MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement is made by and between:

(1) XXX party, address (hereinafter referred to as "**XXX**"), and

(2) XXX party, address (hereinafter referred to as "**XXX**"),

and

(3) The World Health Organization, having its headquarters at 20 avenue Appia, 1211 Geneva 27, Switzerland (hereinafter referred to as "**WHO**"),

[Hereinafter referred to collectively as the "**Supplier**"]

On the one hand,

And

XXX recipient party.

- Representative's name: XXX
- Address: XXX

[Hereinafter referred to as the "**Recipient**"]

On the other hand.

XXX supplier parties and the Recipient shall be referred to collectively as the "Parties" and individually as a "Party".

WHEREAS:

- XXX party is an … *provide brief description* …
- XXX party is an … *provide brief description* …
- WHO is coordinating, … *provide brief description* …

- Recipient is a … *provide brief description of recipient and role in this collaboration . . .*

- *Provide brief description of the collaboration and the role of each party and how they will work together . . .*

- *Define the purpose and scope of the collaboration associated with this MTA. . . ("Purpose" or "Project").*

- The Supplier wishes to collaborate with the Recipient in the implementation of the *Purpose/Project* In particular, Recipient has agreed to conduct the abovementioned laboratory analyses, as more fully described in Annex 1.

- The Parties therefore wish to enter into this agreement setting out the general terms and conditions pursuant to which the Supplier agrees to provide Material, Data Set(s) and other Confidential Information (as hereinafter defined) to the Recipient for the exclusive purpose of the Project (the "Agreement").

NOW, THEREFORE, in consideration of the mutual promises set forth, the Parties hereto agree as follows:

1. DEFINITIONS

In this Agreement, the following capitalised terms, whether used in the singular or plural, shall have the meanings set forth below:

"Agreement" means this Material Transfer Agreement and all its annexes;

"Confidential Information" means any and all information (in any form whether verbal, written, visual, electronic or otherwise) provided in the context of this Agreement and described by the Party providing it as confidential, and includes the Material and Data Set(s) as well as any information relating thereto.

"Effective Date": the last date of signature of the Agreement by the Parties.

"Host Country" is XXX (*formal name of country*) where Material and Data Set(s) have been collected or originate from.

"Human Biological Material" means any material that comes from a person (e.g., blood, body fluids, tissue samples, microbiological isolates, urine, excrements, strains etc.).

"Party" shall have the meaning set forth in the introductory paragraph;

"Intellectual Property" means any patentable inventions or any other proprietary rights that are conceived or reduced to practice by or on behalf of Recipient, in connection with or as a result of the Project (hereafter "Inventions"), and (ii) any data, results, know-how, and other intellectual property that are not Inventions and that are generated by or on behalf of Recipient, in connection with or as a result of the Project(hereafter "Know-How").

"Materials and Data Set(s)" shall have the meaning set forth in the recitals;

"Personal Data" includes any subset of health information, including demographic information that identifies an individual, directly or indirectly (or there is a reasonable basis to believe that the information can be used to identify an individual); and in particular by reference to an identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity (e.g. name and first name, address; GPS coordinates; contact details; in some cases date of birth, biometrics or medical data, initials can also be an identifier);

"Publication" means any abstracts, reports, external communication, websites, presentations or other peer-reviewed scientific publications that contain Results as hereinafter defined;

"Results" means the information, data, results, Intellectual Property generated in connection with or as a result of the Project.

"Project" shall have the meaning set forth in the recitals;

"Representative(s)" means directors, officers, employees, agents, contractors, consultants or affiliated students of the Recipient who are directly engaged in performing the Project under the control of the Recipient;

"Third Party" means any entity or person other than the Parties.

2. SUPPLY OF MATERIAL AND DATA SET (S)

2.1 The Supplier may from time to time provide to the Recipient Material and Data Set(s) and other Confidential Information pursuant to the terms and conditions of this Agreement.

2.2 In order to ensure that medical confidentiality and privacy of patients are fully respected, Parties agree that Material and Data Set(s) and the other Confidential Information shall contain no Personal Data. The Supplier shall ensure that Material and Data Set(s) and the other Confidential Information contain no Personal Data *prior* to any disclosure or transmission of Material and Data Set (s) and other Confidential Information.

