**MATERIALS TRANSFER AGREEMENT**

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| Parties | |
| **Between:** | [Company A],having its registered offices at [ ], (“Transferor”); |
| **And:** | [Company B],having its registered offices at [ ], (“Transferee”); |

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| Agreement: |
| **The Parties agree to transfer a quantity of the Materials for the PURPOSE (as defined below) on the terms and conditions attached to this cover page.** |

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| Background: |
| **A. The Transferor has in its possession a Material that may be of a novel and/or commercially valuable nature.**  **B. The Transferee wishes to obtain a quantity of the Material for use in accordance with the provisions of these terms and conditions.** |

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| Material to be transferred: |
| **Material:**  [Insert description of Material here] |
| **Purpose:**  [Insert Purpose Here] |
| **Holding Location:**  [Insert Holding Location address here] |

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| Return Date: |
| **If no Return Date is stated, then the Term shall be that set out in clause .** |
| [Insert Return Date here] |

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| Special Conditions: |
| [Insert any special conditions here] |

**TERMS AND CONDITIONS:**

1. **DEFINITIONS**

AGREEMENT means this agreement, inclusive of the cover page, these terms and conditions and any attached schedules. In the event of a discrepancy between these Terms and Conditions and the Special Conditions on the cover page, the Special Condition will take precedence.

CONFIDENTIAL INFORMATION means (i) all information and materials relating to the Material or otherwise disclosed pursuant to this Agreement including but not limited to all drawings, specifications, technical information, research and development details, product analysis, compilations, documents, records, notebooks and similar material in any form whatsoever; or (ii) information which is by its nature confidential or which the Transferor advises the Transferee is confidential and shall include but not be limited to the terms of this Agreement. Information shall be deemed confidential whether or not it is identified as such at the time of disclosure.

The term Confidential Information does not include:

1. information which the parties agree in writing to exclude from the terms of this Agreement;
2. information which at the date of this Agreement is in the public domain or subsequently enters the public domain without fault on the part of the Transferee;
3. information that is received in good faith by the Transferee from a third party, which party is lawfully in possession of the same and had the right to disclose that information;
4. information which is, at the date of this Agreement already properly in the possession of the Transferee and can be demonstrated by written record to be previously known to the Transferee; or
5. information which is required to be disclosed to a governmental agency or otherwise by law.

INTELLECTUAL PROPERTY means all intellectual and industrial property rights and interests (including common law rights and interests) including, without limitation:

*Choose subsections that apply <(a) trade marks, applications for trade marks, trade name(s);*

*(b) know-how, being technical and other information, experience or trade secrets;*

*(c) designs whether or not registered or protected by copyright;*

*(d) patents and applications for patents, plant variety rights;*

*(e) copyright material; and*

*(f) other intellectual property*.>

DISCLOSING PARTY means either party who has disclosed Confidential Information to the Receiving Party under this Agreement.

IMPROVEMENT means any improvement, modification or enhancement of the Material, any other Intellectual Property, substances, products, materials, discoveries or inventions created by, or otherwise resulting from, the Transferee’s use of the Material for the Purpose.

RECEIVING PARTY means either party who has received or has otherwise become aware of Confidential Information in respect of or relating to the other party.

