

**MATERIAL TRANSFER AGREEMENT**

by and between

\_\_\_\_\_ LIMITED

and

UNIVERSITY OF PISA

DATE:

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## MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement (the “**Agreement**”) is made effective as of the \_\_\_\_\_ day of March 2010 (the “**Effective Date**”) by and between

- (1) \_\_\_\_\_ LIMITED, a company incorporated in \_\_\_\_\_ under no. \_\_\_\_\_ whose registered office is at \_\_\_\_\_
- (2) UNIVERSITY OF PISA whose registered office is in Lungarno Pacinotti n. 43-44, 56100 Pisa Pisa”).

### Recitals

- (A) WHEREAS, Pisa owns or otherwise controls the Materials (as defined below); and
- (B) WHEREAS, \_\_\_\_\_ desires to obtain samples of the Materials and use such samples for the purpose of conducting the Research (as defined below); and
- (C) WHEREAS, Pisa is willing to furnish the Materials to \_\_\_\_\_, upon the terms and conditions set forth herein.

### Agreement

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

## 1 Definitions

Unless otherwise specifically provided in this Agreement, the following terms shall have the following meanings:

- 1.1 “**Affiliates**” means, with respect to a Person, any Person that controls, is controlled by or is under common control with such first Person. For purposes of this definition only, “control” means (a) to possess, directly or indirectly, the power to direct the management or policies of a Person, whether through ownership of voting securities or by contract relating to voting rights or corporate governance, or (b) to own, directly or indirectly, more than fifty percent (50%) of the outstanding voting securities or other ownership interest of such Person.
- 1.2 “\_\_\_\_\_ **Results**” means any Results whether or not patentable other than Pisa Results.
- 1.3 “**Confidential Information**” means any information relating to the Research, including the Results, and any information or material disclosed by or on behalf of Pisa to \_\_\_\_\_ after the Effective Date relating to the Materials, including, without limitation, any information relating to regulatory documentation, clinical studies and tests performed on the Materials, disclosed in any form including, without limitation, oral and written form, software stored and samples provided.
- 1.4 “**Loss**” means any and all liabilities, claims, demands, causes of action, damages, loss and expenses, including interest, penalties, and reasonable lawyers’ fees and disbursements.
- 1.5 “**Materials**” means those materials listed in Schedule 1 hereto, which are subject to patent application n. \_\_\_\_\_-, in the aggregate quantities specified in Schedule 1, and any associated know-how and data that is transferred to \_\_\_\_\_ by Pisa after the Effective Date.
- 1.6 “**Parties**” means \_\_\_\_\_ and Pisa and “**Party**” means either of \_\_\_\_\_ or Pisa.
- 1.7 “**Person**” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust,

incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

- 1.8 **“Research”** means those tests and studies set forth in Schedule 2 hereto carried out by \_\_\_\_\_.
- 1.9 **“Researchers”** means all employees or agents of \_\_\_\_\_ who are engaged in carrying out the Research.
- 1.10 **“Results”** means any ideas, inventions, discoveries, know-how, data, documentation, reports, materials, writings, designs, computer software, processes, principles, methods, techniques and other information, recorded in any form, that are discovered, conceived, reduced to practice or otherwise generated as a direct result of the Research by or on behalf of \_\_\_\_\_ (whether solely or jointly with others), and any patent, trade secret, copyright or other intellectual property rights pertaining to any of the foregoing, provided, however, that “Results” shall exclude any of the foregoing that is exclusively referable to research methods and technologies owned or controlled by \_\_\_\_\_ prior to the Effective Date or subsequently acquired or generated outside the scope of this Agreement.
- 1.11 **“Pisa Results”** means any Results, whether or not patentable, which are directly related to the Materials.

