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MATERIAL TRANSFER AGREEMENT

This **MATERIAL TRANSFER AGREEMENT** (the “**Agreement**”), effective as of [•] (the “**Effective Date**”), is entered into by Istituti Clinici Scientifici Maugeri, SpA SB, with its registered offices in Via Salvatore Maugeri 10, 27100 Pavia, Italy (“**ICSM**”) and [•], with its registered offices in [•] (“**Recipient**”).

(ICSM and Recipient are referred to herein individually as a “**Party**” and together as the “**Parties**”).

WHEREAS:


- (A) ICSM is an Italian leading group in rehabilitation medicine and related care, with 18 institutes in six regions employing 3,600 people. As a Scientific Institute for Research, Hospitalization and Health Care (*Istituto di Ricovero e Cura a Carattere Scientifico - IRCCS*), ICS Maugeri drives clinical assistance in strong relation with scientific research activities;
- (B) **Recipient has requested that ICSM provide certain material (including information related to such material) to Recipient for the purpose of conducting research studies;**
- (C) **ICSM is willing to provide certain quantities of such material to Recipient, to be used in accordance with the terms provided herein.**

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties do agree as follows:

Affiliates. For purposes of this Agreement, “**Affiliate**” means any person, corporation or other entity, which controls, is controlled by, or is under common control with a Party, or any officer, director or employee of such a corporation or other entity. A person, corporation or other entity shall be deemed to control another person, corporation or entity, if it owns, directly or indirectly, more than fifty percent (50%) of the voting stock or other voting interest, or has the power to elect more than half of the directors or managers of such other corporation or entity, or has the ability, via contract or otherwise, to direct the affairs of such entity.

Delivery. At Recipient’s sole cost and expense ICSM shall deliver to Recipient, without any financial consideration, the material identified in Appendix A attached hereto (the “**Material**”) and certain related collateral information regarding the Material (the “**Material Information**”). Delivery shall be in accordance with the specifications and delivery details set forth in Appendix B attached hereto.

Use and Research. Recipient may use the Material and Material Information solely for the purpose of conducting the research described in the research plan set forth in Appendix C attached hereto (the “**Research**” and the “**Research Plan**”) and for no other purpose. Such Research Plan may only be

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changed or amended by prior written consent of both Parties. Recipient will not use the Material for injection of any substance into human subjects or in any clinical trial. Recipient shall be responsible for ensuring that the Material and Material Information are only used by and made accessible to those of Recipient's officers, employees, agents and independent contractors who are responsible for the performance of any activities in connection with the Research and that the Material shall not be used for any commercial purpose. Recipient shall not transfer the Material or otherwise provide access to the Material to any third party except as expressly set forth in this Agreement. The Material shall be stored and used at Recipient's facilities only. Recipient represents and warrants that the Research is being conducted by Recipient for its own internal purposes and is not being performed by or for any third party. Recipient shall not reverse engineer or modify any Material without the prior written consent of ICSM. Recipient agrees that its employees, agents and independent contractors shall be bound by the terms of this Agreement or shall be bound by written obligations of a similar nature in favor of ICSM as it relates to the Material. No Material shall be transferred or otherwise provided to any officer, employee, agent or independent contractor who is not responsible for any activities in connection with the Research.

Compliance with Law. *Recipient shall use, and shall cause its researchers officers, directors, employees or agents to use, the Material in compliance with all applicable laws, rules, regulations, guidelines and requirements. In accordance with any other applicable national laws governing the shipment of drugs, Recipient 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 Material received pursuant to this Agreement shall actually be used only for tests in vitro or in animals used only for laboratory research.*

Use of Human Biological Samples. *Recipient acknowledges that, insofar as the Research involves the use of human biological samples, it has the adequate facilities and relevant permissions and ethical approvals for the collection of human biological samples and that, unless such samples were obtained anonymously or were subsequently anonymised, it has obtained or will obtain, as applicable, explicit informed consent of the subjects who have provided the samples to utilize such sample in research and that their use within the Research is within the scope of such consent. In the event that human biological samples are obtained from sources other than Recipient, Recipient shall ensure that it has been granted the right to freely use such samples in carrying out the Research and that the human biological samples have been obtained in compliance with all applicable laws and regulations.*

