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Grey background = To be completed

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# SERVICE AGREEMENT

between

**Université de Fribourg**

Avenue Europe 20

1700 Fribourg

Switzerland

represented by

[Name and Title of signatories]

hereinafter referred to as “**UniFR**”

and

[Name and Address of the Company]

represented by

[Name and Title of signatories]

hereinafter referred to as the “**Partner**”

“UniFR” and the “Partner” individually referred to as a **Party** and, collectively, as the **“Parties**”

**It is agreed as follows:**

# DEFINITIONS

In addition to any other terms defined elsewhere in this Agreement, the following capitalized terms, whether used in singular or plural form, shall have the following meaning:

* 1. **"Affiliate"** means a company controlled by, controlling or under common control with a Party by ownership, directly or indirectly, of fifty percent (50%) or more of the stock entitled to vote in the election of directors, or if there is no such stock, fifty percent (50%) or more of the ownership interest in such company.
  2. **"Agreement"** means this agreement, any signed amendment to it, as well as any attached exhibit, annex, appendix, schedule, protocol or other equivalent addendum.
  3. **"Background lntellectual Property"** means any lntellectual Property owned or controlled by a Party prior to or independent of performance of this Agreement and used by it in fulfilling its obligations under this Agreement, as well as any modifications or improvements made thereto in course of performing this Agreement.
  4. **"Confidential Information"** means any knowledge and information relating to Parties' proprietary products and processes, ingredients, recipes, know-how, business plans, inventions, designs, methods, systems, improvements, materials, trade secrets, data and research data, customer lists, supplier lists and any other information relating to the business of the Parties which is not readily available to the public and does not constitute Results.
  5. **"UniFR Materials"** means UniFR tangible materials, such as ingredients or biological materials received by the Partner pursuant to this Agreement.
  6. **"Disclosing Party"** means the party disclosing the Confidential Information.
  7. **"Effective Date"** means “*date”*.
  8. **"lntellectual Property"** means any registered and unregistered intellectual property rights such as, but not limited to, patents, designs, trademarks, plant certificates, semi­ conductor layouts and corresponding applications, as well as copyrights, know-how, trade secrets and Confidential Information.
  9. **"Receiving Party"** means the party receiving the Confidential Information.
  10. **"Results"** means the content and result of all work and activities produced by “*the partner*” in anticipation of, or pursuant to, this Agreement, including but not limited to inventions, discoveries, designs, materials, improvements, know-how, biological materials, computer software, data, plans and documentation. For the removal of doubt, the Parties agree that the definition of Results should not cover any amelioration, updates of or additions to one Party's Background lntellectual Property as a consequence of the performance of the Services. lt is also agreed that “*the partner*” shall remain the owner of all its methods and tools, in particular but not limited to software application and algorithms used or developed in the performance of the Service, as well as of any lntellectual Property rights pertaining thereto.

# SCOPE OF THE AGREEMENT

* 1. As of Effective Date, UniFR will receive [to complete] [e.g. bioinformatics support by The Partner to the maximum extent of 300 of working hours per year]. The Services contain in particular but are not limited to [description of the Services] and are described in detail in the attached Research Proposal (the **"Services"; see Appendix 1).**
  2. The Parties may regularly communicate about all relevant matters regarding the Services. The Partner will inform UniFR about any unforeseen results, problems, difficulties etc. with respect to the Services. The Parties shall meet either in person or by teleconference or videoconference to discuss progress and Results every month. The dates for these meetings will be mutually agreed by the Parties.
  3. The partner point of contact during provision of the Services is Prof. [name and contact details]. The contact person for UniFR during the provision of the Services is Prof. [name and contact details]

# COMPENSATION AND PAYMENT

* 1. In consideration for the performance of the Services, UniFR shall be invoiced on an hourly basis at **CHF [to complete]** per working hour (the **Services Fee).** The Parties agree that, unless mutually agreed in writing (email sufficient), the total amount to be invoiced by The Partner under this Agreement shall not exceed CHF [to complete]. For the sake of clarity, the aforesaid Services Fee does not include VAT and any similar tax (if any) which will be separately mentioned on the invoice but includes The Partner overheads ([to complete] %).

**3.2** UniFR shall reimburse to the Partner for all reasonable expenses of the Partner in connection with proper performance of the Services, provided UniFR has given its prior written approval thereto. Reimbursement of expenses shall be made within thirty (30) days of receipt by UniFR of the Partner's itemized statement of expenses, to be issued on a monthly basis and to include proper documentation of all expenses.

* 1. The Partner shall send applicable invoices quarterly to UniFR's address mentioned above. All invoices should be paid within a period of maximum thirty (30) days of their issuance. The Partner shall itemize on each invoice, the Services to which the invoice relates, the amount payable as well as the the Partner bank details.