## 2 Transfer of Materials

- 2.1 Transfer of Materials. Pisa agrees to transfer with a non exclusive licence to \_\_\_\_\_ the Materials to allow \_\_\_\_\_ to carry out the Research.
- 2.2 DISCLAIMER. ALL MATERIALS PROVIDED BY PISA ARE PROVIDED “AS IS” AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW PISA HEREBY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER TERMS, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, WITH RESPECT TO THE MATERIALS, INCLUDING ANY REPRESENTATION OR WARRANTY OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.
- 2.3 NO LIABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PISA SHALL NOT BE LIABLE TO \_\_\_\_\_, OR ANY OF ITS EMPLOYEES OR AGENTS, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE, WITH REGARD TO THE PROVISION OF MATERIALS TO \_\_\_\_\_. PISA SHALL ALSO NOT BE LIABLE FOR DAMAGES DERIVING FROM THE USE OF THE MATERIALS BY \_\_\_\_\_ OR FOR ANY PATENT INFRINGEMENT THAT MAY RESULT FROM \_\_\_\_\_’S USE OF THE MATERIALS FOR THE RESEARCH.

## 3 Conditions of Transfer

- 3.1 Permitted Use of Materials. The Materials transferred pursuant to this Agreement (a) shall be used by \_\_\_\_\_ only for the Research and shall at all times remain solely under the control of \_\_\_\_\_; (b) shall not be used by or delivered by \_\_\_\_\_ to or for the benefit of any third party without the prior written consent of Pisa; (c) shall not be used by \_\_\_\_\_ in research or testing involving human subjects; and (d) shall not be used by \_\_\_\_\_ in any product for commercial use or distribution.
- 3.2 No Sale or Transfer. The transfer of the Materials by Pisa to \_\_\_\_\_ shall not constitute a sale of the Materials or an option or license in or to any rights, title or interest in or to the Materials.

- 3.3 Experimental Nature. \_\_\_\_\_ acknowledges (and shall inform the Researchers) that not all of the characteristics of the Materials may be known. \_\_\_\_\_ shall use, and shall cause its Researchers to use, the Materials with prudence and appropriate caution in any experimental work.
- 3.4 Compliance with Law. \_\_\_\_\_ shall use, and shall cause its Researchers to use, the Materials in compliance with all applicable laws, rules, regulations, guidelines and requirements. In accordance with the requirements of the United States law and/or any other applicable national laws governing the shipment of drugs, \_\_\_\_\_ hereby certifies that (a) it is regularly engaged in conducting tests *in vitro* or in animals used only for laboratory research purposes, and (b) the Materials received pursuant to this Agreement shall actually be used only for tests *in vitro* or in animals used only for laboratory research.
- 3.5 Prohibition on Structure Determination. \_\_\_\_\_ agrees that neither it nor any of its Researchers shall attempt to determine the structure of the Materials (e.g. chemical structure, amino acid sequence or nucleotide sequence) or otherwise characterise the Materials without the prior written consent of Pisa.
- 3.6 Animal Care. \_\_\_\_\_ agrees that, insofar as the Research involves the use of animals, the Research shall be conducted in accordance with the \_\_\_\_\_ International Policy on Animal Care and Use.

#### **4 Disclosures and Reports**

\_\_\_\_\_ shall keep Pisa informed of all uses that \_\_\_\_\_ makes of the Materials. \_\_\_\_\_ shall submit a final written report to Pisa within thirty (30) days of the completion of the Research, which report shall include a summary of the Results as specifically listed in the Schedule 2 - Research. \_\_\_\_\_ acknowledges and agrees that Pisa has the right to independently use or in any way exploit these Results.

#### **5 Ownership of Results and Materials**

- 5.1 Ownership of Results. \_\_\_\_\_ shall, and shall cause the Researchers to, make full disclosure to Pisa of all Results. The Parties agree that Pisa (or such Person as Pisa may designate) shall own all right, title and interest in and to all Pisa Results and that \_\_\_\_\_ (or such Person as \_\_\_\_\_ may designate) shall own all right, title and interest in and to all \_\_\_\_\_ Results.