1. **OWNERSHIP**
   1. The Material represents a significant investment on the part of the Transferor and shall remain the property of the Transferor including where the Material is incorporated with other material or broken down into any component parts. Nothing in this agreement provides any licence to any Intellectual Property or proprietary rights of the Transferor other than as expressly set out herein;
   2. The Transferee acknowledges that the Material and any Improvements are the absolute property of the Transferor and at all times will remain the absolute property of the Transferor, unless the parties agree otherwise in writing;
   3. All inventions, products, processes and other derivations arising from the Material, whether registerable or not, and any commercial benefits arising therefrom, shall be the sole and exclusive property of the Transferor, and the Transferee shall immediately disclose full details thereof to the Transferor, and shall sign all documents and do all things necessary to enable the Transferor to fully enjoy such sole and exclusive ownership;
   4. The Transferee shall not seek or obtain any intellectual property rights in relation to the Material. Intellectual property rights includes, but is not restricted to, any right under the Patents Act 1953, the Designs Act 1953, the Trade Marks Act 2002, the Copyright Act 1994, the Plant Variety Rights Act 1987, and any similar right under law in any country, and includes trade secrets, trade marks, trade names, data, computer software, pending rights, and any other right capable of being described as an intellectual property right.
2. **PROVISION OF MATERIALS**
   1. The Transferor shall provide the Material to the Transferee for the Purpose on the terms and conditions as set out in this Agreement;
   2. The Transferee agrees that it shall:
3. only use the Material at the Holding Location or as otherwise agreed between the parties in writing; and
4. hold, use and dispose of the Material according to all applicable laws, regulations, guidelines, codes of practice or the like, where rights of access by third parties are restricted.
   1. The Transferee agrees that it shall NOT:
5. deal with or use the Material either directly or indirectly for any reason other than the Purpose, except by prior written permission of the Transferor, which may be given or withheld at the Transferor’s absolute discretion;
6. use the Material in or on human subjects or in clinical trials involving human subjects unless it has had the required legal approval from relevant ethical standards or other regulatory body and the prior written approval of the Transferor;
7. use the Material for any form of breeding or propagating or for any form of genetic manipulation, other than as expressly authorised by this Agreement; or
8. make, have, or allow to be made any duplication of the Material other than that reasonably required for the Purpose.
   1. The Transferee shall store the Material in accordance with the instructions (if any) of the Transferor. In the absence of any such instructions, the Transferee shall store the Material:
9. separately from other materials, substances or products; and
10. at a temperature appropriate for the correct storage of such Material.
    1. The Transferee shall limit access to the Material to those of its employees reasonably requiring it for the Purpose.
    2. The Transferee shall not provide access to or use of the Material to any third party without the prior written consent of the Transferor.
11. **TRANSFER OF MATERIAL**
    1. On or as soon as practicable after the execution of this Agreement, the Transferor shall (at the Transferor’s cost) transfer the Material to the Holding Location;
    2. Transfer of the Material will be deemed to have occurred when the Material is either delivered to the Holding Location or to an alternative destination agreed between the parties;
    3. The Transferee shall take full responsibility for risk and liability of the Material from the moment of transfer of the Material;
    4. In the event the Material transferred is incorrect or otherwise damaged, as a result of the transfer and prior to the use by the Transferee, the Transferee shall inform the Transferor as soon as reasonably practicable after discovering such damage. On receiving notice from the Transferee, the Transferor will replace the Material at a time to be agreed between the parties;
    5. The Transferee shall hold and maintain full replacement and indemnity insurance in respect of the Material. The Transferee shall produce evidence of the existence of such insurance cover and the payment of the premiums on the insurance cover to the Transferor upon request.
12. **RETURN OF MATERIALS**
    1. The Material shall be returned to the Transferor or disposed of as directed by the Transferor on or before the Return Date, or upon completion or cessation of any research specified under Purpose if this precedes the Return Date. The Transferor may specify an earlier Return Date by giving not less than 30 days written notice;
    2. Where the Transferor requires the Material and/or Improvements to be returned to the Transferor, the Transferee shall:
13. return the Material and/or Improvements (at the Transferee’s cost) to a destination agreed by the parties;
14. take full responsibility for the Material and/or Improvements until the moment when the Material and/or Improvements are returned to a site agreed between the parties or when the Material and/or Improvements are surrendered to the Transferor or any other person at the request of the Transferor; and
15. replace the Material and/or Improvements (at the Transferee’s cost) where the Material and/or Improvements returned are incorrect or otherwise damaged (after receiving notice from the Transferor as soon as reasonably practicable of such).
16. **INTELLECTUAL PROPERTY**
    1. The parties agree throughout the term of this Agreement:
17. not to cause or permit anything that may damage or endanger the other party’s Intellectual Property or title to such Intellectual Property;
18. to notify the other party of any suspected infringement of their Intellectual Property;
19. to take such reasonable action a party may direct at the expense of that party in relation to such infringement;
20. to compensate the other party for any use by a party of the Intellectual Property otherwise than in accordance with this Agreement;
21. not to use the Intellectual Property otherwise than as permitted by this Agreement;
22. on the expiry or termination of this Agreement, to immediately cease using the other party’s Intellectual Property; and
23. to hold any additional goodwill generated in relation to the other party’s Intellectual Property as bare trustee for that party.
24. **IMPROVEMENTS**

