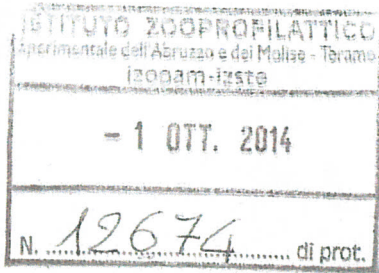


Affore Generale

CONFIDENTIAL

MATERIAL TRANSFER AGREEMENT

BETWEEN



THE ISTITUTO ZOOPROFILATTICO SPERIMENTALE DELL'ABRUZZO E DEL MOLISE "G. Caporale", hereinafter referred to as **"IZSAM"**, a **public health institute**, having its registered office located at Teramo, Italy, herein represented by **the Scientific Director Dr. Giovanni Savini**, duly authorised hereto.

AND



The Agricultural Research Council, a juristic person established in terms of the Agricultural Research Act no 86 of 1990, hereinafter referred to as **"the ARC"**, having its registered address located at 1134 Park Street, Hatfield, Pretoria, Republic of South Africa, herein represented by **Dr Shadrack Ralekeno Moephuli** as CEO/President of the ARC, duly authorized hereto.

Individually called a **"Party"** and collectively called **"the Parties"**.

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THE PARTIES AGREE AS FOLLOWS:

1. OBJECT OF AGREEMENT

This agreement sets out the terms and conditions under which the ARC will provide 20 and 50 vials of African horse sickness (AHS) virus antibody positive sera from vaccinated and naturally exposed horses respectively, hereinafter referred to as "**the Material**", to the Institution in and to which the ARC owns all proprietary and intellectual property rights, as well as connected information, for the purpose of new AHS ELISA validation

2. SUPPLY AND USE OF THE MATERIAL

- 2.1 The ARC shall remain the sole owner and maintainer of the Material supplied to the Institution under this Agreement and reserves the right to provide the same material to any other third party for the same or similar research.
- 2.2 The Institution shall destroy, or at the request of the ARC, return to the ARC all residual Material within 15 days of termination of this agreement for whatever reason.
- 2.3 The Institution shall use the Material received from the ARC exclusively for research purposes and the parties agree that no other use of the Material is permitted by the Institution, specifically research that is subject to consulting, licensing or other contractual arrangements with any third party unless prior written permission is obtained from ARC.
- 2.4 The Material is experimental in nature, and the ARC makes no expressed or implied warranties of merchantability or fitness of the Material for a particular purpose. Furthermore, the ARC makes no representation that the use of the Material is not infringing or will not infringe any patents or proprietary rights of third parties.
- 2.5 The Recipient Scientist and the Institution shall indemnify and hold harmless the ARC, its employees and agents, from and against any claims or liabilities which might arise from or in connection with this Agreement or as a result of the use, misuse, dissemination or storage of the Material by the Recipient Scientist or by anyone in the Institution.

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- 2.6 The Material shall be used in compliance with all applicable laws, regulations and guidelines.

3. RESULTS OF THE STUDY

- 3.1 The Institution shall supply the ARC with any and all results stemming from the conducting of the research on the Material within 30 (thirty) days of such results being concluded and in the form of a written report.
- 3.2 The Institution shall provide copies of disclosures involving the Institution's use of the material prior to such disclosures, which disclosure by the Institution may be delayed by the ARC for up to one year beyond notification to the ARC, if it deems such necessary to apply for patent protection. To this extent, the Institution is not allowed to publish any data generated by use of the Material unless prior written permission is obtained from ARC.
- 3.3 Any intellectual property which is invented, improved, discovered or conceived or made by the Institution relating to use of the Material, provided by the ARC in terms of this agreement, shall belong to and be the exclusive property of the ARC and to the extent possible and in advance, the Institution hereby cedes and assigns all its right, title and interest in such intellectual property to the ARC, for no consideration. The Institution shall forthwith disclose any such inventions, discoveries or improvements to the ARC.
- 3.4 The Institution undertakes to sign all documents and to do all things necessary, at the cost of the ARC, to obtain or to record the aforementioned right, title or interest in favour of the ARC.

4. CONFIDENTIALITY

- 4.1 The Institution shall ensure that all confidential information received from the ARC under this Agreement be kept secure and confidential and that only persons working with the Material and who need to utilise the confidential information be allowed access to such confidential information, after first being made aware of the confidentiality of such confidential information, except to the extent that such information is:
- 4.1.1 already known to the Institution or was publicly known at the time this Agreement was signed, as evidenced by written records;

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- 4.1.2 becomes publicly available in the absence of a violation of this Agreement;
 - 4.1.3 is disclosed to the recipient by a third party with a legal right to do so;
 - 4.1.4 is developed by either party independently of the information disclosed by the other party, or;
 - 4.1.5 has to be disclosed to a governmental authority under a general obligation, provided, however, that the exception from the confidentiality obligation is restricted to such disclosure.
- 4.2 The Institution undertakes to conclude the necessary confidentiality undertakings with its agents, representatives, officers and employees who shall hold in confidence all information received from the ARC, directly or indirectly, and all writings related in any way to the intellectual property or the ARC's confidential information until such time that the ARC's information is readily available in written form to the public from sources not attributable to the Institution.