\_\_\_\_\_ hereby assigns and transfers, and shall cause the Researchers to assign and transfer, without additional consideration, to Pisa (or its designee) all right, title and interest in and to any and all Pisa Results throughout the world. Without limiting the generality of the foregoing, the Parties agree that to the extent any Results are copyrightable, \_\_\_\_\_ (or its designee) with respect to \_\_\_\_\_ Results and Pisa (or its designee) with respect to Pisa Results, shall be the sole owner of all copyrights therein.

- 5.1 Ownership of Materials. Pisa shall own and retain all right, title and interest in and to the Materials.

#### **6 Confidentiality and Non-Disclosure**

- 6.1 Confidentiality Obligations. From the Effective Date and for five (5) years thereafter, \_\_\_\_\_ shall (a) only use the Confidential Information for the purpose of carrying out the Research, and (b) keep confidential and not publish, make available or otherwise disclose Confidential Information, except to its directors, officers, employees, advisors or representatives of \_\_\_\_\_ and its Affiliates with a need to know such Confidential Information to meet the said purpose and who are bound by confidentiality and non-

- use obligations in all material respects equal to those undertaken by \_\_\_\_\_ hereunder. \_\_\_\_\_ will maintain Confidential Information consistent with the policies and procedures that \_\_\_\_\_ uses to protect its own confidential information of a similar nature and will notify Pisa immediately, and cooperate fully, at Pisa's reasonable request, upon \_\_\_\_\_'s discovery of any loss or compromise of the Confidential Information.
- 6.2 Exceptions. \_\_\_\_\_'s obligations in Section 6.1 will not extend to any Confidential Information: (a) that is or hereafter becomes part of the public domain without breach of this Agreement; (b) that is received from a third party, other than an Affiliate of Pisa, not bound by confidentiality towards Pisa or its Affiliates; (c) that was already known to \_\_\_\_\_ prior to receipt from Pisa; or (d) that is developed by \_\_\_\_\_ without use or reference to the Confidential Information.
- 6.3 Disclosures Required by Law. This Agreement will not be deemed to restrict either Party from complying with a lawfully issued governmental order or other legal requirement to produce or disclose Confidential Information; provided, however, that \_\_\_\_\_ shall promptly notify Pisa upon learning of such order or requirement, to enable Pisa to oppose the order or obtain a protective order, and the Parties shall cooperate to a reasonable extent with one another in such proceedings. If \_\_\_\_\_ is thereafter required to disclose Confidential Information, Pisa and \_\_\_\_\_ will endeavour to agree to a mutually satisfactory means to disclose such information.
- 6.4 Competitive Programs. Pisa acknowledges and agrees that \_\_\_\_\_ (a) conducts research, development, manufacturing and marketing programs and businesses that may be competitive with Pisa's program to which the Materials relate ("**Competitive Programs**"), and (b) now possesses or may independently develop information and other materials that may be similar to the Confidential Information disclosed by Pisa to \_\_\_\_\_ ("**Similar Information**"). Nothing in this Agreement shall be construed to preclude \_\_\_\_\_ from (i) conducting the Competitive Programs, or (ii) using or in any way exploiting the Similar Information. In mutual terms, \_\_\_\_\_ reciprocally acknowledges and agrees that Pisa (a) conducts research, development, manufacturing and marketing programs and businesses that may be competitive with \_\_\_\_\_'s program to which the Materials relate ("**Pisa Competitive Programs**"), and (b) now possesses or may independently develop information and other materials that may be similar to the Confidential Information disclosed by Pisa to \_\_\_\_\_ ("**Pisa Similar Information**"). Nothing in this Agreement shall be construed to preclude Pisa from (i) conducting the Pisa Competitive Programs, or (ii) using or in any way exploiting the Pisa Similar Information..
- 6.5 Press Releases and Use of Name. Each Party shall keep the existence of, the terms of and the transactions covered by this Agreement confidential and shall not disclose such information to any other Person through a press release or otherwise, or mention or otherwise use the name, insignia, symbol, trademark, trade name or logotype of the other Party or its Affiliates in any manner without the prior written consent of the other Party in each instance (which shall not be unreasonably withheld). The restrictions imposed by this Section 6.4 will not prohibit any Party from making any disclosure identifying the other Party that is required by applicable law, rule or regulation or the requirements of a national securities exchange or another similar regulatory body, in which event such Party (a) may disclose only that portion of such information that is legally required to be disclosed and shall exercise its reasonable best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the information so disclosed and (b) shall notify the other Party prior to making such disclosure. AstraZeneca agrees that, during each disclosure of the Results of the research conducted on the Materials provided by Pisa, \_\_\_\_\_ will mention the name of Pisa as the patent holder.

