

**LICENSE AGREEMENT**

XXXXXXXXXX, whose registered office is located at XXXXXXXXXXX, represented herein by XXXXXXXXXXX

**AND**

**ARC Seibersdorf research** GmbH, hereinafter called “**ARC-sr**”, whose registered office is located at Donau-City-Strasse 1, 1220 Vienna, Austria, represented herein by Konrad Freyborn, managing director.

**WHEREAS:**

ARC-sr intends to establish a comprehensive library of expressed sequence tags (ESTs) and associated information (platform for integrated clone management: PICME) and to provide the Research & Development community with support based on that library. This license (agreement) regulates the transfer of material and thus its availability to the scientific community.

**DEFINITIONS:**

Provider (XXXXXXXXXX): Organization providing the Material

Licensee (ARC-sr): Organization receiving the Material

Material: ESTs (Expressed Sequence Tags) as bacterial cultures plus information (lab ID, NCBI accession number, annotations, unigene information, information on underlying publications, etc.).

ESTs from [SPECIES] will be transferred in batch as bacterial colonies or plasmids along with a minimum of necessary data (lab ID, location on plates, NCBI accession number). Sequences related to the physical clones have already been published (XXXXXXXXXX), indicating that knowledge about the sequence is in the public domain. Therefore, such physical clones are not subject to intellectual property rights.

Associated information: information published about EST (reference of the publication: XXXXXXXXXXX).

**IN CONSEQUENCE THEREOF THE PARTIES AGREE AS FOLLOWS**

1. ARC-sr acknowledges XXXXXXXXXXX as the owner of the Material. Consequently, the Licensee will not patent, protect, claim any title or deed, a restrictive right on the Material without the preliminary written agreement of XXXXXXXXXXX.

2 XXXXXXXXXXX and ARC-sr acknowledge, that the Material (amount and state of material) will be supplied to the Licensee by [DATE].

The Licensee includes received Material and Associated information into its repository.

3.1 xxxxxxxxxx grants to ARC-sr on a non exclusive basis the right:

- to duplicate and keep the Material so as to put it on spotted micro-arrays;
- to sell the spotted micro-arrays to academic and non profit organizations for their own in house research.
- to provide single clones free of charge or a small collection of these (10 up to 100) on a cost basis to third parties upon request for their own in house research.

For any other use than those specified in section 3.1, the Licensee shall have the prior and written agreement of xxxxxxxxxx.

3.2 The license as laid out in section 3.1 is granted to ARC-sr free of charge and worldwide. ARC-sr is not allowed to grant sublicense.

3.3 The Licensee is authorised to combine, to mix or to incorporate the Material with other material (biologic or not) solely for the aims defined in section 3.1.

3.4 Other than set out in section 3.1, this licence is concluded *intuitu personae*, is inalienable and non-transferable except with express written permission from xxxxxxxxxx.

4. The Licensee will sell ESTs and associated information to third parties according to the price list as published under <http://www.picme.at>

5. For the rights granted to ARC-sr under section 3.1, ARC-sr will sell to xxxxxxxxxx micro arrays produced using cDNAs from the provider a discounted rate as set out in Annex 1. ARC-sr reserves herself the right to adapt Annex 1 proportionally to the price list as described in section 4.

6. In case of publication concerning these micro-arrays or contributions of these micro-arrays to research results, ARC-sr as well as any customer shall reference the micro-arrays as follows: "The ESTs printed on the PICME arrays were produced by xxxxxxxxxx [CITATION]".

In order to ensure that any third party to whom the access to Material and Associated information shall be granted to in Agreement with section 3.1 is bound by the above mentioned provision the Licensee shall set up an agreement to be signed by the third party upon purchase of micro-arrays containing the above mentioned provision. In case of single clones, the third party will undertake to acknowledge the provider by name in any kind of publication.

7. Any information notified as such "Confidential" received by a party from the other party during this Agreement, will be considered as confidential and therefore access to such information will not be granted to third party without prior written approval by the owner of such information. The disclosing party acknowledges that it will be necessary for the recipient to disclose confidential information to certain employees and consultants with whom it is evaluating such confidential information pursuant to the purpose as set out in this Agreement. The recipient warrants to the disclosing party that it has sufficient procedures and protections in place in order (including but not limited to the requirements of applicable data protection law) to enforce and maintain confidentiality and prevent unauthorised use and unauthorised disclosure of such confidential Information by its employees and consultants to whom such confidential information is disclosed. In addition, the recipient agrees to enforce, to the maximum extent possible, such procedures and protections against any employee or third party to maintain confidentiality and prevent unauthorised use and unauthorised disclosure of such confidential information.

Nevertheless, the obligations of confidentiality of the parties do not apply to the information received from the other party :

- which is in the public domain at the time of their disclosure by one of the parties;
- which fall in the public domain without any breach of this Agreement;
- which was legally supplied by a third party not being submitted to obligations of confidentiality;
- which is already known by a party before the coming into force of this Agreement without having been communicated, directly or indirectly, by one of the parties.

8. The Recipient undertakes to use the Material according to its national and the international laws and regulations and will make his business of obtaining all authorisations needed to the conduct of its activity with the Material in the framework of article 3.1.

9. ARC-sr acknowledges that the Material supplied by xxxxxxxxxx is of experimental nature and that xxxxxxxxxx:

- a) gives no warrantee as for its utility, efficiency, merchantability, non-toxicity, safety, fitness for a particular use;
- b) declines any liability concerning any damages caused by the Material and by the use which could be made of it;
- c) makes no representation or warranty that the use of the Material will not infringe any patent or other proprietary right.

10. This Agreement will come into effect at the date of its signature and will expire after four (4) years. Before expiry of this Agreement, ARC-sr and xxxxxxxxxx will jointly decide the possible continuation of this Agreement. If the Agreement is not carried on, ARC-sr will destroy the original Material received by xxxxxxxxxx located in its repository. For the avoidance of doubt all material created or duplicated by ARC-sr based upon the Material will stay in the ownership of ARC-sr and therefore will not be destroyed. In any case, the obligations of confidentiality contained in this Agreement will be maintained as long as the information is not part of the public domain.

11. The Licensee shall ensure that any third party to whom the Material is transferred according to section 3.1 is bound by the same provisions as set out in this Agreement. No employment, agency, partnership or joint venture relationship is created between the parties as a result of this Agreement.

12. This Agreement is submitted to [COUNTRY] law. The parties will do their best to resolve amicably any dispute as for the interpretation or the performance of this Agreement. In case of persistent disagreement, the Parties will bring the dispute before the [COUNTRY] courts.

13. No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise or any right or remedy under this Agreement shall prevent any further exercise or the right or remedy of the exercise of any other right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law. If any clause contained in this Agreement is, for any reason, held to be invalid or unenforceable, in any respect, such invalidity or unenforceability will not affect the validity of the remaining Agreement. This Agreement is binding upon the Recipient and its successors.

In two counterparts, date.....

**xxxxxx:** Name.....

**ARC-sr:** Name.....

**Annex 1:**