referred to as “Parties”)

1.

SUBJECT MATTER OF THE AGREEMENT, TRANSFER OF OWNERSHIP

The Recipient shall have the right to take the following samples from the Provider (description, in as much detail as possible, of the samples in question (types of tissue, blood, volume) and data, also whether the samples are taken during examinations that were scheduled anyway, thus applying only to samples not required for medical treatment, or whether the samples are taken exclusively for research purposes) and shall acquire ownership of such samples (hereinafter the “Samples”). [As far as samples are taken during medical examinations, no further or other samples shall, under any circumstances, be taken than those required for medical treatment.]

Alternative, if no samples are taken:

The Provider shall transfer to the Recipient the following samples (hereinafter the “Samples”) of which the latter shall acquire ownership:

(description, in as much detail as possible, of the types of tissue in question, etc.)

2.

REMUNERATION

The ownership of the Samples shall be transferred to the Recipient free of charge. The Provider shall receive, as reimbursement for expenses, a sum of EUR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Alternative, if there is no legal need for the transfer being free of charge: The remuneration for the transfer of the samples shall amount to EUR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3.

WARRANTY

3.1. The Provider warrants that it is the owner of the samples. The Provider accepts no warranty or liability as to the fitness of the samples for a specific purpose.

3.2. The Recipient warrants that consent, if required, has been given by the relevant ethics commission and that the standards of good clinical practice were complied with during the taking of the samples.

[3.3. Insofar as the Recipient operates a biodatabase ('biobank'), the data and samples supplied by the donors shall be stored in such database in encoded form (with only the attending physicians and the directly involved staff of the biobank being able to correlate the stored data with the donor). Everybody who has access to the biobank shall be subject to secrecy. No unauthorised person shall have access to the biobank.]

4.

INFORMED CONSENT

4.1. The Recipient shall collect personal data from the Provider, i.e. (detailed and conclusive list of all personal data made available, such as name, date of birth, symptoms, life situation, etc., wording such as “including, without limitation” shall not be used), [the Recipient also having the right and authority to procure such information, including, without limitation, medical data, from third-party institutions (e.g. general practitioner)] and the Provider shall agree to such personal data being used by the Recipient for conducting a research project based on the samples, i.e. (description, in as much detail as possible, of the research project and the purpose of the research, if applicable, including a description of how the personal data will be used specifically), including for the time beyond the death of the Provider. For the purpose of (description, in as much detail as possible, of why the personal data will be passed on to third parties), the personal data shall be passed on to the following third parties (exact designation of the third parties in question). [Alternative for preceding sentence: Before being passed on to any third parties, the personal data shall be anonymised; the third parties in question shall not be able, through legally permitted means, to correlate the data to a given person].

4.2. Within the scope of a meeting dedicated to this purpose, the Provider has been informed by \_\_\_\_\_\_\_\_\_\_\_\_\_(add name and function) extensively and in an easily understandable manner about the nature, significance and scope of the research project, and all the Provider’s questions were answered to a sufficient extent during such meeting.

4.3. If the donor withdraws consent for the use of the personal data, the personal data shall either be made completely anonymous and work be continued with such anonymised data [or the data shall be used only with indirect personal information] or the research activity relying on the personal data shall be stopped immediately by the Recipient.

If the personal data were anonymised, it shall not be possible to withdraw consent.

4.4. The withdrawal of consent for the use of the donor’s personal data shall have no impact on the ownership of the research results, which shall be due to the research institution; such institution shall have the right, but not the obligation, to apply for patents in respect of the results.

4.5. Upon the Provider’s express request, provided that the Provider is identical with the donor, the Provider or his/her direct descendants shall be informed about major research results.

4.6. As far as it is necessary to identify links between the research results and the donor’s disease, the attending physician or hospital/clinic will do so only upon the donor’s express informed consent, documented in writing, unless such information is passed on in a completely anonymised form.

4.7. Any and all rights and obligations under this agreement shall be made binding upon legal successors where necessary.

5.

APPLICABLE LAW AND JURISDICTION

5.1. This 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 excluded.

5.2. The court competent in the matter shall be the [Vienna Commercial Court].

6.

SIGNATURES

For the Recipient

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

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

[Name, title/position] [Signature]

For the Provider

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

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

[Name, title/position] [Signature]