## 7 Termination

- 7.1 Term and Termination. This Agreement shall commence upon the Effective Date and shall continue until the Research is completed and in no event shall the Research be completed later than sixty (60) days after the Effective Date. If additional time is required to complete the Research, the Parties may agree to extend the Research period.
- 7.2 Effect of Termination. Upon termination of this Agreement \_\_\_\_\_ shall promptly cease performing the Research. The expiration or termination of this Agreement shall be without prejudice to any rights or obligations of the Parties that may have accrued prior to the termination and, except as otherwise expressly provided herein, shall not limit any rights or remedies which may be available by law or otherwise. Upon termination or expiration of this Agreement, \_\_\_\_\_ shall promptly (a) at Pisa's option, either destroy or return to Pisa all Materials, provided that in the case of the destruction of the Materials, \_\_\_\_\_ shall certify in writing to Pisa that such Materials have been destroyed, and (b) at Pisa's option, either destroy or return to Pisa all other Confidential Information received from Pisa, provided, however, that \_\_\_\_\_ shall be permitted to retain one copy of such Confidential Information for archival purposes, and (c) provide Pisa with a final written report in accordance with Article 4.
- 7.3 Survival. The provisions of Article 1, Sections 2.2, 2.3, 5.1, 5.1, 6.1, 6.2, 6.3, 6.4, this Section 7.3 and Article 8 shall survive the expiration or termination of this Agreement for any reason.

## 8 Indemnification

In addition to any other remedy available to the Parties, each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its Affiliates and its and their respective officers, directors, partners, shareholders, employees and agents (the "**Indemnified Party**") from and against any and all Loss incurred by the Indemnified Party to the extent resulting from, arising out of, or in connection with, (a) any breach of any covenant in this Agreement by the Indemnifying Party, (b) the inaccuracy or breach of any representation or warranty made by the Indemnifying Party in this Agreement or (c) the enforcement of the Indemnified Party's rights under this Article 8.

## 9 Representations, Warranties and Covenants

Pisa represents, warrants and covenants to \_\_\_\_\_ that (a) it has full power and authority, and has taken all necessary actions and has obtained all necessary authorizations, licenses, consents and approvals required, to execute and perform this Agreement and (b) it has not been debarred or subject to debarment or otherwise disqualified or suspended from performing scientific or clinical investigations or otherwise subjected to any restrictions or sanctions by the FDA or any other governmental or regulatory authority or professional body with respect to the performance of scientific or clinical investigations (a "**Debarred Person**"), and Pisa shall not use in any capacity, in connection with the Research, any Debarred Person.

## 10 Miscellaneous

- 10.1 Assignment. This Agreement may not be assigned by either Party in whole or in part without the prior written consent of the other Party, except that \_\_\_\_\_ without such consent may assign this Agreement and its rights and obligations hereunder to any of its Affiliates or any successor in interest (whether by merger, acquisition, asset purchase or otherwise) to all or substantially all of the business to which this Agreement relates. \_\_\_\_\_ shall always have the right to perform any or all of its obligations and exercise any or all of its rights under this Agreement through any of its Affiliates.



