

PRODUCT TRANSFER AGREEMENT

BETWEEN

The **CENTRE NATIONAL DE LA RECHERCHE SCIENTIFIQUE**,

A national public scientific and technological establishment,

SIREN no. 180 089 013 - APE code 7219Z,

Having its registered office at 3 rue Michel Ange, 75794 Paris Cedex 16,

Represented by its President, Mr Alain Fuchs, who has delegated signing authority for this agreement to Mrs Ghislaine Gibello, the CNRS' Regional Delegate for the Languedoc Roussillon region.

Hereinafter referred to as the "**CNRS**",

Acting both in its own name and on behalf of the UPS no. 3035 "*Unité de Gestion de la Chimiothèque Nationale*" (Management Unit of the National Chemical Library), managed by Mr Philippe Jauffret,

Hereinafter referred to as the "**UGCN**",

And

- XXXXXX Organisation [to be completed for each supervisory organisation°]

Hereinafter referred to as ".....",

And

- XXXXXX Organisation [to be completed for each supervisory organisation°]

Hereinafter referred to as ".....",

And

- XXXXXX Organisation [to be completed for each supervisory organisation°]

Hereinafter referred to as ".....",

The CNRS and the XXX supervisory organisation(s), acting both in their own name and in the name and on behalf of the relevant unit or units or team(s), identified as laboratory(ies) participating in the *Groupement d'Intérêt Scientifique "Chimiothèque Nationale"* (hereinafter the "GIS CN") and listed in Appendix I, (hereinafter the "Laboratories"), are hereinafter referred to jointly as the "**Relevant Members of the GIS CN**" or individually as the "**Relevant Member of the GIS CN**".

It is hereby stipulated that, pursuant to this Agreement, the Relevant Members of the GIS CN only commit themselves to the obligations binding upon the Laboratories which are attached to them and for the part concerning the PRODUCTS which they own.

PARTIES OF THE FIRST PART

AND

Company or Organisation

A French Joint Stock Company (SA) with capital of
registered with the _____ Trade and Companies Registry

intra-Community VAT no.

having its registered office at

represented by

Hereinafter referred to as the “**Beneficiary**”,

PARTY OF THE SECOND PART

The Relevant Members of the GIS CN and the Beneficiary are hereinafter individually referred to as a “Party” and jointly as the “Parties”.

WHEREAS:

Within the context of the GIS CN, the Members of the GIS CN have established an archived and formatted collection of natural substances, synthetic substances and natural extracts, referenced in a common database accessible via the website managed by the UGCN.

Pursuant to carrying-out its research work, the Beneficiary is interested in receiving a certain number and a certain volume of PRODUCTS which it has selected by consulting the common database managed by the UGCN.

In these circumstances, the Parties have decided to execute this product transfer agreement (hereinafter the “Agreement”).

The provisions of this Agreement shall be written subject to the provisions of the Convention on Biological Diversity (CBD), adopted in Rio de Janeiro on May 22nd, 1992 and entered into force on December 29th, 1993, especially concerning the fair sharing of the benefits drawn from the exploitation of genetic resources with the provider country (Article 15 of the CBD).

THE FOLLOWING HAS BEEN AGREED UPON:

PRELIMINARY ARTICLE - DEFINITIONS

SIGNATURE DATE means the last signature date of this Agreement by all the Parties.

INFORMATION means any and all information or data concerning the PRODUCTS and, in particular, the know-how required for the implementation of the PRODUCTS, whether in written, graphic or oral form, regardless of the medium used, which is disclosed pursuant to this Agreement.

CONFIDENTIAL INFORMATION means all the INFORMATION bearing the word “confidential”. When the INFORMATION is provided orally, its confidential nature shall be stated when it is disclosed and the disclosed INFORMATION shall be stated as such and shall be described or summarised in writing within thirty (30) days of its disclosure.

PRODUCTS mean the chemical substances, the preparations containing them and the natural extracts listed and described in Appendix I.