3. AUTHORISED USE AND ACCESS OF MATERIAL AND DATA SET (S) AND OTHER CONFIDENTIAL INFORMATION

3.1 The Recipient shall hold and maintain in confidence all Confidential Information . In this connection, the Recipient shall:

i) take all reasonable measures to keep such Confidential Information confidential, including taking such action as may be appropriate to prevent the unauthorized access, use or disclosure of the Confidential Information;

ii) use the Confidential Information **solely** for carrying out the Project and only to the extent that is reasonably necessary to achieve the Project objectives and not for any other purpose. (Any other use or transfer to any Third Party (other than Representatives pursuant to Section 3.3 below) of the Material and Data Set(s) or the other Confidential Information by the Recipient requires the prior and written approval of the Supplier and, as required by applicable laws, the competent authorities in the Host Country.); and

iii) only disclose the Confidential Information to those persons who have a need to know or are authorized to receive the Confidential Information under the terms of this Agreement, and who are bound by similar obligations of confidentiality and restrictions on use as contained herein.

3.2 In addition, the Recipient acknowledges and agrees that the use or transfer of Material and Data Set(s) or the other Confidential Information may require the prior authorization of competent authorities in the Host Country, including with respect to Project that are not regulated as medical research in the country of the Recipient or that do not require prior authorization under the legislation of the country of the Recipient. Supplier shall use reasonable efforts to obtain any required authorizations as needed for the Project prior to sending Material and Data Set(s) or other Confidential Information to Recipient or Recipient's designated subcontractor for the Project. Without limitation to the provisions of the preceding sentences, the Recipient agrees not to use or store the Material and Data Sets at any facility outside of the control of the Recipient unless authorized by Supplier.

3.3 The Recipient shall only authorise access to the Confidential Information to its Representatives whose knowledge is necessary to enable the Recipient to carry out the Project, and shall guarantee that such use by its Representatives shall be consistent with the assurances and obligations set forth in this Agreement. Prior to disclosing any Confidential Information to any of its Representatives, the Recipient shall obtain their written agreement and undertaking to maintain and preserve the confidentiality of the Confidential Information and to comply with each of the terms and provisions of the Agreement.

3.4 Notwithstanding the foregoing, there shall be no obligations of confidentiality or restrictions on use if and to the extent the Recipient can demonstrate that:

(i) the information is publicly available, or becomes publicly available otherwise than by action of the Recipient; or

(ii) the information was already known to the Recipient (as evidenced by its written records) prior to its receipt hereunder; or

(iii) the information was received, without an obligation of confidentiality, from a third party not in breach of an obligation of confidentiality, or

(iv) the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with an order of a competent court or public authority, provided that the recipient will in such event promptly notify the Supplier in writing of such obligation and shall provide adequate opportunity to the Supplier to object to, or restrict, such disclosure or request confidential treatment thereof.

3.5 Unless different period is stipulated by the Supplier, the obligations of this Article 3 shall continue for a period of ten years after the expiration or termination of this Agreement.

3.6 The Recipient shall promptly report in writing to the Supplier any use or disclosure of the Confidential Information not provided for by this Agreement of which it becomes aware. The Supplier in its sole discretion may require the Recipient to: (a) promptly investigate and respond to the Supplier's concerns regarding any alleged disclosure; (b) promptly resolve any problems identified by the investigation; (c) submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and/or (d) require that all Material, Data Set(s) and other Confidential Information (including any document created by or on behalf of Recipient and containing Confidential Information) be immediately returned or destroyed.

4. OBLIGATIONS OF THE RECIPIENT

4.1 The Recipient agrees:

- To establish appropriate administrative, legal, technical, and physical safeguards to comply with each of the terms and provisions of the Agreement; and
- To respect all and any regulations of the Host Country applicable to the use of the Material and Data Set(s) and the other Confidential Information; and
- To prevent unauthorized use or access to Material and Data Set(s) and other Confidential Information.

4.2 The Recipient shall not attempt to identify or contact any specific individual or groups of individuals or medical institutions whose data or Human Biological Material is included in the Material and Data Set(s) or other Confidential Information.

4.3 The Supplier shall transfer the Materials and Data Set(s) and other Confidential Information "as is", which Recipient acknowledges and agrees, and the Supplier shall not make, and hereby disclaims, any and all representation or warranty, either implied or express, with respect to:

(i) The accuracy and completeness of the Confidential Information;

(ii) The fitness of the Confidential Information for the Project or any other particular purpose; or

(iii) The fact that the use of the Confidential Information will not infringe any proprietary right. Notwithstanding the forgoing, Supplier represents and warrants that to the best of Supplier's

knowledge, Recipient can use the Materials and Data Set(s) and other Confidential Information for the Project in accordance with and subject to the terms of this Agreement.

