Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20[ ]

(1) **[…………………………………………………………]**

(2) **[………………………………………………………..]**

MATERIALS TRANSFER AGREEMENT

**THIS AGREEMENT** dated […………………………………………..] 20[ ] is made **BETWEEN:**

**(1)** **UNIVERSIDAD DE SALAMANCA**, whose administrative offices are at Patio de Escuelas, 1 37007 Salamanca, Spain, acting through the Department/Research Group/Centre ……………………… (the University);

**(2)** **[……………………..]** [**LIMITED**], a company registered in [England] under number [………………], whose registered office is at [………………………………………………………………] (the Company)

1**.** **DEFINITIONS**

In this Agreement the following expressions have the meaning set opposite:

|  |  |
| --- | --- |
| **Academic** **Publication:** | the publication of an abstract, article or paper in a journal, or its presentation at a conference or seminar; and in clauses 5 and 6 "to Publish" and "Publication" are to be construed as references to Academic Publication; |
| **this Agreement:** | this document including its Schedule, as amended from time to time in accordance with clause 9.9; |
| **a Business Day:** | Monday to Friday (inclusive) except bank or public holidays in Spain; |
| **Confidential Information:** | in the case of the University, the Materials and in the case of the Company, the Results, the Improvements and the Project; |
| **the Field:** | ................................ |
| **a Group Company:** | any undertaking which is, on or after the date of this Agreement from time to time, a subsidiary undertaking of the Company, a parent undertaking of the Company or a subsidiary undertaking of a parent undertaking of the Company, as those terms are defined in section 258 of the Companies Act 1985; |
| **Intellectual Property:** | patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above; |
| **Know-how:** | unpatented technical information (including, without limitation information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain; |
| **an Improvement:** | a material enhancement to the functionality of any of the Materials created in the course of the Project, except a new use discovered for any of the Materials; |
| **the Materials:** | the materials described in Part A of the Schedule[, including any construct, strain, replication, progeny or derivative that contains any of the Materials, and all Know-how supplied by the University to the Company relating to any of the Materials; |
| **the Principal Investigator:** | For the University, Dr. ……………………………...For the Company, …………………………………….. |
| **the Project:** | the [academic] OR [non-clinical] research project(s) described in Part B of the Schedule; |
| **the Results:** | all information, Know-how, results, inventions, software and other Intellectual Property (except an Improvement) identified or first reduced to practice or writing as a result of using the Materials in the Project; |
| **the Term:** | Two (2) years beginning on the date of this Agreement, or the end of the Project (whichever is earlier) |
| **the Territory:** | Worldwide |

# **TERMS AND CONDITIONS FOR USE**

# 2.1 The University will provide the Materials to the Company on the terms and conditions of this Agreement.

2.2 The Company will use the Materials only for the Project, and not for any commercial purpose or commercially-sponsored research without first obtaining the University’s written consent.

* 1. The Company will not supply the Materials to any person, except the Principal Investigator and people under the Principal Investigator’s direct supervision, or allow them to be removed from the Company’s premises unless it first obtains the University’s written consent.
	2. The Company will use the Materials in accordance with all applicable laws, regulations, and governmental guidelines.
	3. The Company will provide the University with one report each six (6) months summarising the progress of the use of the Materials in the Project and][a final report within [3] months after the completion of the use of the Materials in the Project] and a copy of all of the Results and Improvements.
	4. The Term may be extended only by the written agreement of the Company and the University.

3. **PAYMENT**

 OPTION 1: The Materials are provided to the Company free of charge.

OPTION 2: The Company will pay the University the Price in full on the date of this Agreement. All amounts payable to the University under this Agreement are exclusive of VAT (or any similar tax) which the Company will pay at the rate from time to time prescribed by law, plus all delivery and customs charges. The University will issue a single invoice in the first ten days after signing this agreement, for the full amount, and will not send any material until have received payment of the invoice.

4. **USE AND EXPLOITATION OF** **INTELLECTUAL PROPERTY**

* 1. No licence under any Intellectual Property owned or controlled by the University is granted or implied by this Agreement other than the right for the Company to have possession of, and use, the Materials in accordance with the terms of this Agreement.
	2. The University will own the Intellectual Property in the Results and in the Improvements, and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Results.
	3. Where any third party such as a student or contractor is involved in the Project, the Company or the party engaging that contractor (as the case may be) will ensure that that student and that contractor assign any Intellectual Property they may have in the Results and in the Improvements in order to be able to give effect to the provisions of this clause 4.

4.4 The Company will notify the University promptly after identifying any Result or any Improvement that the Company believes is patentable, and will supply the University with copies of that Result or Improvement as the case may be. The Company will notify other Results and Improvements to the University in the reports provided under clause 2.5.

4.5 The University grants the Company a royalty-free, non-exclusive licence to use the Improvements for the purpose of carrying out the Project, but for no other purpose. The Company may not grant any sub-licence to use the Improvements.

**5. ACADEMIC PUBLICATION**

5.1 The Project is undertaken in pursuance of a primary charitable purpose of the University; that is the advancement of education through teaching and research. Therefore, any employee or student of the University (whether or not involved in the Project) may, provided the University has not received a Confidentiality Notice under clause 5.2:

5.1.1 discuss work undertaken as part of the Project in University seminars, tutorials and lectures; and

5.1.2 Publish any of the Results and any of the Improvements.

5.2 The University, using the results of the project, agrees to write and publish in scientific journals of high impact index, one or more articles in which the research team of Dr. Alberto Orfao will be responsible for the publication, being co-authors company researchers.