Safety Reporting. *Recipient shall, and shall cause all researchers to, comply with any and all safety reporting procedures and requirements, including any such reporting procedures and requirements relating to any serious or unexpected event, injury, toxicity or sensitivity reaction associated with the Material, in each case as set forth in ICSM guidelines as ICSM may supply to the Recipient from time to time.*

Biobank participant. *In case the Material comes from a biobank, the Recipient confirms that it*

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shall deal promptly and appropriately (in accordance with the participants option to with withdraw according to the relevant biobank guidelines) with any "no further use" withdrawals by participants which ICSM notifies to the Recipient. Recipient is expressly prohibited from (or attempting to): (a) developing, linking or re-engineering the Materials supplied to it so as to render it personal data; (b) identifying any participant to any biobank from the Material provided by ICSM; or (c) contacting any participant. In the event that Recipient inadvertently identifies any participant to a biobank then it shall notify ICSM immediately setting out (in reasonable detail) the circumstances by which it happened. Other than for the purposes of this clause, Recipient shall not: (i) share the identification of that participant with any other person; or (ii) attempt to contact the participant themselves.


No Sale or Transfer. The transfer of the Material by ICSM to Recipient shall not constitute a sale of the Material or an option or, except to the extent necessary for the conduct of the Research, a license in or to any rights, title or interest in or to the Material.

*Results of Research Using the Material. Within thirty (30) days of the completion of the Research, Recipient shall deliver to ICSM a written summary of the Research activities, tests or studies performed using the Material and the results thereof (collectively, the “**Results**”). The Results shall be the sole and exclusive property and confidential information of ICSM, and Recipient hereby assigns to ICSM all right, title and interest it may have or obtain in any such Results, including, without limitation, any intellectual property rights arising therefrom or related thereto. Recipient agrees that the Results shall be promptly communicated to ICSM in confidence, and that it shall not publish, publicly disclose or otherwise use the Results or related data at any time or for any purpose, except as permitted under Section 10 below.*

Publication. ICSM recognizes that Recipient may wish to publish the Results in scientific journals or present the Results at symposia or other academic meetings, and ICSM agrees that Recipient will have the right to do so, solely in accordance with the following provisions. Recipient will submit to ICSM any such proposed publication or presentation of the Results at least thirty (30) days prior to the submission for publication or presentation. If ICSM determines that the proposed publication or presentation contains patentable subject matter that requires protection, ICSM may require the delay of publication or presentation until after the filing of patent applications by Recipient, such delay not to exceed 90 (ninety) days. If ICSM determines that the proposed publication or presentation includes Confidential Information (as defined in Section 10), it will so inform Recipient, and Recipient will delete such Confidential Information from any proposed disclosure as directed by ICSM. All publications or presentations related to the Research must acknowledge ICSM’s contribution to the Research, unless requested otherwise.

Confidential Information.

Definition of Confidential Information. For purposes of this Agreement, the term “ICSM Confidential Information” means (a) the Material, Material Information and Results, and (b) any and all

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information of a confidential, secret, and/or proprietary nature provided by or on behalf of ICSM or any of its Affiliates to Recipient in connection with this Agreement, regardless of whether such information is in written, oral, electronic or in any other form, and regardless of whether such information is specifically designated as “confidential”.

Restrictions on Disclosure and Use. Recipient shall (a) maintain all ICSM Confidential Information in strict confidence, (b) disclose ICSM Confidential Information only to those employees, officers, directors and other representatives of Recipient who are obligated to maintain the confidential nature of such ICSM Confidential Information and who have a need to know such ICSM Confidential Information in connection with the performance of the Research, (c) not disclose ICSM Confidential Information to any other person or entity without the prior written consent of ICSM and ensure that any employee who is given access to ICSM Confidential Information has executed an appropriate written agreement with Recipient sufficient to enable Recipient to comply with all of the provisions of this Agreement, and (d) not use ICSM Confidential Information except for purposes of performing the Research. Notwithstanding anything to the contrary in this Agreement, Recipient shall be entitled to disclose ICSM Confidential Information to the extent required by applicable law or court order; provided, that, (x) Recipient shall furnish ICSM with prompt written notice that the ICSM Confidential Information is required to be disclosed so as to provide ICSM with a reasonable opportunity to seek to prevent disclosure or to obtain a protective order for the ICSM Confidential Information, and (y) the Parties will consult with each other prior to Recipient making any such required disclosure.