4.4 Recipient shall arrange for the work on the Project to be conducted . . . . *brief description of the way the Recipient will conduct the work outlined in this agreement and presentation of any sub-contractors if any are involved* . . .

5. INTELLECTUAL PROPERTY

5.1 The Recipient acknowledges and agrees that the ownership of Materials and Data Set(s), in particular of Human Biological Material, may be specifically regulated in the Host Country; such regulations may differ from those applicable in the country of the Recipient. Without limitation to the provisions of the preceding sentence, the parties agree that the Recipient does not obtain any right, title, or interest in any of the Materials and Data Set(s) furnished by the Supplier.

5.2 The Recipient agrees that it shall not seek Intellectual Property rights of any kind, or any other protection in respect of the Materials and Data Set(s), other Confidential Information or any Results, without the Supplier's prior written consent.

6. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS

6.1 Except as may otherwise be provided in this Agreement, the Recipient shall comply with all laws and governmental rules, regulations, good practices and guidelines which are applicable to the Materials and Data Set(s) or the use thereof.

6.2 The Supplier shall be responsible for obtaining all applicable Host Country and international ethical, regulatory and legal approvals that are necessary to carry out the Project, including with respect to the use of the Materials and Data Set(s) or other Confidential Information for the Project in accordance with this Agreement. The Supplier shall be responsible for complying with all Host Country requirements in order to send the Material and Data(s) to Recipient for use in the Project.

6.3 Each Party shall strictly respect the technical instructions for the safe transport of dangerous goods by air published by the International Civil Aviation Organization (ICAO) and all and any applicable Host Country legislation relative to Dangerous Goods Regulations while handling and transporting Material and Data Set(s).

7. PUBLICATIONS

Subject to the provisions set forth in this Article 7 (including without limitation the protection of Confidential Information), the Parties may publish the Results.

7.1 Any Publication of the Results by the Recipient shall be placed under embargo until the Supplier has (i) published the Results in a peer review Publication or (ii) presented the Results at a research conference, or twelve (12) months has pasted from the completion of the Project, whichever occurs first.

7.2 The Recipient shall not prevent the Supplier from releasing a Publication (including disclosing any information relating to the Project and/or the Results) provided that the Recipient shall be provided by the Supplier with the Publication it intends to release at least thirty (30) days before submission for publication in a journal or presentation at an international meeting or other public disclosure. The Recipient will have the right to examine the Publication before it is printed, disseminated or otherwise disclosed, and to make comments within seven (7) days from the receipt of such copy; such Recipient comments shall be given due consideration by the Supplier as long as they are received in sufficient time so as not to delay the publication or presentation.

7.3 In order to avoid prejudicing the confidentiality of any information (including the Materials, Data Set(s) and other Confidential Information), the Recipient shall transmit to the Supplier any material intended to be published at least thirty (30) days before a proposed publication is submitted to any editor, publisher, referee or meeting organizer. In the absence of an objection by the Supplier within that 30-day period, concerning prejudice to the confidentiality of any information, the publication may proceed. The Recipient shall consider seriously and in good faith any other comments offered by the Supplier as long as they are received in sufficient time so as not to delay the publication or presentation.

7.3 Any Publication as referred to above shall duly acknowledge each of the Parties (unless a Party indicates that it does not wish to be associated with any such Publication). In addition to review of the content of publications as referred to above, each Party shall have the right to review the acknowledgement and request reasonable changes to the use of its name, or request that its name be deleted altogether.

7.4 The Parties are encouraged to produce and broadly disseminate electronic versions of important Publications produced as a result of the Project.

8. RESULTS SHARING

The Recipient shall provide the Supplier with the Results within four (4) weeks of Recipient's receipt of the *. . . provide a point when the Recipient must provide to the Supplier results . . .*. Notably, the Recipient shall provide to the Supplier a copy of any report containing Results. The Supplier shall be entitled to use the content of the reports without restriction.

9. FINANCIAL CONTRIBUTIONS OF THE PARTIES

Unless expressly specified otherwise in the Agreement, each Party will be responsible for covering all the costs it incurs in the set up and implementation of the activities under this Agreement. Any given

expense or cost can only be committed in writing by the Party responsible for paying the cost in question. In no case can one Party commit an expense on behalf of another Party, without the prior written consent of that other Party.