WORK SCHEDULE means the work schedule described in Appendix II.

RESULTS mean any and all result of in-house research or tests conducted by the Beneficiary on the PRODUCTS and, in particular, the products created and developed by the Beneficiary from the PRODUCTS or from elements which contain or incorporate all or part of the PRODUCTS, or which use the INFORMATION.

Words in the plural may be understood in the singular form and vice-versa.

ARTICLE 1 – PURPOSE AND SCOPE OF THE AGREEMENT

1.1 Under the Agreement, the Relevant Members of the GIS CN undertake to provide the PRODUCTS and the INFORMATION non-exclusively to the Beneficiary and authorise the latter to use said PRODUCTS and INFORMATION during the term provided for in Article 2, solely for its in-house research work or tests and pursuant to the WORK SCHEDULE, to the exclusion of any and all other work, in particular, commercial activity, even free-of-charge. Such furnishing is personal and non-assignable.

The Beneficiary accepts that the PRODUCTS and INFORMATION be provided by the Relevant Members of the GIS CN pursuant to this Agreement for research on laboratory animals and/or in vitro studies, and that said PRODUCTS and INFORMATION may under no circumstances be used on human beings.

1.2 The Beneficiary undertakes not to transfer nor disclose the PRODUCTS or INFORMATION to third parties.

1.3 In particular, the Beneficiary undertakes not to file applications for patents or other industrial property titles related to the PRODUCTS or incorporating the INFORMATION, without the prior agreement of the Relevant Member(s) of the GIS CN.

1.4 The Agreement does not make any transfer of ownership of all or part of the PRODUCTS to the Beneficiary. They remain the property of the Relevant Members of the GIS CN.

Moreover, the Agreement does not grant or involve any granting of a licence or any assignment of intellectual property rights or know-how to the Beneficiary. In particular, the Agreement does not grant the Beneficiary any right to manufacture, sell, rent or transfer the PRODUCTS to third parties, nor any right and/or lien whatsoever over the use or utilisation of the INFORMATION, in any respect whatsoever.

ARTICLE 2 – TERM

The Agreement takes effect on the SIGNATURE DATE for a one (1) year term.

Orders for other PRODUCTS which are placed following the signing of the Agreement shall be materialised by the execution of a new agreement.

At the end of this term, the Agreement may be extended by an amendment signed by the Parties, specifying the purpose and term of such extension.

ARTICLE 3 – FINANCIAL TERMS

3.1 The Beneficiary shall pay a fixed amount for packaging and shipping expenses. The amount is set in Appendix III, in proportion to the volume of PRODUCTS ordered.

The Beneficiary shall make an order form to M. ROURA, *Agent Comptable Secondaire de la Délégation Languedoc-Roussillon du CNRS France*.

The invoice shall be established following the order form and the amount of ... euros (...€) shall be done within forty-five days (45) to account no. 10071 34000 00001003417 34, open in the name of the *Agent Comptable Secondaire de la Délégation Languedoc-Roussillon du CNRS France*.

3.2 The expenses relating to returning or destroying the PRODUCTS and furnishing the RESULTS to the Relevant Members of the GIS CN, under Articles 5.1 and 8.2 of the Agreement, shall be fully paid by the Beneficiary, which accepts such.

ARTICLE 4 – SCIENTIFIC MANAGERS

Name of scientific manager is the scientific manager for the Beneficiary.

ARTICLE 5 - RESULTS

5.0 The Parties agree that any use of the results will be in compliance with the Convention on Biological Diversity, adopted in Rio de Janeiro on May 22nd, 1992 and entered into force on December 29th, 1993.

5.1 The Beneficiary undertakes to send the UGCN a written report on all the RESULTS within thirty (30) days of the expiry or termination date of the Agreement. The UGCN shall be responsible for forwarding the RESULTS to the Relevant Members of the GIS CN, only for the PRODUCTS which they own.