Exceptions. The obligations of non-disclosure and non-use under this Agreement will not apply to information which Recipient can clearly demonstrate, by written records, falls within any of the following categories:

- (a) *information that was generally known to the public prior to disclosure or being generated under this Agreement or later becomes generally known to the public through no fault of Recipient;*
- (b) *information that was already known to the Recipient prior to disclosure or being generated under this Agreement;*
- (c) *information obtained by Recipient from a third party other than on behalf of ICSM and provided such third party is lawfully in possession of and has the right to disclose the same without limitation upon further disclosure; and*
- (d) *information that was independently developed by Recipient without reference to the ICSM Confidential Information and other than as part of the Research.*

Use of Affiliates. Recipient will not make ICSM Confidential Information available to any

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of Recipient's Affiliates without ICSM's prior written consent. In the event ICSM consents to the use of Material or disclosure of ICSM Confidential Information by Recipient to any of its Affiliates, the term "Recipient", as used in this Agreement, shall be deemed to include such Affiliate.

Safekeeping. Recipient shall maintain all ICSM Confidential Information disclosed to it in a secure place with access limited to those persons who are specifically authorized to have access to such ICSM Confidential Information pursuant to this Agreement. Recipient shall promptly notify ICSM of any unauthorized use or disclosure of ICSM Confidential Information of which it becomes aware or has knowledge and will take all reasonable steps to assist ICSM in attempting to minimize any potential or actual damages or losses resulting from such unauthorized use or disclosure.

Injunctive Relief. Recipient acknowledges and agrees that any violation of the terms of this Agreement relating to the disclosure or use of ICSM Confidential Information may result in irreparable injury and damage to ICSM not adequately compensable in money damages, and for which ICSM may have no adequate remedy at law. Recipient acknowledges and agrees that, if the disclosure or use restrictions contained in this Agreement are violated, ICSM may need to obtain injunctions, orders, or decrees in order to protect ICSM Confidential Information and will be entitled to do so, in addition to any other remedies available for breach at law or in equity, without having to post a bond or show harm.

Ownership. *Notwithstanding that ICSM is hereby delivering to Recipient the physical embodiment of each Material, ICSM is and shall remain the sole and exclusive owner of the Material, Material Information, the Results and all intellectual property rights arising from or related to any of the foregoing. Recipient agrees to not file any patent directed to or claiming: (a) the Material, (b) any derivatives or modified or transformed versions thereof, or (c) inventions arising from or otherwise related to the Material and generated in connection with the use of the Material by Recipient (each, an "**Invention**," and collectively, the "**Inventions**"), and Recipient hereby assign to ICSM any and all right, title and interest in and to any such Invention, including, without limitation, any intellectual property rights. If Recipient files a patent application in breach of this Agreement, Recipient hereby agree that ICSM shall own all right, title and interest in and to such patent application and all patents issuing thereon. In addition, Recipient shall perform, during and after the term of this Agreement, all acts, and execute all documents, deemed necessary or desirable by ICSM to permit and assist it to register, perfect, obtain, maintain, defend and enforce ICSM's rights in and to any such intellectual property rights, including, without limitation, any such patent rights. ICSM shall provide reasonable compensation to Recipient for the time devoted to said activities and for their reasonable out-of-pocket expenses. This is without prejudice the moral right of inventor to be recognized author.*

Term of Agreement. *The term of this Agreement shall begin on the Effective Date and shall expire upon completion of the Research, unless terminated earlier pursuant to Section 13. Upon expiration or earlier termination of this Agreement, Recipient shall discontinue all use of the Material and shall destroy,*

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or return at ICSM's request, any remaining quantities of the Material and any other ICSM Confidential Information pursuant to any written instructions received from ICSM, and thereafter provide ICSM with written confirmation of such destruction or return as the case may be. The expiration or earlier termination of this Agreement shall not affect any rights or obligations of either Party accruing prior to such expiration or termination, and the applicable provisions shall survive the expiration or earlier termination of this Agreement.