5. ASSIGNMENT

The material and any rights and obligations stemming from this Agreement cannot be transferred, distributed, released or disclosed to a third party by the Institution or the Recipient Scientist, except to those individuals working under the Recipient Scientist's direct supervision in the Institution and the material will be used only in laboratories located at the Institute and will not be taken to any other location, unless prior written permission is obtained from ARC.

6. DURATION

This Agreement is effective as from the date of signature of the last party to sign in time and shall terminate upon:

- 6.1 Mutual agreement between the parties; or
- 6.2 Conclusion of a superseding agreement between the parties; or
- 6.3 90 (ninety) days written notice from any of the parties to the other party.

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7. GOVERNING LAW AND LANGUAGE

This Agreement shall be governed by and interpreted in accordance with the laws of Republic of South Africa and in the English language.

8. BREACH AND TERMINATION

8.1 Should either party ("**the defaulting party**") fail to perform any of its obligations under this Agreement or commit a breach of any material provision of this Agreement and:-

8.1.1 if such failure or breach is remediable, fail to remedy such breach within 30 (thirty) days of the other party ("**the non-defaulting party**") calling upon it in writing to do so, then the non-defaulting party shall be entitled (without prejudice to any other rights or remedies it may have in terms of this Agreement or in law, including the right to claim damages) to claim specific performance or terminate this Agreement;

8.1.2 if such failure or breach is incapable of being remedied, then the non-defaulting party shall be entitled to either claim damages or terminate this Agreement.

8.2 In the event that any of the parties:-

8.2.1 passes a resolution for its voluntary winding up (whether provisional or final); or

8.2.2 is placed under provisional or final liquidation; or

8.2.3 is placed under judicial management (whether subject to a final or provisional order); or

8.2.4 commits any act of insolvency as defined in the Insolvency Act 24 of 1936 as read with the Companies Act 61 of 1973; or

8.2.5 makes an arrangement or attempts to compromise with its creditors generally or makes an application to a court of law to protect it from its creditors,

then the other party shall be entitled to terminate this Agreement forthwith by

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written notice to the defaulting party.

9. DISPUTE RESOLUTION

- 9.1 Save as otherwise provided for in this Agreement, a dispute which arises from:-
- 9.1.1 the interpretation of; or
 - 9.1.2 the carrying into effect of; or
 - 9.1.3 any of the parties' rights and obligations arising from; or
 - 9.1.4 the termination or purported termination of or arising from the termination; or
 - 9.1.5 the rectification or proposed rectification of; or
 - 9.1.6 any other matter which may, in terms of this Agreement, be referred for determination in terms of this clause; or
 - 9.1.7 the procedures to be followed under this agreement,
- of which notice is given by a party to the other party to this Agreement shall, unless such dispute is resolved amicably by the parties within 21 (twenty-one) days of the notice of the dispute (or such longer period as the parties may have agreed), be submitted to and decided by arbitration. Either party shall be entitled to submit a notice of dispute to the other. The notice ("**the notice**") of the arbitration shall be given within 7 (seven) days of the expiry of the said 21 (twenty-one) day period.
- 9.2 The arbitration shall be held:-
- 9.2.1 within 21 (twenty one) days of the date of the notice;
 - 9.2.2 in Pretoria;
 - 9.2.3 with only the parties to the dispute and their representatives present;
 - 9.2.4 subject to the provisions of this clause 9.4, in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA");
 - 9.2.5 with a view to being completed as expeditiously as possible and with due regard to commercial exigencies;
 - 9.2.6 in English.
- 9.3 The arbitrator shall be appointed by the Arbitration Foundation of South Africa.
- 9.4 The arbitration shall be held in accordance with the formalities and/or

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procedures determined by the arbitrator, which may be in an informal and summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures or the strict rules of evidence, but subject always to the observance of the principles of justice.

- 9.5 The arbitrator shall, inter alia, be entitled to:-
- 9.5.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision and, for that purpose, shall have the widest power of investigations including but not limited to the investigation of the books and records of the parties;
 - 9.5.2 interview and question, any of the directors, officers and representatives of the parties;
 - 9.5.3 decide the matter submitted to him according to what he considers just and equitable in the circumstances;
 - 9.5.4 make such award, including an award for specific performance, interdict, damages or a penalty or otherwise as he, in his discretion, may deem fit or appropriate.
- 9.6 Immediately after the arbitrator has been agreed or nominated as provided herein, the parties shall be entitled to call upon the arbitrator to fix a date and place, when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 9.7 The arbitrator shall be obliged to give his award in writing, supported by reason for his award.
- 9.8 Each party irrevocably agrees and undertakes that any award which may be made by the arbitrator:-
- 9.8.1 shall be final and binding on it;
 - 9.8.2 shall be carried into effect;
 - 9.8.3 shall, if either party so requires, be made an order of any court of competent jurisdiction.
- 9.9 The cost of and incidental to the arbitrator and the proceeding shall be in the discretion of the arbitrator.
- 9.10 Nothing herein contained shall preclude either party from applying to court for a temporary interdict or for other urgent interim relief pending the decision of the arbitrator.

