

<b>Effective Date : Month, Day, Years</b>
<b>Disclosure Period : 12 months</b> ..... to .....
<b>End of confidentiality obligations : .....</b>

<b>MATERIAL TRANSFER AGREEMENT</b>
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This material transfer agreement (hereinafter referred to as the **“Agreement”**) is made by and between:

**Commissariat à l'énergie atomique et aux énergies alternatives**, a French state-owned research entity with a scientific, technical or industrial activity duly organised under the laws of France and having its registered office located at 25 rue Leblanc, Bâtiment « Le Ponant D » - 75015 Paris, FRANCE, declared at the Paris Register of Commerce and Trade (“Registre du Commerce et des Sociétés de Paris”) under the following registration number R.C.S. Paris B 775 685 019, acting for its Laboratoire d'électronique et de technologie de l'information (« LETI »), whose principal place of business is at 17 rue des Martyrs, 38054 Grenoble Cedex 9, and represented by Mr Daniel VELLOU, head of department DTBS, and duly authorised for the purposes hereof,

hereinafter referred to as **“CEA”** or **“Coordinator”**

Acting for and on behalf of the project 654190 “EUNCL” partners,

hereinafter referred to as **“EUNCL Partners”**

And

**Company** ....., incorporated under the laws of ....., with its head office located at ....., represented by M ....., [function],

hereinafter referred to as **“The Sponsor”**,

hereinafter called individually and alternatively the **“Receiving Party”** and the **“Disclosing Party”** or a **“Party”** and together the **“Parties”**.

WHEREAS:

- there is, within the context of EU-NCL project, a collaboration agreement between CEA and EUNCL-Partners:

- **The JOINT RESEARCH CENTRE** of the European Commission(JRC), established in Rue de la Loi 200 – 1049 Brussels – Belgium,
  - **The European Research Services GmbH**, having its registered office at Mendelstr. 17, 48149 Münster, Germany,
  - **Leydis Biomedical Research, Inc.**, the Operations and Technical Support contractor to the Frederick National Laboratory for Cancer Research, on behalf of the Nano-Characterization Laboratory, having an office located at 1050 Boyles Street, Frederick, Maryland, 21702,
  - **The Provost, Fellows**, Foundation Scholars, and the other members of Board, of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, a Body Corporate incorporated by Charter - having its registered office at College Green, Dublin 2, Ireland
  - **Stiftelsen SINTEF** by its institute Materials and Chemistry, incorporated, having its registered office at Strindveien 4, N-7465 Trondheim, Norway
  - **The University of Liverpool**, incorporated by Royal Charter having its registered office at the University of Liverpool, Foundation Building, 765 Brownlow Hill, Liverpool, L69 7ZX, United Kingdom,
  - **The Swiss federal Laboratories for Material sciences and technology**, incorporated under the laws of Switzerland and having their registered office at Überlandstrasse 129, 8600 Dübendorf, Switzerland,
  - **Gesellschaft für Bioanalytik Münster e. V.**, incorporated under the laws of Germany and having its registered office at Mendelstr. 17, D-48149 Münster, Germany
- EUNCL Partners, which are concerned together with CEA by the present Agreement.
  - for the needs of the present Agreement, said EUNCL Partners have delegated to CEA the authority to sign the present Agreement in their name and on their behalf.
  - CEA and EUNCL Partners are active **in the characterisation of nanomedicines** and owns considerable proprietary and valuable experience and information related to the same;
  - **The Sponsor** is active in the development, production and commercialisation of ..... for the ..... industry and owns considerable proprietary and valuable experience and information related to the same, their production, their processing and their use.

The Parties are interested in pursuing exploratory discussions between them related to **the physical and biological characterisation of the Samples** and carry out evaluations on the Samples (altogether the “**Purpose**”).

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**THEREFORE the Parties agree as follows:**

## **1. EVALUATIONS**

1.1 The Parties will carry out the evaluations on the Samples in the manner specified below and for the following scientific and practical aims:

- a) the Sponsor shall send to CEA and any one of the EUNCL Partners by its entry point **Gesellschaft für Bioanalytik Münster e.V.** Samples as provided in the Annex 1, whose amount will be determined by the evaluation committee, hereinafter called the **“Samples”**;  
Shipping fees to **Gesellschaft für Bioanalytik Münster e. V.** are at the Sponsor’s expense.
- b) The Samples will be delivered to **Gesellschaft für Bioanalytik Münster e. V.** by The Sponsor and then, the Samples will be delivered by **Gesellschaft für Bioanalytik Münster e. V.** to CEA and the other EUNCL Partners.  
Shipping fees by **Gesellschaft für Bioanalytik Münster e. V. to the other EUNCL partners and to CEA** are at **Gesellschaft für Bioanalytik Münster e. V.’s** expense.
- c) The Evaluations will be performed by the CEA and EUNCL Partners individually and/or collectively, at their respective institutions.
- d) The testing by CEA and EUNCL Partners of Samples provided by The Sponsor, thereby generating hereinafter referred to **“Tested Samples”**, and experimental data (including but not limited to analytical data, reports, etc.) hereinafter are referred to as the **“Results”**.
- e) After the Evaluations, the Samples Tested or not, will be destroyed by EUNCL Partners and CEA unless The Sponsor’s request to return the Sample in accordance with the article 2.3 of the present Agreement. It is agreed between the Parties that EUNCL Partners and CEA can retain a Samples of the Research Material for future reference.

hereinafter altogether the **“Evaluations”**,

It is expressly agreed between the Parties that the Results consist of reports and are not as such patentable or able to be protected by intellectual property rights.

1.2 CEA and EUNCL Partners undertakes to:

- a) use Samples required to conduct the Evaluations, under the following terms and conditions,
- b) use Results only within the scope of the Evaluations and to perform their activities under the Purpose of this Agreement solely on their own premises and with their own personnel for said Purpose only and on a "need to know" basis ;
- c) inform The Sponsor of Results,

where CEA and EUNCL Partners are able to communicate such information without contravening confidentiality obligations undertaken by CEA and EUNCL Partners towards any third parties.

1.3 The Sponsor undertakes to:

- a) provide CEA and EUNCL Partners with Samples and all relevant information required for CEA and EUNCL Partners to conduct CEA’s and EUNCL Partners’ activities under the Evaluations, under the following terms and conditions,

- b) use the Results only within the scope of the Evaluations and to perform its activities under the Purpose of this Agreement solely on its own premises and with its own personnel for said Purpose only and on a "need to know" basis.

## 2. CONFIDENTIALITY

The Parties recognise that it will be necessary to disclose to each other certain of their proprietary information pertaining to the above subject matter, which information the Parties regard as confidential.

2.1 As used in the Agreement the term "**Confidential Information**" shall mean all and any information or data whether of financial, commercial, technical (*including the Results*), legal or whatever nature disclosed by the Disclosing Party to the Receiving Party under this Agreement, whether in writing or drawings, orally, in the form of models (*including Samples and Tested Samples*), computer program or in any form whatsoever including information derivable by visual inspection, provided that such written information is clearly and conspicuously marked as proprietary or confidential and that such oral or visual information is designated as proprietary or confidential upon disclosure and confirmed by the Disclosing Party in writing within thirty (30) days from the date of disclosure and provided that any information disclosed during this thirty (30) days period shall be treated as a Confidential Information by the Receiving Party.

However, information disclosed by the Disclosing Party hereunder shall not be Confidential Information if it is, as proven by the Receiving Party by appropriate documentation:

- (a) already available to the public or becomes available to the public through no breach of the Agreement by the Receiving Party; or
- (b) in the Receiving Party's possession prior to receipt from the Disclosing Party; or
- (c) received independently from a third party free to disclose such information to the Receiving Party; or
- (d) the result of developments undertaken by the Receiving Party's personnel which had no access to such information.

For the avoidance of doubt, the Parties shall consider the Results as CEA's and EUNCL Partners' Confidential Information.

- 2.2 Nothing in this Agreement shall be construed as compelling a Party to disclose any Confidential Information to the other, or to enter into any further contractual relationship with the other Party.
- 2.3 Confidential Information, all copies thereof and all rights thereto, shall remain the exclusive property of the Disclosing Party.

All Confidential Information, whether original or copies thereof, including any document, note, meeting report containing such information, shall be promptly returned by the Receiving Party to the Disclosing Party on receipt of the Disclosing Party's written request therefor. The Receiving Party will not retain any copies, extracts or reproductions in whole or in part of the Confidential Information.