5.2 The RESULTS obtained following the use of one or more PRODUCTS and/or INFORMATION items belonging to one or more Relevant Members of the GIS CN, are the joint property of this or these Relevant Member(s) of the GIS CN and the Beneficiary (hereinafter the "Joint Owners").

The other Relevant Members of the GIS CN, which are not Joint Owners of said PRODUCTS and/or INFORMATION have no rights over the RESULTS originating from said PRODUCTS.

The Joint Owners of the RESULTS shall discuss in order to organise, within the framework of rules of joint ownership, the terms and conditions governing the joint ownership, prior to any and all commercial and/or industrial use.

5.3 The Joint Owners of the RESULTS are entitled to use them for in-house research purposes.

5.4 Should one of the Joint Owners of the RESULTS wish to commercially or industrially use or utilise them, directly or indirectly, it shall inform the other Joint Owner(s) thereof. It undertakes, subject to the rights granted to third parties prior to the signing of this Agreement, to negotiate the conditions for such use or utilisation in good faith.

5.5 Should a research programme, intended to optimise one or more hits identified on the PRODUCTS supplied by the Relevant Members of the GIS CN, be initiated, the Beneficiary shall inform the Relevant Members of the GIS CN thereof in writing and the latter shall then have a preferential right concerning the implementation of such a programme. If the Relevant Members of the GIS CN do not exercise their right within three (3) months as from receipt of the written proposal to contract, the Beneficiary shall be entitled to initiate such a programme itself or to entrust said programme to a third party.

5.6 In the event that the RESULTS could be published, the Joint Owners of the RESULTS shall, for the term of the Agreement and for twelve (12) months following its expiry or termination, immediately keep each other informed thereof and undertake, prior to any and all publication, to discuss in order to jointly agree as to the publication strategy to be implemented for the dissemination of the RESULTS. The Joint Owners shall be mentioned in these publications.

Any Joint Owner is authorised to:

- delay publication or communication for a maximum of eighteen (18) months as from the date of the authorisation request if the information contained in the publication or in the communication requires protection by a patent.

- or to change certain specifications, the disclosure of which would be contrary to the provisions of Article 6.

These changes shall not affect the publication's scientific value.

Should a Joint Owner fail to communicate its decision within a maximum of two (2) months as from the publication or communication authorisation request, it shall be deemed to have agreed thereto.

In any and all publication, the Joint Owner Beneficiary undertakes to identify the origin of the PRODUCTS or INFORMATION in the same way as the Relevant Members of the GIS CN which are Joint Owners undertake to specify the origin of the RESULTS.

5.7 In the event that the RESULTS could lead to the filing of a patent, the Joint Owners shall immediately keep each other informed thereof and undertake, prior to

any and all filing, to discuss in order to jointly agree as to the conditions of protection and use to be implemented in order to protect the RESULTS.

ARTICLE 6 – CONFIDENTIALITY

6.1 Under the Agreement, the Beneficiary undertakes to respect and uphold the strictly confidential nature of the PRODUCTS, the CONFIDENTIAL INFORMATION and the RESULTS.

6.2 The Beneficiary assumes personal responsibility vis-à-vis the Relevant Members of the GIS CN for its staff's compliance with the confidential nature of the PRODUCTS, CONFIDENTIAL INFORMATION and RESULTS.

6.3 Under the Agreement, the Relevant Members of the GIS CN and the UGCN undertake to respect and uphold the strictly confidential nature of the WORK SCHEDULES and the RESULTS.

6.4 The Relevant Members of the GIS CN assume personal responsibility vis-à-vis the Beneficiary for their staff's compliance with the confidential nature of the WORK SCHEDULES and the RESULTS.

6.5 This Article does not apply to CONFIDENTIAL INFORMATION, WORK SCHEDULES and RESULTS for which one of the Parties is able to prove:

- a) that their disclosure was decided on by joint agreement, duly noted in writing, between the Parties, in particular, under the provisions of Article 5.6;
- b) that they belonged to the public domain when they were disclosed or entered the public domain without any negligence by it;
- c) that on the date when they were communicated, it already had them in its possession;
- d) that they were legally received from a third party, without a breach of the Agreement's non-disclosure obligations;
- e) that they were legally disclosed by one of the Parties after having obtained the other Party's prior and written authorisation;
- f) that their disclosure was imposed by the application of a material legal or regulatory provision or by the enforcement of a final legal decision or an arbitration award;
- g) that they were disclosed by the Party from which they originate;
- h) that it can be justified that they were developed by the disclosing Party, independently and in good faith, by its members of staff who did not have access to the CONFIDENTIAL INFORMATION, WORK SCHEDULES and RESULTS.

The foregoing exceptions are not cumulative.

6.6 The provisions of this Article take effect as from the SIGNATURE DATE of the Agreement by all the Parties and shall remain effective for five (5) years, notwithstanding the expiry or early termination of the Agreement.

6.7 The provisions of this Article shall apply subject to the provisions of Article 5 hereof.

6.8 The provisions of Articles 5.6 and 6 may not prevent:

- either the obligation binding on all persons involved in the WORK SCHEDULE to present an activity report to the structure to which they report as such communication does not represent disclosure within the meaning of industrial property legislation,
- or the oral defence of final papers and theses by students whose scientific work relates to the purpose of the Agreement, as such defence is organised whenever necessary so as to ensure the confidentiality of the RESULTS, whilst complying with effective university regulations.

ARTICLE 7 – WARRANTIES

7.1 The Relevant Members of the GIS CN undertake to deliver the PRODUCTS to the Beneficiary, via their laboratories, as soon as reasonably possible.

7.2 As the PRODUCTS are of an experimental nature, some of their features are unknown. They may possibly have dangerous properties and should therefore be used with all due care.

The PRODUCTS and the INFORMATION are sent “as is”, without an express or tacit warranty, in respect of their commercial nature or their compatibility for a specific use, or their novelty, safety, purity, harmlessness, non-toxicity, activity, usefulness or compliance or as to whether they infringe the intellectual property rights of third parties.

Under no circumstances may the Relevant Members of the GIS CN be held liable owing to the use and/or warehousing of these PRODUCTS and/or their extracts, reproductions or derivatives or the INFORMATION.

The Relevant Members of the GIS CN only warrant as to the material existence of the PRODUCTS and the INFORMATION.

7.3 The possible uncertainties and risks as regards performance of the Agreement, use of the Products, the INFORMATION, the RESULTS and their transport / transfer are the sole responsibility of the Beneficiary which accepts such.

7.4 The Beneficiary has sole responsibility for ensuring that the use of the PRODUCTS, the INFORMATION and the RESULTS comply with applicable legislation and regulations and, in particular, but non-exhaustively, regulations applying to handling, warehousing and use of biological or hazardous materials.

7.5 In the event of the supply of PRODUCTS or INFORMATION belonging to several Relevant Members of the GIS CN, the latter shall individually assume their noted liability in respect of the PRODUCTS and INFORMATION which they provide,

within the limits set forth in the previous paragraphs. No joint and several liability whatsoever (legal, financial, etc.) may be invoked by the Beneficiary in the event of a dispute.

ARTICLE 8 – TERMINATION – EXPIRY

8.1 The Agreement may be terminated by one of the Parties should another Party breach one or more of the obligations set forth herein. Such termination shall take effect two (2) months after the plaintiff Party sends a registered letter with acknowledgment of receipt setting-out the reasons for the complaint unless, within said timeframe, the defaulting Party were to have complied with its obligations or has provided proof that it is unable to do so owing to an event of force majeure. The exercising of this right of termination does not discharge the defaulting Party from complying with the obligations which it has committed itself to until the effective termination date, without prejudice to payment of the damages owed by the defaulting Party to compensate for the loss which may have been suffered by the plaintiff Party owing to the early termination of the Agreement.