# CONFIDENTIALITY

* 1. The Receiving Party undertakes to keep confidential and not to disclose to any third party any Confidential Information of the Disclosing Party, during the term of this Agreement and for a period of five (5) years after the termination of this Agreement.
  2. The Confidential Information shall always remain the property of the Disclosing Party. The Receiving Party undertakes to use the Confidential Information of the Disclosing Party exclusively for the purpose of this Agreement.
  3. The obligations mentioned under Articles 4.1 and 4.2 shall not apply to Confidential Information which:
     1. was in the public domain at the time of its receipt by the Receiving Party; or
     2. was at the time of its receipt already in the Receiving Party's possession, or known to it; or
     3. becomes part of the public domain after its receipt by the Receiving Party, but not through a breach of this Agreement by the Receiving Party or its employees; or
     4. is rightfully given to the Receiving Party by a third party on a non-confidential basis.
  4. The Receiving Party shall also have the right to disclose to the relevant authority any Confidential Information which is required by law, a competent court or a governmental entity to be disclosed, provided however that the Disclosing Party shall, where reasonably possible, first have been given an opportunity to obtain a protective order precluding or limiting the disclosure of said Confidential Information.
  5. The Receiving Party may communicate the Confidential Information on a need-to-know basis, only to those of its employees who are directly and necessarily involved in the performance of the Services, and who are bound to the Receiving Party by obligations similar to those of this Article 4. The Receiving Party shall be responsible for any breach of this Agreement caused by the acts or omissions of its employees.

# RESULTS AND INTELLECTUAL PROPERTY

* 1. Each Party is and shall remain the exclusive owner of its respective Background lntellectual Property and its ameliorations, updates or additions to, resulting from the performance of the Services.
  2. The Partner agrees that the Results and lntellectual Property in the Results shall be the property of UniFR (such rights to include, without limitation, the right to register protection for that lntellectual Property including filing and prosecuting patent applications).
  3. To the extent that the lntellectual Property on Results does not vest automatically in UniFR, the Partner hereby irrevocably assigns to UniFR all right, title and interest in and to all such lntellectual Property, and will execute, and will cause its employees to execute, all documents (including but not limited to documents related to patent applications) which may be necessary to give effect to the provisions of this Article 5.3. To the extent that Results include tangible materials such as biological materials, UniFR shall also be the exclusive owner of all tangible property rights and lntellectual Property in such Results.
  4. The Partner undertakes not to use directly or indirectly the Results for any purpose other than the performance of this Agreement, unless it has obtained the prior written consent of UniFR. In addition, the Partne” undertakes to keep confidential and not to disclose the Results to any third party.
  5. To the extent that any Background lntellectual Property of the Partner is necessary for using or exploiting the Results in good faith, UniFR and its Affiliates are hereby granted a non-exclusive, royalty free, non-transferable worldwide license under such Background lntellectual Property.

# UNIFR MATERIALS

* 1. UniFR Materials and, in the case of biological materials, their components, supernatant, progeny and unmodified derivatives constitute Background lntellectual Property of UniFR and may be patented. Title to the UniFR Materials and any pertaining lntellectual Property is and shall always remain with UniFR, and the Partner shall not, for any purpose, transfer or otherwise disclose the UniFR Materials to any third party without the prior written consent of UniFR. The Partner hereby undertakes to use the UniFR Materials only for the purpose of performing the Services, and more specifically not to produce nor attempt to produce any modified derivatives of the UniFR Materials.
  2. Upon termination or expiration of this Agreement, the Partner shall immediately cease use and destroy any remaining UniFR Materials, unless instructed otherwise in writing by UniFR.

# DATA PROTECTION

Each Party agrees to comply at all times with all applicable laws, especially all laws, statutes and regulations concerning personal data protection. In the event that the Partner needs to process personal data for the performance of the Services, the Partner acts as a data processor, while UniFR act as a data controller. In such case, UniFR warrants that it has the legal right to disclose any personal data (if any) provided to the Partner under or in connection with this Agreement, and that the processing of such personal data by the Partner will not breach any applicable data protection laws or regulations. The Partner will not undertake any act, in particular processing of data, that UniFR would not be permitted to carry out itself. UniFR undertakes to notify the Partner of any transfer of personal data, so that the Parties can take all necessary measures, in particular entering into a separate agreement for the processing of personal data. Such an agreement can be incorporated into this Agreement.

# INDEPENDENT CONTRACTORS

* 1. The Partner shall at all times be an independent contractor, and not an agent, partner, joint venturer or employee of UniFR, and nothing contained herein shall be deemed to create any employment, partnership or joint venture relationship between the Parties.
  2. The way the Services are performed is within the sole control and discretion of the Partner. The Partner shall not be eligible to participate in any benefits extended by UniFR to its employees, and the Partner and its employees will have no authority to bind or UniFR to any obligation or agreement, or speak for, represent or obligate UniFR in any way.