*Choose One:*

*<If at any time during the term of this Agreement the Transferee makes or discovers any Improvements to the Material the Transferee will immediately:*

1. *provide the Transferor with the details of the Improvement;*
2. *acknowledge that the Intellectual Property in any such Improvement and the right to obtain any relevant protection belongs to the Transferor; and*
3. *provide such assistance as the Transferor may reasonably require to obtain that protection.>*

*or*

*<If at any time during the term of this Agreement the Transferee makes or discovers any Improvements to the Material the Transferee will immediately:*

1. *provide the Transferor with the details of the Improvement;* 
   1. *In return the Transferor will:*
2. *acknowledge that the Intellectual Property in any such Improvement and the right to obtain any relevant protection belongs to the Transferee; and*
3. *provide such assistance as the Transferee may reasonably require to obtain that protection.>*
4. **CONFIDENTIAL INFORMATION**
   1. In respect of the Confidential Information each party shall:
5. keep all Confidential Information in the Receiving Party’s possession and treat all Confidential Information as confidential regardless of when disclosed;
6. not use any Confidential Information in any way other than for the Purpose;
7. refrain from making or having made any duplication (in any form whatsoever) of the Confidential Information except insofar as is necessary for the purpose;
8. not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party, as may be applicable, and without first obtaining a Confidentiality Agreement from said third party in terms equivalent to the terms of this Agreement; and
9. not use any of the Confidential Information in any way which would conflict with or be harmful to the interests of the Disclosing Party.
   1. If the Receiving Party becomes aware of the possession, use or knowledge of the Confidential Information by any unauthorised party, then the Receiving Party must;

(a) immediately inform the Disclosing Party; and

(b) at the Disclosing Party’s request and expense, provide all assistance in relation to the unauthorised possession, use or knowledge as the disclosing party requires, unless such unauthorised possession, use or knowledge is the fault of the Receiving Party, in which case such assistance shall be at the Receiving Party’s expense;

* 1. The burden of proof of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the Receiving Party;
  2. At the Disclosing Party’s written request, the Receiving Party will promptly, at the Disclosing Party’s election, return to the Disclosing Party or destroy or erase, or procure the destruction or erasure of, any or all of the Confidential Information.

1. **LIABILITY AND INDEMNITY**
   1. The parties acknowledge and agree that the Material is experimental in nature and may have hazardous properties;
   2. The Transferee is entering into this Agreement solely in reliance on the Transferee’s own judgement, and the Transferor makes no representations and extends no warranties of any kind to the Transferee in relation to the Material. In particular, the Transferor does not warrant that:
2. the Material is fit for any particular purpose, including the Purpose; and
3. that the use of the Material will not infringe any patent, copyright, trade mark or other property rights in the Material of a third party.
   1. The Transferee shall indemnify the Transferor against all liabilities, costs (including full costs between solicitor and client), losses, claims or demands incurred by the Transferor arising out of or incidental to the storage, use or disposal of the Material and the Transferee’s non-compliance with this Agreement;
   2. The Transferee shall be responsible for obtaining any customs or regulatory approvals, or similar, needed in relation to entry of the Material into the Transferee’s country and/or to transfer of the Material within that country. The Transferee shall advise the Transferor of any steps that the Transferor needs to take in respect of entry of the Material into the Transferee’s country and/or in respect of transfer of the Material within that country, and the Transferor may decline to transfer the Material if the Transferor is unable or unwilling to take those steps. Costs incurred by the Transferor in transferring the Material to the Transferee shall be paid by the Transferee, in advance if so requested by the Transferor.

*Optional Clauses*

* 1. *<Notwithstanding anything else in this Agreement, the Transferor will not be under any liability whatsoever to the Transferee for any loss of profit, loss of business opportunity, loss of bargain or exemplary damages or losses suffered by the Transferee arising out of or flowing from any breach of contract, any pre-contractual misrepresentation, alleged infringement of rights in relation to the Material or other dispute arising out of these terms whether actionable in contract, tort (including negligence) equity or otherwise.>*
  2. *<In the event that the Transferor is found liable, the Transferor’s liability shall not exceed the monetary value of the Material to which the liability relates.>*

1. **TERM AND TERMINATION**
   1. This Agreement takes effect from the date of last signature and shall remain in force until the return of the Materials, unless terminated pursuant to the following Clauses 10.2 and 12.3.2 ;

