**INDUSTRIAL MATERIAL TRANSFER AGREEMENT**

between:

**Fondazione per l’Istituto di Ricerca in Biomedicina**

**Institute for Research in Biomedicine ("IRB" or "Provider")**

Via Francesco Chiesa 5, 6500 Bellinzona, Switzerland

and

XXXNAME, XXXADDRESS (**"Recipient")**

**Definitions:**

**Recipient Scientist**: XXXNAME/XXXADDRESS

**Research Purpose:** the experiments planned with the Material are described in Annex 1.

**Original Material:** the material to be delivered from Provider to Recipient under the terms of this Agreement is specified in Annex 2. The material is of human origin: \_\_\_\_\_\_ (Y/N, see point 8 below).

**Material:** includes Original Material, Progeny, and Unmodified Derivatives. The Material shall not include other substances created by the Recipient through the use of the Material but shall include any substance which incorporates the Material.

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

**Unmodified Derivatives:** 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, subsets of the Original Material such as DNA/RNA sequences, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by an hybridoma cell line.

**Modifications**: shall mean substances created by Recipient which contain/incorporate the Material.

**Terms and Conditions of this Agreement:**

1. (a) Provider retains ownership of the Material including any Material contained or incorporated in the Modifications;

(b) the Material is to be used by Recipient at Recipient’s institutional facilities only, and only under the direction of Recipient Scientist. The Material is to be used strictly only for the non-commercial Research Purpose declared in Annex 1, the Recipient shall not use the Material in any activity or for any other purpose than the permitted Research Purpose. The Recipient shall not give, sell, share, release, convey, or otherwise distribute the Material and/or any accompanying Confidential Information to any third party without the prior written permission of IRB. The Recipient acknowledges that IRB may withhold its consent for any reason it deems necessary and is not obliged to give the reason thereof;

(c) the Recipient acknowledges that the Material is or may be the subject of a patent application. Except as expressly provided in this Agreement, no rights are provided to Recipient under any patent applications, trade secrets or other proprietary rights of Provider. In particular, no rights are provided to use the Material, Modifications or any related patents of the Provider for profit-making or commercial purposes, such as sale, lease, license, use in manufacturing, use in contract research, use in drug screening, evaluation, or designing programs; or provision of a commercial service;

(d) if Recipient desires to use the Material or Modifications for such profit-making or commercial purposes, Recipient agrees that it must first negotiate a license or other appropriate agreement, the terms of which would be negotiated in good faith and at arm’s length conditions at that time with the Provider and third parties as may be required, and it is further understood by Recipient that Provider shall have no obligation to enter into such a license or agreement;

(e) the Material is provided at no cost unless otherwise specified in Annex 2, or with an optional transmittal fee solely to reimburse the Provider for its preparation and distribution costs.

2. Recipient and Recipient Scientist agree to hold confidential all information and related know-how disclosed by the Provider to the Recipient concerning the Material that is marked as "Confidential" or with similar labeling, or that are not expressly designated as "Confidential", but which should reasonably be deemed confidential by reason of the medium, nature or content ("Confidential Information"). Confidential Information shall remain the property of the Provider except as such Confidential Information: (a) was known by the Recipient at the time of disclosure; (b) becomes part of the public domain, except by breach of this Agreement by Recipient; (c) is rightfully received by Recipient from a third party without an obligation of confidence to the Provider; (d) is independently developed by Recipient's personnel who have not had access to such Confidential Information and the Material or (e) is required to be disclosed by law or court order.

3. The Recipient will provide the Provider with a summary of any research results obtained with the Material, and on request detailed data and information regarding research with the Material. For the avoidance of doubt, any such disclosed data or information will be treated as Confidential Information by the Provider.

4. If Recipient's research results in an invention, a new use of the Material, a method or a product concerning the Material or a patent application claiming Modifications (collectively referred to as "Invention"), Recipient agrees to disclose the Invention to the Provider promptly on a confidential basis. Inventorship shall be determined in accordance with applicable patent law. Ownership shall reflect inventorship, with the Inventions being owned by the party to whom the inventors are under obligation to assign their rights to. Provider shall get in any case an automatic, global, fully paid, sub-licensable, non-exclusive license to the Inventions for any purpose. In the case of a jointly owned Invention between the Provider and the Recipient, the parties agree to negotiate an agreement in good faith which shall provide for fair and equitable sharing, taking into account the role and contributions of individuals involved in the development of the Invention, of the Material itself, of patent costs, income, and invention management responsibilities. In the case of a Recipient-only Invention to be commercialized, the parties agree to negotiate a commercialization agreement in good faith and at arm’s length conditions, which shall take into account the contribution of the Material itself in the conception of the Invention.