Termination. Either Party has the right to terminate this Agreement at any time on thirty (30) days written notice to the other Party. In addition, ICSM shall have the right to immediately terminate this Agreement upon written notice to Recipient in the event that Recipient breaches one or more of its obligations under this Agreement. Recipient shall be solely liable and responsible for any actual or threatened breach of this Agreement by any of its officers, directors, employees or agents.

Limitation of Liability and Indemnity. In no event shall ICSM be liable for any damages arising as a result of any use, misuse, handling, storage or disposal by Recipient of the Material or Results, and Recipient hereby assumes all liability that may arise from the use, misuse, handling, storage or disposal of the Material. Recipient hereby agrees to indemnify, defend and hold ICSM and its Affiliates and its and their respective officers, directors, employees, agents, and attorneys harmless from and against all damage, loss, claim, injury (including bodily injury or death), expense (including reasonable fees of attorneys and experts), liability or the like, which may arise from or otherwise relate to: (a) Recipient's use, misuse, handling, storage or disposal of the Material; or (b) Recipient's fraudulent breach of this Agreement, unless any such damage, loss, claim, injury or liability is caused by the gross negligence or willful misconduct of ICSM.

No Warranty. Recipient acknowledges that the Material and Material Information are provided "as is" and without any warranty, express or implied, including without limitation any implied warranty of merchantability or fitness for any particular purpose or any warranty that the use of the Material will not infringe or violate any patent or other proprietary right of any third party.

No License or Other Rights. The furnishing of the Material and Material Information under this Agreement shall not constitute any assignment, grant, option, or license to Recipient under any patent, patent application, or other rights now or hereafter held by ICSM. ICSM shall have and retain sole ownership of, and all rights, title and interest in or to the Material and Material Information, and nothing herein shall be construed as creating, granting or conveying to Recipient, whether expressly, by implication, estoppel or otherwise, any ownership interest or other rights in or to the Material or Material Information.

Independent Contractors. Recipient acknowledges and agrees that provision of the Material to Recipient does not create or imply a particular relationship between ICSM and Recipient and further

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agrees that Recipient is acting independently of ICSM and not as an employee, agent, partner or joint venturer of or with ICSM. Recipient shall have no authority to represent, bind or act on behalf of ICSM.


Assignment. This Agreement, and the rights and obligations hereunder, may not be assigned or transferred by either Party to any third party without the prior written consent of the other Party, except that either Party may assign this Agreement to an Affiliate or in connection with the merger, consolidation or sale of all or substantially all of its assets to which this Agreement relates.

Entire Agreement/Amendments. This Agreement (including Appendix A, Appendix B and Appendix C) constitutes the entire agreement of the Parties with regard to its subject matter, and supersedes all previous written or oral representations, agreements and understandings between ICSM and Recipient with respect thereto. This Agreement may only be amended, supplemented or changed by a written document signed by authorized representatives of both Parties. The Parties acknowledge that any further agreement related to the commercialization of Material shall be set forth in one or more separate written agreements between the Parties and that neither Party is obligated to enter into any such agreement.

Severability. In the event that any one or more of the provisions in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect.

Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of Italy without reference to the principles of conflict of laws. Except for actions seeking injunctive relief (which may be brought in any appropriate jurisdiction), suits under this Agreement shall only be brought in a court of competent jurisdiction in Pavia (Italy). This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

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ICS Maugeri SpA SB

By: _____

[name]

[title]

Date: _____


[•]

By: _____

[name]


[title]

Date: _____

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APPENDIX A

MATERIAL TO BE DELIVERED

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APPENDIX B

DELIVERY DETAILS AND SPECIFICATIONS

Delivery Details


a) **Timing:**

b) **Delivery Address:**

Specifications

a) **Quantity:**

b) **Other Terms:** Other terms, if any, specifically instructed by Recipient before delivery and agreed by ICSM

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APPENDIX C

RESEARCH PLAN