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- 9.11 The provisions of this clause:-
- 9.11.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or to claim, at any such proceedings, that it is not bound by such provisions;
 - 9.11.2 are severable from the rest of this Agreement and shall remain in effect despite the termination for any reason of this Agreement.

10. FORCE MAJEURE

Neither party will be liable to the other for any default or delay in the performance of its obligations under this Agreement: -

- 10.1 if and to the extent that such default or delay is caused by any act of God, war, earthquake, fire, flood, frost, tempest, civil disturbance, decrees or restraints or acts of Government or military authority, strikes and other industrial disputes, sabotage, plant or machinery break-downs, court order, any delay in any performance due from the other party, or any other circumstance beyond its reasonable control, including without limitation, failures and fluctuations in electrical power or communications; and
- 10.2 provided the non-performing party is without fault in causing such default or delay, and such default or delay could not have been prevented by the non-performing party through the use of alternative sources, workaround plans or other means.
- 10.3 Following any circumstance of force majeure, the non-performing party shall:
 - 10.3.1 notify the other party as soon as possible;
 - 10.3.2 be excused from further performance or observance of its obligations so affected for so long as such force majeure events prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and
 - 10.3.3 co-operate with the other party in implementing such contingency measures as that other party may reasonably

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require.

- 10.4 Notwithstanding the foregoing, if either party is precluded by, or as a result of an event of force majeure from fulfilling its obligations for a period of more than ninety (90) consecutive days (including Saturdays, Sundays and Public Holidays), then either party shall be entitled to cancel this agreement by giving written notice to the other party.

11. NOTICES AND DOMICILIUM

- 11.1 The parties hereby choose *domicilium citandi et executandi* ("domicilium") for all purposes under this Agreement the addresses set out below:-

The ARC:

<u>Physical Address</u>	<u>Postal Address</u>	<u>Facsimile</u>
1134 Park Street Hatfield, Pretoria 0083	P.O. Box 8783 Pretoria 0001	(012) 430 5814

The IZSAM:

<u>Physical Address</u>	<u>Postal Address</u>	<u>Facsimile</u>
Campo Boario 64100 Teramo Italy	Campo Boario 64100 Teramo Italy	0039 0861 332251

- 11.2 Either party may give written notice to the other, change its *domicilium* to any other physical address in the Republic of South Africa and its telefax number to any other South African number, provided that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.

- 11.3 Any notice to be given by either party to the other shall be deemed to have

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been duly received by the other party:-

- 11.3.1 if addressed to the addressee at its *domicilium* and posted by pre-paid registered post on the 10th day after the date of posting thereof, or
- 11.3.2 if delivered to the addressee's *domicilium* by hand during business hours on a business day, on the date of delivery thereof, or if sent by fax to the addressee on the first business day following the date of sending thereof; or
- 11.3.3 if sent by telefax, on the date and time of sending of such telefax, as evidenced by a fax confirmation printout.

- 11.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to its chosen *domicilium*.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the ARC and the IZSAM in respect of the subject matter hereof and replaces all prior Agreements or arrangements between the parties in regard to the subject matter of this Agreement. No other terms apart from those contained herein were stipulated and no other suggestions, guarantees and motives apart from those contained herein have been made by either the parties themselves or on their behalf;

13. NON-VARIATION

No amendment, variation, modification or consensual termination to this Agreement shall be effective unless in writing and signed by authorised signatories of the parties.

14. WAIVER

No granting of time or forbearance or any indulgence, altitude or other omission by

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the parties, shall be or be deemed to be a waiver of any term or condition of this Agreement or be deemed to be a condonation by the parties of any act or omission on the part of any of the parties and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.

15. SEVERABILITY

If any provision of this Agreement should be wholly or partially invalid, unenforceable or unlawful, then this Agreement shall be severable in respect of the provision in question and the remaining provisions of this Agreement shall remain in full force and effect. The parties shall use their best endeavours to negotiate with a view to removing the invalidity.

16. GOOD FAITH

Both parties undertake to perform their obligations under this agreement in the utmost good faith.

17. COSTS

Each party shall pay its own legal and other costs relating to the negotiation, drafting and execution of this Agreement.

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SIGNED AT Pretoria ON THIS 17th DAY OF December 2014.

AS WITNESSES:

1. [Signature]

2. [Signature]

for: **THE AGRICULTURAL RESEARCH
COUNCIL**

[Signature]

who warrants that he is duly
authorized hereto

SIGNED AT TERAMO ON 30TH SEPTEMBER 2014.

AS WITNESSES:

1. [Signature]

2. Dr. Onorino Pugliese

for: **ISTITUTO ZOOPROFILATTICO
SPERIMENTALE DELL'ABRUZZO E DEL
MOLISE "G. Caporale"**

[Signature]

Dr. Giovanni Savini
who warrants that s/he is duly
authorised hereto

ISTITUTO ZOOPROFILATTICO Sperimentale dell'Abruzzo e del Molise - ramo izooam-izste
13 APR. 2015
N. 6529 di prot.