



The research commercialisation office of the University of Oxford, previously called **Isis Innovation**, has been renamed **Oxford University Innovation**

All documents and other materials will be updated accordingly. In the meantime the remaining content of this Isis Innovation document is still valid.

URLs beginning www.isis-innovation.com/... are automatically redirected to our new domain, www.innovation.ox.ac.uk/...

Phone numbers and email addresses for individual members of staff are unchanged

Email : enquiries@innovation.ox.ac.uk

MATERIAL EVALUATION AGREEMENT

THIS AGREEMENT is made on _____ 2013 BETWEEN:

- (1) [•], a company incorporated in England and Wales under registration number [•] and whose registered address is at [•] (the “Supplier”); and
- (2) [•], a company incorporated in England and Wales under registration number [•] and whose registered address is at [•] (the “Recipient”).

RECITALS:

- A. The Institution (as defined below) has developed certain Materials (as defined below) and the Recipient wishes to obtain a quantity of these Materials for the Permitted Purpose. The Supplier has agreed to supply the Materials to the Recipient under the terms of this Agreement.

Now it is agreed as follows:

1. Definitions

In this Agreement the following words shall have the following meanings:

Affiliate	in relation to a Party, means an entity or person that Controls, is Controlled by, or is under the common Control of that Party;
Commencement Date	the date as written above [<i>or a specified date after date of agreement</i>];
Confidential Information	in relation to each party, any materials, trade secrets or other information disclosed by that party to the other including without limitation the Materials and this Agreement;
Control	direct or indirect beneficial ownership of 50% (or, outside a Party’s home territory, such lesser percentage as is the maximum permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of an entity, as the case may be;
Evaluation Period	[•] days following receipt and acceptance of the delivery of the Materials at the Recipient’s Premises;
Institution	[•];
Intellectual Property Rights	any patent, copyright, trade mark, trade name, service mark, registered design, design right (registered and unregistered), know-how, right of confidence, trade secret, right to extract and exploit data, database right, any similar rights protected in any jurisdiction, whether now existing or coming into existence at some future date, any application for any of the above, and any accrued rights of action in respect of any of the above;

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Materials	[<i>quantity and description</i>] and includes any [modifications], components, constructs, strains, derivatives, obtained from or as a result of the use of the materials;
Named Courier	a courier chosen by the Supplier to deliver the Materials to the Recipient;
Parties	the Supplier and the Recipient, and a “Party” shall mean either of them;
Permitted Purpose	[•]; and
Recipient’s Premises	[•].

2. **Supply of Materials**

- 2.1 Upon receipt of the full fee in accordance with Clause 4, the Supplier will arrange for the delivery of the Materials by the Named Courier to the Recipient’s Premises.
- 2.2 Delivery to and acceptance of the Materials by the Recipient shall be evidenced by receipt of the Named Courier’s delivery note by the Supplier.
- 2.3 The Recipient assumes all risk of harm, loss or damage to the Materials from the time of dispatch by the Supplier to the Recipient.
- 2.4 For the avoidance of doubt, nothing in this Agreement prevents the Supplier from supplying the Materials to any number of third parties.

3. **Evaluation of the Materials and Results**

- 3.1 The Supplier grants the Recipient a non-exclusive right to the Intellectual Property Rights and to use of the Materials for the Evaluation Period, solely for the Permitted Purpose and only at the Recipient’s Premises.
- 3.2 Within 30 days of the end of the Evaluation Period, the Recipient shall provide the Supplier with a final written report of the Recipient’s evaluation on or using the Materials, including without limitation quantitative and qualitative results (the “Results”). The Results shall not be disclosed in any way prior to disclosure to the Supplier. For the avoidance of doubt, the written report and Results shall be provided by the Supplier to the Institution.
- 3.3 The Supplier and the Institution shall be entitled to use all such Results, reports and publications and make them available to third parties.

4. **Payment**

- 4.1 Upon the execution of this Agreement, the Recipient shall pay the Supplier a non-refundable evaluation fee of [•] (“Evaluation Fee”).
- 4.2 In addition to the Evaluation Fee, the Recipient shall reimburse the Institution for all reasonable packaging, shipping and related costs that may be incurred when preparing and dispatching the Materials to the Recipient.
- 4.3 All sums due under this Agreement:

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- 4.3.1 are exclusive of any value added or other sales tax which where applicable will be paid by the Recipient to the Supplier in addition to the Evaluation Fee and any other sums due under this Agreement;
- 4.3.2 shall be paid in pounds sterling in cash by transferring an amount in aggregate to the account in the name of the Supplier [*account details of Supplier*]; and
- 4.3.3 shall be made by the due date, failing which the Supplier may charge interest on any outstanding amount on a daily basis at a rate equivalent to 8% above the Barclays Bank plc base lending rate then in force in London.

5. Use of the Materials

- 5.1 The Recipient may only use the Materials for the Permitted Purpose at the Recipient's Premises during the Evaluation Period.
- 5.2 The Recipient has no right to:
 - 5.2.1 reproduce the Materials;
 - 5.2.2 reverse engineer decompile, disassemble or otherwise determine the chemical structure or sequence of the Materials;
 - 5.2.3 manufacture or have manufactured or contract production of the Materials;
 - 5.2.4 sell the Materials;
 - 5.2.5 share the use of or supply or distribute the Materials to any third party;
 - 5.2.6 allow any third parties access to the Materials for any purpose;
 - 5.2.7 carry out work to modify or improve the Materials without the prior written consent of the Supplier; or
 - 5.2.8 inject or administer the Materials into any living animal or human.
- 5.3 The Recipient will:
 - 5.3.1 comply with all applicable governmental and regulatory regulations and guidelines applicable to the handling, storing, transporting, using and disposing of the Materials;
 - 5.3.2 use the Materials in accordance with good laboratory practice, good clinical laboratory practice and the highest standards of skill and care.

6 Intellectual Property Rights

- 6.1 Nothing in this Agreement shall affect the ownership of any Intellectual Property Rights in the Materials which shall at all times remain under the ownership of the [Supplier/Institution]. The Recipient acknowledges that by virtue of this Agreement it acquires no more than the limited right which is granted at Clause 3.1 to have possession of and use the Materials and does not acquire any rights of ownership or

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title in or over the Materials or any licence under other Intellectual Property Rights owned by or licensed to the Supplier or the Institution.

6.2 In the event that the Recipient makes or observes any new discovery, improvement or invention (“Invention”) relating to the production, use or application of the Materials resulting from its use of the Materials, then the Recipient shall notify the Supplier of that Invention.

6.3 All Results (as defined in Clause 3.3) and Inventions shall belong to the [Supplier/Institution] upon creation and the Recipient shall execute any documents as are necessary to secure the vesting in the [Supplier/Institution] of all Intellectual Property Rights in the Results and Inventions.

7. **Confidential Information**

7.1 Subject to Clause 7.2, each Party will keep confidential Confidential Information of the other Party and will not disclose or supply the Confidential Information to any third party or use it for any purpose except in accordance with the terms of this Agreement.

7.2 Clause 7.1 will not apply to any Confidential Information which:

7.2.1 is known to the Party receiving the Confidential Information (“the Receiving Party”) before disclosure and not subject to any obligation of confidentiality owed to the disclosing party;

7.2.2 is or becomes publicly known without he fault of the Receiving Party;

7.2.3 is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that there has been a breach of an obligation of confidentiality owed to the party disclosing the Confidential Information (“the Disclosing Party”);

7.2.4 the Receiving Party can establish by reasonable proof, was substantially and independently developed by officers or employees of the Receiving Party who had no knowledge of the Disclosing Party’s Confidential Information; or

7.2.5 is approved for release in writing by an authorised representative of the disclosing party.

7.3 Nothing in this Agreement will prevent the Receiving Party from disclosing Confidential Information where it is required to do so to comply with a court order, applicable laws or governmental regulations provided that the Receiving Party, where possible, notifies the Disclosing Party of such requirement prior to any such disclosure and in the case of disclosure under the Freedom of Information Act 2000 none of the exceptions to that Act applies to the relevant Confidential Information.

8. **Publication and Advertising**

8.1 The Recipient shall acknowledge the Institution as the source of the Materials and for any other contribution (if any) in any publication which mentions the Materials.

8.2 The Recipient shall send the Supplier a copy of any proposed reports, publications or disclosures to third parties, whether oral or written, which describe work carried out using the Materials at least 45 days prior to any such disclosure or submission for

publication. The Supplier shall have the right to delay publication or disclosure for up to 90 additional days to permit adequate steps to be taken to secure patent or other protection for the subject matter referred to in the report, publication or disclosure and/or to require the deletion of any Confidential Information that would be disclosed by such report, publication or disclosure. The Supplier's rights under this Clause shall not affect the Recipient's obligations under Clause 7.

- 8.3 The Recipient may not use the name of the Supplier or the Institution in any advertising, promotional or sales literature without the Supplier's prior written consent.

9. **Warranties and Liabilities**

- 9.1 The Recipient acknowledges that the Materials are experimental in nature and supplied "as is" and without any express or implied warranties, representation or undertakings, and any condition or warranty that would otherwise be implied by law as to the quality or fitness for purpose of the Materials is hereby excluded to the fullest extent permitted by law. For the avoidance of doubt, the Supplier gives no warranty that the use of the Materials will not infringe any intellectual property rights of third parties.

- 9.2 The Recipient acknowledges that the Materials are still under development and the Supplier has not produced or supplied the Materials to meet the Recipient's own specification or that of any other user.

- 9.3 The Supplier shall not be liable to the Recipient for any indirect or consequential loss, damage or expense of any kind arising out of or in connection with the Materials or this Agreement including any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, whether arising in contract, tort, negligence, under indemnity, breach of statutory duty or otherwise and even if the Recipient has advised the Supplier of the possibility of those losses arising or if they were or are within the Supplier's contemplation at the date of this Agreement.

- 9.4 Nothing in this Agreement limits the Supplier's liability for fraud, or death, or personal injury arising as a result of the Supplier's negligence or any other liability which may not, by law, be excluded.

10. **Indemnity**

- 10.1 The Recipient shall indemnify the Supplier, the Institution and their Affiliates (the "Indemnitees") against all losses, damages, legal costs and other expenses of any nature and all costs and expenses incurred in connection with:

10.1.1 any demand, claims or liability (whether criminal or civil, in contract, tort, or based on product liability laws or otherwise) that may be asserted against any of the Indemnitees arising directly or indirectly from the use, storage or disposal of the Materials by the Recipient or any third parties who may have received the Materials from the Recipient (in breach of this Agreement); or

10.1.2 any breach by the Recipient of Clause 7.

11. **Term and termination**

- 11.1 This Agreement shall commence on the Commencement Date and continue for the Evaluation Period unless terminated earlier in accordance with this Clause 11.

- 11.2 Without prejudice to any other right or remedy, either Party may terminate this Agreement by notice in writing to the other Party (“Other Party”) such notice to take effect as specified in the notice:
- 11.2.1 if the Other Party is in material breach of this Agreement and in the case of breach, capable of remedy within five days, the breach is not remedied within five days of the Other Party receiving notice specifying the breach and requiring the remedy; or
- 11.2.2 if (i) the Other Party becomes insolvent or unable to pay its debts as and when they become due, (ii) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntary for the purpose of solvent amalgamation or reconstruction), (iii) a liquidator, administrator, administrative receiver, receiver or trustee is appointed in respect of the whole or any part of the Other Party’s assets or business, (iv) the Other Party makes any composition with its creditors, (v) the Other Party ceases to continue its business, or (vi) as a result of debts and/or maladministration the Other Party takes or suffers any similar or analogous action.
- 11.3 Upon termination of this Agreement the Recipient shall immediately discontinue use of the Materials and shall immediately return the Materials or, if the Supplier so requests, destroy the Materials and provide verifiable evidence of that destruction.
- 11.4 A Party’s right of termination under this Agreement, and the exercise of any such right, shall be without prejudice to any other right or remedy (including any right to claim damages) that such Party may have in the event of a breach of contract or other default of the other Party.
- 11.5 The obligations on the Parties under Clauses 1, 3.3, 6, 7, 8, 9, 10, 11.3, 11.4, 11.5 and 12 of this Agreement shall survive termination of this Agreement.

12. **General**

- 12.1 *Force majeure.* Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement (other than payment) which result from circumstances beyond the reasonable control of that Party. That Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 12.2 This Agreement may only be amended in writing signed by duly authorised representatives of each Party.
- 12.3 Neither Party shall assign or mortgage, charge or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the other Party.
- 12.4 No failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.
- 12.5 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable, it will, to the extent of such illegality, invalidity,

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voidness, voidability, unenforceability or unreasonableness, be deemed severable and the Parties shall uphold the remainder of this Agreement and shall negotiate an amendment which, so far as legally feasible, maintains the economic balance between the Parties.

12.6 Nothing in this Agreement shall create, imply or evidence any partnership or joint venture between the Supplier and the Recipient or the relationship between them of principal and agent.

12.7 In this Agreement:

12.7.1 the headings are used for convenience only and shall not affect its interpretation;

12.7.2 references to Clauses mean clauses in this Agreement; and

12.7.3 where the word “including” is used it shall be understood as meaning “including without limitation”.

12.8 *Notices*

12.8.1 Any notice to be given under this Agreement shall be in English, in writing and shall be delivered by first class recorded delivery mail (if sent to an inland address) or by international courier (if sent to an address outside of the United Kingdom), or by email (confirmed by first class recorded delivery mail or international courier, as appropriate) to the address of the relevant Party set out at the head of this Agreement [or to the address of the Company specified for service within the jurisdiction of the courts of England and Wales], or to the relevant email address set out below, or such other address or email address as that Party may from time to time notify to the other Party in accordance with this Clause 12.8. The email addresses of the Parties are as follows:

Supplier – [●]

Recipient – [●]

12.8.2 Notices sent as above shall be deemed to have been received one (1) working day after the day of posting in the case of delivery inland first class recorded delivery mail, or three (3) working days after the date of collection by the international courier, or in the case of email notifications, on the date the confirmation copy was deemed to have been received.

12.9 *Entire Agreement.* This Agreement sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to the subject matter of this Agreement. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

12.10 *Third parties.* Except for the rights of the Indemnitees as provided in Clause 10 who may in their own right enforce the provision of that Clause, this Agreement does not create any right enforceable by any person who is not a party to it (“Third Party”) under the Contracts (Rights of Third Parties) Act 1999 but this Clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

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12.11 *Law and jurisdiction.* The validity, construction, performance of this Agreement shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales to which the Parties hereby submit except that a Party may seek an interim injunction in any court of competent jurisdiction.

12.12 This Agreement may be executed in any number of counterparts. This has the same effect as if the signature on the counterparts were on a single copy of this Agreement.

AGREED by the Parties through their authorised signatories:

SIGNED for and on behalf of
[Supplier]

SIGNED for and on behalf of
[Recipient]

Signed

Signed

Print name

Print name

Title

Title

Date

Date