

Template

APPENDIX II

RESEARCH PROJECT AGREEMENT

between

Nestec Ltd., Avenue Nestlé 55, CH-1800 Vevey, Switzerland
(hereafter "Nestec")

and

Ecole Polytechnique Fédérale de Lausanne, CH-1015 Lausanne, Switzerland
(hereafter "EPFL")

(hereafter individually "**Party**" or collectively "**Parties**")

Preamble

Whereas EPFL and Nestec have entered into an alliance agreement on November 21, 2006, establishing a strategic scientific collaboration focusing on the impact of nutrition on cognitive performance (hereafter "the Alliance Agreement").

In the framework of the Alliance Agreement, EPFL and Nestec are willing to:

1. Carry out research projects in collaboration; and
2. Allow Nestec to commission EPFL for certain scientific services.

In the present case, the Parties have decided to carry out a research project in collaboration.

IT IS HEREBY AGREED as follows:

Article 1 : Definitions

- 1.1 "**Affiliate**" means a company controlled by, controlling or under common control with a Party to this Agreement 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.
- 1.2 "**Agreement**" means this agreement, any signed amendment to it, as well as any attached exhibit, annex, appendix, schedule, protocol or other equivalent addendum.

Cl ^{AS}

- 1.3 **"Background Intellectual Property"** means any Intellectual Property owned or controlled by a Party to this Agreement at the Effective Date of this Agreement.
- 1.4 **"Confidential Information"** means any information pertaining to a Party's proprietary products and processes, ingredients, recipes, know-how, business plans, inventions, designs, methods, systems, improvements, materials, trade secrets, customer lists, supplier lists and any other information pertaining to the business or activities of a Party, provided that such information has been clearly labeled or declared in writing as confidential by that Party.
- 1.5 **"Disclosing Party"** means any Party to this Agreement disclosing Confidential Information to the other Party.
- 1.6 **"Effective Date"** means the date of signature of this Agreement by the last Party to sign.
- 1.7 **"EPFL Additional Costs"** means the following costs of the Research Project: (i) salary and social charges of the scientific staff, in proportion of their involvement in the Research Project with the exception of the salary and social charges of any professor involved in the Research Project; (ii) salary and social charges of any technician specially assigned to the Research Project; (iii) costs of any consumables; (iv) costs for any special equipment or services to be bought for the performance of the Research Project; (v) travel costs, if any. The Parties understand and agree that the purchase of any major equipment shall be agreed between the Parties beforehand.
- 1.8 **"EPFL Results"** means Results obtained solely by EPFL or jointly by EPFL and Nestec in the performance of the Research Project pursuant to this Agreement.
- 1.9 **"EPFL Field of Use"** means any applications of EPFL Results relative to pharmaceutical products, medical and electronic products and devices, optical systems and devices, research tools, medical diagnostic methods and systems, drug delivery methods, materials and devices, bioinformatics, computing and communication systems, sensors and actuators, neuro-prosthetics, but excluding all food and beverage applications for humans and animals (including medical food, clinical food, functional food, nutritional supplements and other nutritionally significant products), bioavailability methods and systems for nutrients, nutritional diagnostic methods and systems, as well as early markers of diagnosis of cognitive decline to the extent they are used to define nutritional strategies. The Parties understand and agree that any borderline applications which might pertain both to the EPFL Field of Use and the Nestec Field of Use shall be considered as being within the Nestec Field of Use. Notwithstanding, Nestec shall consider in good faith any request by EPFL to include said border-line applications in the EPFL Field of Use if Nestec has no legitimate commercial interest in such applications.
- 1.10 **"Intellectual Property"** means any registered and unregistered intellectual property rights, such as but not limited to results, data, patents, designs, trademarks, plant certificates, semi-conductor layouts and corresponding applications, as well as copyrights, know-how, and trade secrets.
- 1.11 **"Nestec Field of Use"** means any application of EPFL Results relative to food and beverage for humans and animals (including medical food, clinical food, functional

food, nutritional supplements and other nutritionally significant products), bioavailability methods and systems for nutrients, as well as nutritional diagnostic methods and systems, as well as early markers of diagnosis of cognitive decline to the extent they are used to define nutritional strategies. The Parties understand and agree that any borderline applications which might pertain both to the EPFL Field of Use and the Nestec Field of Use shall be considered as belonging to the Nestec Field of Use. Notwithstanding, Nestec shall consider in good faith any request by EPFL to include said border-line applications in the EPFL Field of Use if Nestec has no legitimate commercial interest in such applications.