Notwithstanding any terms to the contrary in this Agreement:

- a) Each Party shall have full ownership of and retain all of its own Results;
  - b) CEA and EUNCL Partners shall, for internal research purposes, be entitled to retain and use all Results;
  - c) CEA and EUNCL Partners shall, for project with third parties, be entitled to retain and use all Results subject to the prior written consent of The Sponsor;
  - d) The Sponsor shall be free to use the Results, for its internal research purposes;
  - e) The Sponsor shall be free to use the Results, for projects with third parties.
- 2.4 The Receiving Party undertakes during the term of this Agreement and for a period of five (5) years after the date of its expiry or termination:
- to safeguard Confidential Information as it does for its own proprietary information of like importance, but at least with a reasonable degree of care,
  - to use Confidential Information only for the Purpose and to divulge Confidential Information to its personnel for said Purpose only and on a "need to know" basis,
  - not to duplicate or otherwise reproduce Confidential Information except for such copies as the Receiving Party may require for the Purpose as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information,
  - not to divulge Confidential Information to any third party for any purpose, unless and until expressly authorized in writing to do so by the Disclosing Party,
  - not to reverse-compile, reverse-assemble or reverse-engineer Confidential Information or any part thereof,

- not to claim nor to register any Intellectual Property right, nor to exercise any Intellectual Property right or any other right on Confidential Information received under the Agreement.

### **3. NO TRANSFER OF RIGHTS**

Nothing contained in this Agreement shall be construed as granting or conferring upon the Receiving Party, whether expressly or impliedly, any right by license or otherwise under any proprietary or statutory right of the Disclosing Party existing prior to or coming into existence after the Effective Date of the Agreement.

### **4. WARRANTIES - LIABILITY**

The Confidential Information (including Samples and Results), is disclosed “as is”. The Disclosing Party makes no representations or warranties, whether express or implied, with respect to Confidential Information, and notably their fitness for a commercial technical purpose. The use of Confidential Information is made at the sole risk of the Receiving Party.

### **5. FINANCIAL PROVISIONS**

The Parties agree that the provision of Samples, Results and other Confidential Information hereunder shall be made free of charge.

### **6. TERM**

This Agreement governs communication of Confidential Information and the Evaluations from **Month, Day, Year** (the “Effective Date”) for a **twelve (12) months** duration and shall then expire (“Disclosure Period”). The Receiving Party’s duty to protect Confidential Information as provided in article 2 above shall continue for a period of **five (5) years** after the expiration or early termination of this Agreement (“**Confidentiality Period**”).

### **7. TERMINATION**

In the event that a Party breaches any provision of the Agreement, the non-breaching Party will have the right to terminate the Agreement immediately by giving written notice of such breach(es) by registered mail with acknowledgment of receipt to the breaching Party’s undersigned representative below.

Termination of the Agreement does not affect the rights and obligations of the Parties which arose prior to the effective date of termination. The exercise of the right of termination for breach shall in no circumstance be construed as a waiver by the Party requesting termination of its right to claim any damages.

## 8. ASSIGNMENT

The Agreement is personal to the Parties (« *intuitu personae* ») and the Receiving Party undertakes not to assign nor transfer or otherwise convey in whole or in part its rights or obligations under the Agreement to any third party, including an Affiliate, without the Disclosing Party's prior written approval.

## 9. GOVERNING LAW - DISPUTE RESOLUTION

Any dispute arising in connection with this Agreement, including any dispute related to the validity, interpretation, implementation and/or termination of the Agreement, which cannot be amicably settled within the sixty (60) days following its occurrence shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with those Rules. The arbitration proceedings shall take place in Brussels (Belgium). The language to be used in the arbitral proceedings shall be English.

The applicable law shall be Belgium Law, under which the dispute, controversy or claim referred to arbitration shall be decided without regard to its conflict of laws principles.

## 10. NOTICES

Any notices for technical correspondence in connection with the Agreement shall be sent to:

- **Mr. ....**, if to **The Sponsor**

Address:

Phone:

Email:

- **Mr. BOISSEAU Patrick**, if to **CEA and EUNCL Partners**

CEA-Grenoble/LETI/DTBS

17, rue des Martyrs - 38054 Grenoble Cedex 9

Tél. 04.38.78.38.54

Email: patrick.boisseau@cea.fr

## 11. MISCELLANEOUS

The Agreement cancels and supersedes all previous written or oral agreements and understandings between the Parties with regard to the Purpose, and constitutes the Parties' entire agreement as to such Purpose.

No addition or modification of the terms of the Agreement shall be valid between the Parties unless made in writing and signed by their duly authorised representatives.



IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed the Agreement in two (2) original counterparts, one (1) for each Party, on the latest date indicated below:

**For The Sponsor:**

Date:

Name: .....

Title:.....

Signature:.....





For **CEA** acting for and on behalf of the project 654190 "EUNCL" partners:

Date:

Daniel VELLOU,  
*Head of DTBS department*

## **Annex 1: Samples provided by the Sponsor**