# WARRANTY, LIABILITY AND INSURANCE

* 1. The Partner warranties and represents to:
     1. Perform the Services with care, skill and diligence, in accordance with the highest applicable professional standards recognized in the profession, and shall be responsible for the quality, accuracy and completeness of all Services, materials and documents provided under this Agreement;
     2. Comply with all applicable laws in performing the Services; and
     3. Not disclose to UniFR nor use any information that the Partner knows or has reason to believe is the confidential information or lntellectual Property of any third party, unless it has received the prior written consent of such third party and informed UniFR.
  2. Unless provided otherwise in this agreement, the Services are provided *as is.* In no event, with the exception of unlawful intent or gross negligence, shall the Partner be liable for any loss of profits, loss of goodwill, loss of use, loss of production or business interruption costs, or any type of indirect, special, consequential or incidental damages arising from the performance of the Services.
  3. Without prejudice of section 9.2, the Partner shall carry adequate professional liability insurance to cover any claims arising out of the performance of the Services and caused by an error, omission or other act for which the Partner is liable.

# NOTICES, COMMUNICATION AND PUBLICITY

* 1. Any communication between the Parties relating to this Agreement shall be made in writing and shall be sent to the addressee by registered letter, or certified email (PEC) to the following addresses:

|  |  |
| --- | --- |
| **UniFR** | **Partner** |
| Prof. [Name]  [[to](mailto:alessandra.curioni-fontecedro@h-fr.ch) complete]@unifr.ch | [Name]  [email] |
| [Address] | [Address] |

* 1. Neither Party shall use the name of the other, or any name of members of its staff, in any publicity, advertising or news release without the prior written approval of the other Party. Notwithstanding the foregoing, UniFR is allowed to mention the Partner in any scientific publication pertaining to the Services according to ethical and scientific integrity.

# TERM AND TERMINATION

* 1. This Agreement shall come into effect on the Effective Date and remain in full force until [date] (the **"Term"),** unless terminated earlier in accordance with the provision set forth below.
  2. The Parties may terminate this Agreement with immediate effect upon mutual written consent. Either Party may terminate this Agreement at any time upon thirty (30) calendar days prior written notice. Each Party may have the right to terminate this Agreement at any time upon notice to the other Party in the event of a material breach hereof by the latter, which remain uncured fifteen (15) days after written notice thereof.
  3. In the event of such termination, UniFR shall have no further obligation to the Partner under this Agreement, except:
     1. to pay the accrued Services Fee and expenses due to the Partner based on work duly performed up to the effective date of termination; and
     2. to pay all expenditure falling due for payment after the date of termination which arises directly from the Partner reasonably and necessarily entering into commitments prior to the notice of termination specifically related to the Services which may not be cancelled within the notice period provided always that the Partner uses its best efforts to mitigate the same and has sufficiently document such costs.

Upon receipt of such notice of termination, the Partner shall deliver immediately to UniFR all written reports and other materials or documents, whether completed or in progress, developed or prepared by the Partner in the performance of the Services.

* 1. Termination of the Agreement for any reason shall not affect the rights and obligations of the Parties accrued prior to the Effective Date of termination of this Agreement. The rights and obligations mentioned under Articles 4, 5, 6, 9, 11.4, 12 and 13 shall survive the expiry or termination of this Agreement, as well as any other right or obligation which by its nature is intended to survive.

# GENERAL PROVISIONS

* 1. This Agreement sets out the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties (whether written or oral) relating to the subject matter of this Agreement except any prior confidentiality agreement between the Parties which shall continue to apply. This Agreement may be amended only in writing with the signature of duly authorized representatives of each Party. Facsimile and electronically scanned signatures on the said amendment shall be binding on the Parties.

*Delete the last sentence if not necessary.*

* 1. The Partner shall not assign nor subcontract the Services in whole or in part without the prior written consent of UniFR. UniFR reserves the right to assign its rights and to delegate its obligations under this Agreement to any of its Affiliates without the prior consent of the Partner.
  2. lf any provision of this Agreement, or the application thereof, shall, for any reason and to any extent, be held invalid, illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall not be affected thereby to the extent it can exist without the objectionable provision. The Parties further agree to replace such void or unenforceable provision by provision which will achieve, to the extent possible, the economic, business and other purposes of the void and unenforceable provision accordingly to the real intent of the Parties.
  3. This Agreement may be executed in one or more counterparts, each of which when executed and delivered will be deemed to be an original, but all of which taken together will constitute one and the same agreement. This Agreement will become effective when counterparts have been signed by each of the parties and delivered by facsimile or other means to each other Party. Facsimile and electronically scanned signatures on this Agreement shall be binding on the Parties.

*Delete the last sentence if not necessary.*

1. **APPLICABLE LAW, JURISDICTION, AND DISPUTE RESOLUTION**
   1. This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland, without giving effect to any conflict of law rules.
   2. The Parties agree that any dispute, controversy or claim arising out of, or in relation to this Agreement, including the validity, invalidity, breach, or termination thereof, shall first be settled amicably between the Parties. lf no amicable settlement can be reached, any dispute of difference arising out or in relation to this Agreement shall be subject to the exclusive competence of the courts of Fribourg, Switzerland, unless otherwise agreed between the Parties.

--- *Signature page follows* ---

**IN WITNESS WHEREOF,** the Parties have caused this Agreement by their authorized

representatives.

|  |  |
| --- | --- |
| **For UniFR**  By its duly authorized representatives:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Prof. [Name], Rector  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date) | **For the Partner**  By its duly authorized representatives:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date) |

**APPENDIX 1**

[precise description of the Services]