- 10.2 Governing Law, Jurisdiction and Dispute Resolution. This Agreement shall be construed under, governed and interpreted in accordance with the Italian laws under exclusion of its rules relating to conflict of laws. The parties irrevocably submit to the jurisdiction of the Courts of Italy.
- 10.3 Notices. Any notice, request, or other communication permitted or required under this Agreement shall be in writing, shall refer specifically to this Agreement, and shall be deemed given only if hand delivered or sent by an internationally recognised overnight delivery service, costs prepaid, or by facsimile (with transmission confirmed), to the Party to whom notice is to be given at the address set forth in the preamble to this Agreement or at such other address such Party may have provided to the other Party in accordance with this Section 10.4. Such notice, shall be deemed to have been given as of the date delivered by hand or transmitted by facsimile (with transmission confirmed), or on the second business day (at the place of delivery) after deposit with an internationally recognised overnight delivery service, whichever is the earlier.
- 10.4 Relationship of the Parties. The status of a Party under this Agreement shall be that of an independent contractor. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties or, except as otherwise expressly provided in this Agreement, as granting either Party the authority to bind or contract any obligation in the name of or on the account of the other Party or to make any statements, representations, warranties or commitments on behalf of the other Party.
- 10.5 Equitable Relief. A breach by either Party of Sections 3.1, 3.4, and Article 6 will cause irreparable damage and the non-breaching Party will not be adequately compensated by monetary damages. In the event of a breach, or threatened breach, of any of Sections 3.1, 3.4, and Article 6, the non-breaching Party shall be entitled to obtain from any court of competent jurisdiction equitable relief, whether preliminary or permanent, without the need to show irreparable harm or the inadequacy of monetary damages as a remedy and without the requirement of having to post a bond or other security. Nothing in this Section 10.5 is intended, or shall be construed, to limit the Parties' rights to equitable relief or any other remedy for a breach of any provision of this Agreement.
- 10.6 Waiver. A Party's failure to enforce, at any time or for any period of time, any provision of this Agreement, or to exercise any right or remedy shall not constitute a waiver of that provision, right or remedy or prevent such Party from enforcing any or all provisions of this Agreement and exercising any rights or remedies. To be effective any waiver must be in writing. All rights and remedies are cumulative and do not exclude any other right or remedy provided by law or otherwise available except as expressly set forth herein.
- 10.7 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, in any respect, then, to the fullest extent permitted by applicable law and if the rights and obligations of any Party will not be materially and adversely affected: (a) such provision will be given no effect by the Parties and shall not form part of this Agreement, (b) all other provisions of this Agreement shall remain in full force and effect, and (c) the Parties shall use their best efforts to negotiate a provision in replacement of the provision held invalid, illegal or unenforceable that is consistent with applicable law and achieves, as nearly as possible, the original intention of the Parties. To the fullest extent permitted by applicable law, the Parties waive any provision of law that would render any provision in this Agreement invalid, illegal or unenforceable in any respect.
- 10.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement. This Agreement supersedes all prior agreements, whether written or oral, with respect to the subject matter of the Agreement. Each Party confirms that it is not relying on any representations, warranties or covenants of the other Party except as specifically set out in this Agreement. Nothing in this Agreement is intended to limit or exclude any liability for fraud. All Schedules referred to in this Agreement are intended to be and are hereby specifically incorporated into and made a part of this Agreement. No modification will be effective unless in writing and signed by authorized representatives of both Parties.

**Execution**

THIS AGREEMENT IS EXECUTED by the authorised representatives of the Parties as of the date first written above.

SIGNED for and on behalf of

\_\_\_\_\_

\_\_\_\_\_ **Limited**

SIGNED for and on behalf of

**Pisa**

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Signature

Name:

Title: Authorised Signatory  
\_\_\_\_\_

-----  
Signature

Name:

Title: \_\_\_\_\_  
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**Schedule 1 - Materials**

Pisa will deliver \_\_\_\_\_ of a sample denoted as “\_\_\_\_\_” to  
\_\_\_\_\_ for their evaluations, in accordance to what specified in Schedule 2 –  
Research.

**Schedule 2 - Research**