10. LIABILITY

The Recipient hereby agrees to indemnify the Supplier and their respective affiliates as the case may be from and against all claims, demands, causes of action, damages or costs (including without limitation reasonable outside attorneys' fees and all costs associated with the defense of the matter) arising out of (i) the breach by the Recipient or its Representatives of any provisions of this Agreement, (ii) the use by or on behalf of Recipient of the Material and Data Set(s) or other Confidential Information, except to the extent any such claims, demands, causes of action, damages or costs have been caused by the breach by the Supplier of any provisions of this Agreement.

11. TERM AND TERMINATION

11.1 This Agreement will enter into effect on the Effective Date and will remain in effect until the completion of the Project, or one yearr from the Effective Date, whichever is the earlier.

11.2 In the event that this Agreement is breached by the Recipient, the Supplier may in its sole discretion, without prejudice to any other remedies, a) immediately cease to supply Materials, Data Set(s) and other Confidential Information upon written notice to the Recipient and/or b) request that the Recipient takes appropriate steps to cure such breach, which shall be to their satisfaction. In the event Recipient fails to cure such breach within thirty (30) days of receipt of Supplier's written notice, Supplier shall be entitled to terminate this Agreement with immediate effect.

11.3 On completion of the Project or earlier termination of this Agreement, Recipient (including Recipient's designated sub-contractor as the case may be) shall immediately cease using the Materials, Data Set(s) and other Confidential Information:

- *Provide detailed guidance as to what the Recipient is to do with the Material and Data Sets and other confidential information upon termination of completion of this Agreement . . .* .store the Material and Data Sets and other documents containing any Confidential Information in accordance with all applicable laws and generally acceptable industry standards for (i) a period of five (5) years after receipt of the last shipment of Materials, Data Set(s) and/or other Confidential Information. After the above-mentioned storage duration of Material and Data Set(s) by the Recipient, the Recipient shall arrange for the lawful destruction and disposal of all remaining Material and Data Sets and other documents containing any Confidential Information; in case of destruction, the Recipient shall provide the Supplier with the written certification of such lawful destruction and disposal.

11.4 The definitions in Article 1 and Articles 3, 4, 5, 7, 8, 10, this Article 11 and Articles 12, 13, and 14 shall survive the expiration or early termination (for whatever reason) of this Agreement.

12. NO USE OF PARTIES' NAMES AND EMBLEMS

No Party will use the name and/or emblem of any other Party for publicity purposes, without the prior written consent of that other Party.

13. NO REPRESENTATION, PARTNERSHIP OR AGENCY

The Parties are not entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Agreement constitutes an agency, partnership or any other kind of formal business grouping or entity between the Parties.

14. MISCELLANEOUS

Dispute resolution. Any dispute relating to the interpretation or application of this Agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

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Entire Agreement. This Agreement constitutes the final and entire agreement between the Parties. This Agreement may not be modified except in writing signed by a duly authorized representative of each Party.

No Assignment. Other than to an affiliate, a Party may not assign or transfer the Agreement, the rights and obligations hereunder, or any interest herein, without the other Parties' express prior written consent.

Waiver. The failure of a Party to require the performance of a term or obligation or to exercise any right under this Agreement or the waiver of any breach hereunder shall not prevent subsequent enforcement of such term or obligation or exercise of such right or the enforcement at any time of any other right hereunder, or be deemed a waiver of any subsequent breach of the provision so breached, or of any other breach hereof.

Severability. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.

Headings. The captions and headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

No Third Party rights. Except where expressly stated in this Agreement to the contrary, no person who is not a party to this Agreement has any rights under any relevant law or legislation to enforce or enjoy the benefit of any term of this Agreement.

Privileges and immunities of WHO. Nothing contained herein shall be construed as a waiver of any of the privileges and immunities enjoyed by WHO under national or international law, and/or as submitting WHO to any national court jurisdiction.

Annexes. In the event of any inconsistency or conflict between this Agreement and any of the Annexes, this Agreement shall prevail.

Executed in XX originals,

Name and Title:	
Organization:	
Signature:	
Date:	

Name and Title:	
Organization:	
Signature:	
Date:	

Name and Title:	
Organization:	
Signature:	
Date:	

Name and Title:	
Organization:	

Signature:	
Date:	

ANNEX 1:

ANNEX 2:

ANNEX 3: