**MATERIAL / DATA TRANSFER AGREEMENT**

This material /data transfer agreement (hereafter the “**Agreement**”), having an effective date of ………… (hereafter the “**Effective Date**”), is by and between the:

[Name of Institution and address] (hereafter the “**Provider**”)

and

[Name of Institution and address] (hereafter the “**Recipient**”)

Collectively the Provider and the Recipient are referred to as the Parties or separately as the Party.

**WHEREAS**

1. ……. (Description of the project), hereafter referred to as the “**Research**”. A brief summary of the Research is included in Appendix 1 hereto;
2. …….. (Description of the material and/or the data that the Provider will make available), hereafter referred to as the “**Material/Data**”.

By this Agreement, the Parties wish to establish conditions for the transfer and use of the Material/Data and specify the aspects of confidentiality, publications, protection and ownership.

**NOW, THEREFORE, the Provider AND the Recipient AGREE AS FOLLOWS:**

**Clause 1: Practical terms of the transfer and use of the Material/Data**

* 1. The Provider agrees to make the Material/Data available to the Recipient, on a royalty free and on a non-exclusive basis, for the Research only and on the terms and conditions set forth herein. The Material/Data will only be made available in a pseudonymised form, i.e. after all direct and indirect personnel identification has been replaced by a code. The Recipient must under no circumstances attempt to re-identify the data subjects.
  2. The Recipient agrees that:

1. the Material/Data or any data derived from the Material/Data will be used only by employees or individuals working within the Recipient’s institution as identified below for the sole purpose of conducting the Research, to the exclusion of any commercial application that has not been subject to prior express consent in writing of, and contract with, the Provider, under terms and conditions to be mutually agreed by the Parties;
2. the Material/Data or any data derived from the Material/Data shall not be duplicated, transferred, distributed or supplied to any third party, whether with or without consideration, for any purpose or use without the prior written consent of the Provider and provided that the terms of this agreement are maintained ; and that
3. the Material/Data or any data derived from the Material/Data shall be processed and/or used only within the Recipient computational infrastructure and handled in accordance to the General Data Protection Regulation (hereafter the “GDPR”), including GDPR Art. 5: Principles relating to processing of personal data.
   1. The Provider may terminate this Agreement if the Recipient is in material breach or not capable of fulfilling its obligations specified in appendix 1.
   2. On termination of this agreement, the Recipient shall inform the Provider of the degree of success of the Research by written communication.
   3. On termination of this agreement, the Recipient will discontinue its use of the Material/Data and on any data derived from the Material/Data, cf. Clause 2, 2.1., viii.
   4. The Recipient agrees that the Material/Data or any data derived from the Material/Data will not be used whether alone or in conjunction with any other information, in any effort whatsoever to establish the individual identities of any subject from whom the Material/Data was derived.
   5. The Recipient will, within reasonable conditions, enable the Provider to secure the rights and freedoms of the data subject.
   6. The Material and any data derived from the Material must be processed as personal data in accordance with the Recipients jurisdiction.
   7. [Kun aktuelt ved sending av biologisk materiale] The Recipient will reimburse the Provider for its costs of shipping the Material in the amount of NOK [Sett inn]. The Provider will arrange the shipping of the Material to the Recipient and will be responsible for the Material until the Material is delivered.

**Clause 2: Confidentiality**

* 1. Unless other provisions in this Agreement permit it, the disclosure of the Material/Data or any data derived from the Material/Data is in strictest confidence and thus the Recipient will:

1. not disclose the Material/Data ;
2. use at least the same degree of care and security to maintain the Material/Data secret, as the Recipient uses in maintaining its own confidential information, but always at least a reasonable degree of care;
3. use the Material/Data only for the sole purpose of conducting the Research and shall not use the Material/Data for any other purposes without the prior written consent of Provider or until further agreement, if any, is concluded between the Parties concerning the use of the Material/Data;
4. restrict disclosure of the Material/Data solely to those employees or individuals working within the Recipient’s institution who require such access to the Material/Data in order to conduct the Research and provided that the Recipient ensures that they are bound by the confidentiality and non-disclosure obligations contained in this Agreement;
5. (1) make sure that the Material/Data is protected from unauthorized access, (2) promptly inform and assist the Provider immediately and in writing about any deviation concerning access to the Material/Data (both accidental and unauthorized), and, if necessary, (3) take any reasonable steps to regain access control and confidentiality;
6. without undue delay, revoke authorizations and accesses for employees or individuals who no longer need such authorization or access to conduct the Research;
7. promptly notify the Provider about any legally binding request for disclosure of the Material/Data, see contact information in paragraph 11;
8. upon completion of the Research or other termination of this Agreement, cf. clause 1.5, followed by request and instructions from the Provider, delete and/or destroy the Material/Data that has been disclosed to the Recipient including all copies thereof and to delete and/or destroy all information stored in a machine readable form to the extent practically possible. The Recipient may keep a copy to the extent it is required to keep, archive or store such Material/Data because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.
   1. This Agreement imposes no obligation on the Recipient with respect to any information which:
9. at the time of the disclosure is generally available to the public or thereafter becomes generally available to the public otherwise than through the fault or negligence of the Recipient; or
10. can be shown by written records to have been in the Recipient's possession prior to the time of the disclosure and was not acquired, directly or indirectly, from the Provider; or
11. is rightfully given to the Recipient by a third party under no obligation of confidentiality; or
12. is independently developed by the Recipient without the aid or use of such information, as established by a substantial written evidence; or
13. has been identified as no longer confidential by the Provider; or
14. is required to be disclosed in order to comply with applicable laws or regulations or by a court decision or administrative order or decision or order of the regulatory body or arbitration award.  
    1. The Material/Data shall not be deemed to be available to the public or be in the Recipient’s possession merely because they can be reconstructed in hindsight from a combination of information from multiple sources that are available to the public, if none of those sources actually teaches or suggests the entire combination, together with its meaning and importance.

**Clause 3: Intellectual Property**

3.1. The Provider is the owner of the Material/Data and the results obtained in the context of the Research. If the results are achieved through a joint effort, an agreement shall be reached on which of the parties shall secure and ensure the commercial exploitation, hereunder agreement on the division of any such rights.

3.2. All intellectual property existing prior to the Effective Date, shall remain the exclusive property of the Party in question.

**Clause 4: Publication**

* 1. Recipient has the right to publish or disclose the results of the Research resulting of the use of the Material/Data provided. All publications or dissemination of results shall refer to the origin of the Material/Data as an acknowledgement in accordance to the Vancouver Guidelines. Based on the nature of the Material/Data and if applicable the Provider can request the Recipient to facilitate co-authorship in connection with the publication of results.
  2. Nothing contained herein in no way prevents the Provider to publish any documents with no relation with the Research relating to its Material/Data.
  3. No Party shall use the other Party’s name in any marketing material without its prior express and written consent.

**Clause 5: Liability**

* 1. The Provider has collected the Material/Data in a competent and professional manner. However, the Provider does not provide any guarantee regarding the obtainment of specific results regarding the use of the Material/Data.
  2. The Recipient shall bear all risks and assume all liability due to or arising from, but not limited to, the processing, use, storage or disposal of the Material/Data by the Recipient.
  3. Under no circumstances, including, but not limited to, negligence, shall any of the Parties be liable for any indirect, special, incidental, punitive, or consequential damages, including, but not limited to, loss of data or loss of profits arising out of the use of the Material/Data.

**Clause 6: General Provision**

6.1. This Agreement constitutes the entire agreement of the Parties and supersedes all prior communications, undertakings and agreements relating to the subject matter hereof, whether oral or written.

6.2. All notices under this Agreement must be in writing and delivered to the address detailed in clause 11.

6.3. Neither Party shall be liable for loss, damage or delay, nor be deemed to be in default due to it not complying with its obligations as a result of fire, strike, labour difficulties, riots, embargoes, delays or shortages in transportation or any other causes beyond such Party’s reasonable control (*force majeure*).

6.4. 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.

**Clause 7: Duration and termination**

7.1. This Agreement comes into force as of the Effective Date and will remain in force for the duration of the Research.

7.2. Either Party may terminate this Agreement on one month’s written notice to the other Party which can be given at any time.

7.3. The expiry or termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to expiry or termination.

7.4. The provisions in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding its expiry or termination.

**Clause 8: Duty to confirm compliance and allow audits**

* 1. Upon request from the Provider, the Recipient shall provide the Provider with sufficient information to confirm that the terms and conditions of this Agreement are met, including but not limited to access control and processing of the Material/Data;
  2. Upon request from the Provider, the Recipient will deal promptly and properly with all inquiries from the Provider relating to the processing and use of the Material/Data and submit its processing facilities for audit of the processing activities.

**Clause 9: Transfer of rights and renegotiation**

* 1. The Recipient shall not transfer its rights and obligations according to this Agreement to any other third party without the prior written consent of the Provider.
  2. Either Party shall be entitled to demand renegotiation of this Agreement because of changed legislation applicable to it, including entry into codes of conducts according to article 40 in the GDPR.

**Clause 10: Governing law and jurisdiction**

10.1. This agreement shall be governed by Norwegian law and jurisdiction and the competent authorities shall have exclusive right to deal with any dispute which may arise out of or in connection with this Agreement.

**Clause 11: Notices**

11.1. Any notices, requests, agreements, consents, acceptances, approvals or communications that are necessary in accordance with this Agreement, or which are associated therewith, shall be in writing.

11.2. Notifications may be made by fax or electronic mail as long as its source and destination can be demonstrated; written communication with notarial involvement; or any other written form that could reasonably provide evidence that the communication was made and the recipient should have received it.

Communications between the Parties relating to the Agreement shall be made to the following contact persons:

|  |  |
| --- | --- |
| **Recipient** | **Provider** |
| **Name and surname:**  **Title:**  **Address:**  **Email:** | **Name and surname:**  **Title:**  **Address:**  **Email:** |

***Signatures***

|  |  |
| --- | --- |
| On behalf of the Recipient: | On behalf of the Provider: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: |

**APPENDIX 1**

***Research protocol in the document protocol.pdf***

**Bibliography**