8.2 Following termination for any reason whatsoever, or on the Agreement's expiry date, the Beneficiary undertakes, at the written request of the UGCN or the Relevant Members of the GIS CN, and within the thirty (30) days following said request, to return to the Relevant Members of the GIS CN, or to destroy, the PRODUCTS, documents and other elements containing the INFORMATION which are in its possession.

8.3 Notwithstanding the expiry or termination of the Agreement for any reason whatsoever, the provisions of Articles 5 and 6 shall remain fully effective.

ARTICLE 9- WAIVER

Should a Party fail to invoke a breach by another Party of one of its obligations hereunder, this shall not be construed as a waiver of compliance with the obligation in question in the future.

ARTICLE 10 – ENTIRETY AND LIMITS OF THE AGREEMENT

10.1 The Agreement and its Appendices, which represent an integral part of the Agreement, express the entirety of the Parties' agreement concerning the purpose of the Agreement and take precedence over any and all prior written or oral agreement relating thereto. No general or specific condition set forth in any of the documents sent or provided to the Parties may be incorporated into the Agreement.

10.2 The Agreement may only be modified or extended by means of an amendment signed by the Parties' duly-authorized representatives.

10.3 It is understood that the relationships established between the Parties in respect of this Agreement do not grant any rights other than those mentioned herein.

In particular, it is expressly agreed that the Agreement does not grant the Beneficiary any right over any of the patents of the Relevant Members of the GIS CN, nor any right to use the PRODUCTS and the INFORMATION for any product or process for valuable consideration or commercial purposes.

Moreover, each Relevant Member of the GIS CN shall remain entitled to work with third parties on the PRODUCTS or on scientific projects similar to the WORK SCHEDULE.

ARTICLE 10 BIS - TRANSFER OF THE AGREEMENT

The present Agreement cannot be given up to a third party without prior and written authorization of the Parties.

ARTICLE 10 TER - CONFIDENTIALITY OF THE AGREEMENT

The signature, the existence and the execution of the present Agreement will be kept confidential by the Parties and will not be revealed by the one or the other one of them without the written agreement prerequisite of the other Party

ARTICLE 11 – DISPUTES – GOVERNING LAW

11.1 The Agreement and its Appendices shall be subject to French legislation and regulations.

11.2 In the event of a problem concerning the validity, interpretation or performance of the Agreement, the Parties shall endeavour to settle their disagreement out-of-court.

11.3 In the event of a persistent disagreement, the dispute shall be referred to the French Courts having jurisdiction.

ARTICLE 12 – NOTICES

Any notice required in respect of the Agreement shall be served by registered letter with acknowledgement of receipt sent to the Party in question at the following address:

For the UGCN:
UPS 3035 "*Unité de Gestion de la Chimiothèque Nationale*"
ENSCM
8, rue de l'Ecole Normale
34296 Montpellier cedex 5

For the Beneficiary:

Article 13 – INVALIDITY OF A CLAUSE

If one or more provisions of the Agreement were held to be invalid or declared as such under a treaty, act or regulation, or even following a final decision from a Court having jurisdiction, the other provisions shall keep all their effectiveness and scope. In this case, the Parties shall immediately make the required changes by respecting, insofar as possible, the consensus which existed when the Agreement was signed.

Article 14 - LANGUAGE OF THE AGREEMENT

This Agreement will be the technical draftsman in two versions, in the spirit, in French and in English. In case of problems as regards the interpretation, we shall consider both authentic versions.

Drafted in English, in two (2) originals,

For the CNRS:

Date:

Signature:

For the other Relevant Members of the GIS CN (repeat for each relevant member):

Date:

Signature:

For the Beneficiary

Date:

Signature:

Appendix I List of molecules supplied by the UGCN and of the Laboratories and Relevant Members of the GIS CN, the owners of said molecules.

Appendix II WORK SCHEDULE.

Appendix III Details of costs.