* 1. This Agreement will terminate on the earlier of:

1. either party providing 30 days written notice to the other of termination of this Agreement for whatever reason;
2. a party committing a material breach of the terms and conditions of this Agreement and such breach, if capable of remedy is not remedied to the other party’s satisfaction within 14 days of receipt of written notice of such breach from the other party; or
3. the Materials are returned pursuant to clause 5 of this Agreement.
   1. The termination of this Agreement will not affect the rights and obligations of the parties intended to survive termination, including clauses 2, 6, 8, 9 and 12;
   2. Where this Agreement terminates:
4. the Transferee will immediately cease to use the Material and any Improvements; and
5. the Transferor will direct the Transferee to either destroy any Material and/or Improvements that it holds or return them to the Transferor within 14 days of termination.
6. **DISPUTE RESOLUTION**
   1. Any dispute concerning this Agreement shall be settled by full and frank discussion between the parties;
   2. In the absence of any agreement within 30 days of any notification of any dispute, the matter shall be referred to a single arbitrator to be agreed upon between the parties;
   3. Failing agreement upon an arbitrator within 14 days, the dispute shall be referred to an arbitrator to be nominated by the President of the area District Law Society and the dispute settled in area, New Zealand, in accordance with the provisions of the Arbitration Act 1996 or any re-enactment of it;
   4. The parties agree that any decision by the arbitrator shall be fully and finally binding on the parties, all of whom waive their respective rights to further appeal or redress in any court or tribunal, except solely for the purpose of obtaining execution of the judgment rendered by the arbitration. The parties agree that all costs and expenses of the arbitration proceeding shall be borne in accordance with the decision of the arbitrator.
7. **GENERAL CLAUSES**
   1. The obligations and liabilities of the Transferee under this Agreement continue notwithstanding return of the Material to the Transferor;
   2. Continuing Obligations: The parties will not circumvent or attempt to circumvent the provisions and/or intent of this Agreement;
   3. Force Majeure Event means an act of God, nature, war or government, any civil disturbance, or any labour disruption;
      1. Neither party shall be liable for any failure or delay in complying with any obligation imposed on it under this Agreement if:
8. the failure or delay arises from a Force Majeure Event;
9. that party, on becoming aware of the Force Majeure Event, promptly notifies the other party advising of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
10. that party uses its best endeavours:
11. to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement; and
12. (ii) to perform that party's obligations under this Agreement on time despite the Force Majeure Event.
    * 1. Termination: If a party fails substantially to meet an essential obligation under this Agreement continuously for three months as a result of a Force Majeure Event despite meeting all its obligations under this clause, the other party may give one month’s notice in writing terminating this Agreement;
    1. No Warranty: The Disclosing Party provides no representation or warranty (express or implied) with respect to any Confidential Information other than that it has the right to disclose such Confidential Information to the Transferee;
    2. No Assignment: The Transferee may not assign, transfer, novate or subcontract this Agreement or any rights or obligations under this Agreement, without the prior written consent of the Transferor;
    3. No Partnership: Nothing in this Agreement creates a partnership, agency, or joint venture between the Transferor and the Transferee;
    4. Waiver: A failure by a party to enforce a provision of this Agreement will not constitute a waiver of any right to future enforcement of that or any other provision.
    5. Severability: Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement will remain binding upon the parties;
    6. Entire Agreement: This Agreement represents the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges all prior discussions between them.
    7. Governing Law: This Agreement will be subject to and interpreted in accordance with the laws of New Zealand;
    8. Counterparts: This Agreement may be executed in counterparts (which may be facsimile copies) and all of which, when taken together constitute the one document.

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| **AUTHORISED SIGNATORY [Company A]** |  | **AUTHORISED SIGNATORY [Company B]** |
| Signature |  | Signature |
| Full Name (Please Print) |  | Full Name (Please Print) |
| Signing on behalf of (Name of Party) |  | Signing on behalf of (Name of Party) |
| Position |  | Position |
| **WITNESS** |  | **WITNESS** |
| Witness Signature |  | Witness Signature |
| Full Name (Please Print) |  | Full Name (Please Print) |
| Occupation |  | Occupation |
| Address |  | Address |
| Date |  | Date |