6. **CONFIDENTIALITY**

6.1 Subject to clause 5, neither party will disclose to any third party, nor use for any purpose except as expressly permitted by this Agreement, any of the other party's Confidential Information. This clause shall be valid for three (3) years after the end of the Term

6.2 Neither party will be in breach of any obligation to keep any information confidential or not to disclose it to any other party to the extent that it:

6.2.1 is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;

* + 1. is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;

6.2.3 has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other party;

6.2.4 has been independently developed by the party making the disclosure;

6.2.5 is disclosed pursuant to the requirement of any law or regulation or the order of any Court of competent jurisdiction, and the party required to make that disclosure has informed the other, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed; or

6.2.6 is approved for release in writing by an authorised representative of the other party.

* 1. The University will not be in breach of any obligation to keep any of the Results or other information of the Company, confidential or not to disclose them to any third party by making them available to any any person working for or on behalf of the University, who needs to know the same in order to exercise the rights granted in clause 4.4, provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep those Results or that information confidential.

6.4 Neither the University nor the Company will use the other’s name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's written consent

7. **LIMITATION OF LIABILITY**

7.1 The Materials are experimental in nature and the University makes no representation and gives no warranty, condition or undertaking in relation to them. Without limiting the foregoing, the University gives no warranty or condition that the Materials and their use will not infringe any third-party rights or that they have been tested for and are free from pathogens that they are viable, safe, or non-toxic.

7.2 Neither party accepts any responsibility for any use which may be made by the other party of any of the Results or the Improvements, nor for any reliance which may be placed on any Results or Improvements, nor for advice or information given in connection with any Results or Improvements.

7.3 Subject to clause 7.5, the liability of either party to the other for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project, the Results and the Improvements, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, even if even if the party bringing the claim has advised the other of the possibility of those losses or if they were within the other party's contemplation.

7.4 Subject to clause 7.5, the aggregate liability of each party to the other for all and any breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project, the Results and the Improvements, will not exceed 100.00 Euros

7.5 Nothing in this Agreement limits or excludes either party's liability for:

7.5.1 death or personal injury;

7.5.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

7.5.3 any loss or damage caused by a deliberate breach of this Agreement.

7.6 The express undertakings and warranties given by the parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

8. **TERMINATION**

8.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

8.1.1 the other party is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within thirty (30) days after receipt of written notice specifying the breach and requiring its remedy; or

* + 1. the other party becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the other party's assets, or if the other party makes any arrangement with its creditors.
	1. Unless terminated under clause 8.1, this Agreement, and the Company’s right to use the Materials, will come to an end on the expiry of the Term.
	2. On the termination or expiry of this Agreement the Company will, at its expense, destroy the Materials and certify to the University that this has been done.
	3. Clauses 1, 4, 5, 6, 7, 8.3, 8.4 and 9 will survive the expiry of the Term or the termination of this Agreement for any reason and continue indefinitely.

9. **GENERAL**

9.1**Notices:**  Any notice to be given under this Agreement must be in writing, may be delivered to the other party by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

|  |  |
| --- | --- |
| **Method of service**  | Deemed day of receipt |
| By hand or courier | the day of delivery |
| By pre-paid first class post | the second Business Day after posting |
| By recorded delivery post | the next Business Day after posting |
| By fax (provided the sender’s fax machine confirms complete and error-free transmission of that notice to the correct fax number) | the next Business Day after sending or, if sent before 16.00 (sender’s local time) on the Business Day it was sent |

The parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

|  |  |
| --- | --- |
| **For the University:** | **For the Company:** |
| Name:Address: | Name:Address: |
| Fax number: | Fax number: |

9.2 **Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.

9.3 **Assignment:** Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party. That consent may not be unreasonably withheld or delayed.

9.4 **Illegal/unenforceable provisions:**  If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

9.5 **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

9.6 **No agency:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship between them of principal and agent. Neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

9.7 **Entire agreement:**This Agreement constitutes the entire agreement between the parties relating to its subject matter. Each party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.

9.8 **Formalities:** Each party will take any action and execute any document reasonably required by the other party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the requesting party pays the other party’s reasonable expenses.

9.9 **Amendments:**  No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.

9.10 **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.

* 1. **Governing law:** This Agreement is governed by, and is to be construed in accordance with Spanish law. The Spanish Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Agreement, except that either party may bring proceedings for an injunction in any jurisdiction.

9.12 **Escalation:** If the parties are unable to reach agreement on any issue concerning this Agreement within 14 days after one party has notified the other of that issue, they will refer the matter to Vicechancellor of Research in the case of the University, and to ........................ in the case of the Company in an attempt to resolve the issue within 14 days after the referral. Either party may bring proceedings in accordance with clause 9.11 if the matter has not been resolved within that 14 day period, and either party may apply to the court for an injunction whether or not any issue has been escalated under this clause.

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of the University:NamePositionSignature | **SIGNED** for and on behalf of the Company:NamePositionSignature |

[Read and understood by the Principal

Investigator

……………………………………………………………..

Signature

……………………………………………………………..

Date]

# **THE SCHEDULE**

**Part A – The Materials**

**Part B – the Project**