5. The Recipient shall have the right, consistent with academic standards, to publish or present the results of the research work performed in accordance with this Agreement. The Recipient shall disclose such publications to Provider at least thirty (30) days prior to submission and agrees to provide appropriate acknowledgment of the source of the Material in all publications. Provider shall have the ability to provide its comments on any draft publication and such comments will be reasonably considered by Recipient.

The Recipient shall notify the Provider before filing a patent application on a joint invention or within a reasonable time of filing a patent application on a Recipient-only invention.

6. Any Material delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties, both parties acknowledge and agree that the Material is being supplied with no implied warranties and Provider expressly disclaims any warranty of merchantability, fitness for a particular purpose, noninfringement of any third parties patent, copyright, trademark, or other rights, or that the samples will not degrade in Recipient's safe keeping, or that the Material will not pose a safety or health risk. Except to the extent prohibited by law, the Recipient assumes all liability for damages, loss, or expense arising out of or related to the exercise of any rights granted to Recipient under this Agreement or any breach of this Agreement by Recipient and the Recipient Scientist. In no event shall the Provider be liable for any indirect, incidental, special or consequential damages arising out of or in connection with this Agreement except to the extent permitted by law when caused by gross negligence or willful misconduct of the Provider.

7. Unless foreseen and permitted in the Research Purpose, the Recipient agrees that it will not undertake, nor assist any third party in undertaking, any efforts to ascertain the structure or sequence of any Material (including, without limitation, sequencing, NMR, UV, IR, x-ray crystallography and mass spectroscopy and similar analyses) or reverse engineer, sequence, disassemble or decompile any Material or any other composition, software or other items which are provided to Recipient in connection with this Agreement.

8. In case of human-derived materials, the Provider confirms that for the purposes of this Agreement it is entitled to supply the Material to the Recipient and that informed consent covering the intended use has been obtained from the relevant donor subjects and data have been duly coded, and that the relevant Ethical Committee approval has been obtained. A donor may revoke the consent at any time, in this case Provider and Recipient shall destroy the relevant Material.

9. The Recipient confirms that all work using the Material will be carried out in compliance with all applicable laws, regulations, guidelines and approvals.

10. The handling of the Material (storage, dissolution, application) shall be in accordance with published scientific standards and applicable statutes and regulations. In no event shall the Material be used in human beings or in clinical trials involving human subjects without the written permission of the Provider. For clarity, and for the purposes of the preceding sentence only, Material does not include commercialized Unmodified Derivatives.

11. This Agreement shall be governed by and interpreted in accordance with the substantive laws of Switzerland. The exclusive venue shall be the courts of Bellinzona, Switzerland. In the event that the Recipient and the Recipient Scientist fail to comply with the limitation regarding the use of the Material, then in addition to any remedy that may be available to Provider at law, Provider shall have the right to require the Recipient and the Recipient Scientist to destroy all Material and Confidential Information that is in its possession.

12. This Agreement is effective when signed by both Parties and terminates on completion of the Recipient's research with the Material as described in Annex 1 or upon thirty (30) days written notice by either party. On termination of this Agreement, Recipient will discontinue its use of the Material and will, upon direction of Provider, return or destroy the Material and Confidential Information, if any. This Agreement constitutes the whole agreement between the parties in relation to the subject matter hereof. If any provision of this Agreement is held to be invalid or unenforceable and can be deleted without altering the essence of, this provision will be severed and the remaining provisions will remain in full force or effect; in the event that such a provision cannot be deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties’ original intention.

Nothing in this Agreement will create a partnership, joint venture or relationship of agency between the parties. The provisions 1-12 shall survive termination of this MTA.

13. This Agreement is not assignable without the prior written consent of the parties.

**PROVIDER INFORMATION and AUTHORIZED SIGNATURES:**

Institute for Research in Biomedicine, Via Francesco Chiesa 5, 6500 Bellinzona, Switzerland

Provider Scientist: XXX \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature and date

Authorized Signatories names: Atty. Gabriele Gendotti Prof. Davide Robbiani

Authorized Signatories titles: IRB President IRB Director

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Signature and date Signature and date

Approval regarding material of human origin (if applicable): \_\_\_\_\_\_\_\_\_\_ (Prof. M. Uguccioni)

**RECIPIENT INFORMATION and AUTHORIZED SIGNATURES:**

Recipient Organization and address: XXX

Authorized Signatories names: XXX XXX

Authorized Signatories titles: XXX XXX

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Signature and date Signature and date

Certification of Recipient Scientist: I have read and understood the conditions outlined in this Material Transfer Agreement, and I understand that I must abide by them to receive and use the MATERIAL.

Recipient Scientist name: XXX \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature and date)

**Annex 1 (experiments to be performed with the Material):**

XXX

**Annex 2 (description and approximate amount of Material to be transferred)**

XXX