- 1.12 **"Nestec Results"** means Results obtained solely by Nestec in the performance of the Research Project pursuant to this Agreement.
- 1.13 **"Principal Investigator"** means an employee of EPFL designated by the EPFL and agreed upon by Nestec to provide scientific supervision of the Research Project.
- 1.14 **"Receiving Party"** means any Party to this Agreement receiving Confidential Information from the other Party.
- 1.15 **"Results"** means the results of all work and activities realized in the performance of the Research Project, including but not limited to data, inventions, discoveries, designs, materials, improvements, know-how, biological materials, computer software, plans and documentation.
- 1.16 **"Scientific Committee"** means a group of research scientists of each Party, instituted by the Alliance Agreement, whose function is, among other tasks, to resolve amicably any dispute that may arise between the Parties in connection with this Agreement.
- 1.17 **"Steering Committee"** means a group of management representatives of each Party instituted by the Alliance Agreement, whose function is, among other tasks, to resolve amicably any dispute brought up to it by the Scientific Committee in connection with this Agreement.

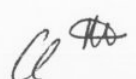
Article 2 : Scope of the Agreement

- 2.1 The EPFL shall carry out in collaboration with Nestec a research project entitled:

<complete>
(hereafter "Research Project")

- 2.2 The goals, research plan and timeline of the Research Project are detailed in Exhibit A.
- 2.3 The Research Project will be performed by and under the supervision of <name>, which shall act as Principal Investigator. The Parties agree that the Principal Investigator is considered as a key person for the Research Project, and shall not be removed or replaced without the prior written consent of Nestec. If, for any reason, the Principal Investigator becomes unable to continue to serve, the EPFL shall designate a successor acceptable to Nestec.

The Research Project shall begin on [insert date] and will end on [insert date].



Article 3 : Meetings and Reports

- 3.1 In order to monitor the progress of the Research Project, meetings shall be held between Nestec and the EPFL as often as deemed necessary by the Parties. Furthermore, there shall be a regular exchange of letters, e-mails and phone calls between Nestec and the EPFL during the performance of the Project.
- 3.2 The EPFL shall present to Nestec and the Scientific Committee one or more intermediate written reports on the progress of the Research Project, as indicated in Exhibit A, and a final written report upon completion of the Research Project.

Article 4 : Remuneration

- 4.1 In consideration for the performance of the Research Project and any rights (including Intellectual Property) granted to Nestec pursuant to this Agreement, Nestec shall pay to the EPFL the total amount of <insert total amount including VAT if applicable >. Payment shall be made against invoices according to the following schedule:

[insert amount]	Upon the Effective Date;
[insert amount]	Upon acceptance by Nestec of the <first> intermediate written report;
[insert amount]	Upon acceptance by Nestec of the <second> intermediate written report;
<add if necessary>	
[insert amount]	Upon acceptance by Nestec of the final written report.

The above amounts include VAT and any other tax, in the event that any such VAT or tax is applicable. EPFL represents that the above amounts are calculated as to include only the EPFL Additional Costs, to the exclusion of any overhead.

Acceptance of the written reports shall not be unreasonably withheld or delayed by Nestec.

- 4.2 All invoices shall be sent to the following address:

Nestec Ltd
Nestlé Research Center
Finance Department
P.O. Box 44
1000 Lausanne 26
Switzerland

CP

- 4.3 Nestec shall make the first payment within thirty (30) days from receiving the first invoice, and shall make the other payments within thirty (30) days after it has approved a written report and received the corresponding invoice.

All payments shall be made to the following bank or post account of the EPFL:

<please indicate bank details of the EPFL>

Article 5 : Confidentiality

- 5.1 In the performance of this Agreement, the Parties may exchange Confidential Information. In addition, the Parties may have access to Confidential Information of the other Party when visiting the premises of that Party. The Receiving Party undertakes to keep confidential and not to disclose to any third party any Confidential Information of the Disclosing Party, including for five (5) years after the end of this Agreement.
- 5.2 The Confidential Information shall always remain the property of the Disclosing Party. The Receiving Party undertakes to use the Confidential Information exclusively for the purpose of this Agreement.
- 5.3 The obligations mentioned under Article 5.1 and 5.2 shall not apply to Confidential Information which:
- (a) was in the public domain at the time of its receipt by the Receiving Party;
 - (b) was at the time of its receipt already in the Receiving Party's possession, or known to it;
 - (c) 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, its employees or students;
 - (d) is rightfully given to the Receiving Party by a third party on a non-confidential basis;
 - (e) was independently developed by the Receiving Party without reliance upon the Confidential Information of the Disclosing Party; or
 - (f) is required by law, a competent court or a governmental entity to be disclosed, provided however that the Disclosing Party shall first have been given an opportunity to obtain a protective order precluding or limiting the disclosure of the Confidential Information.

The Receiving Party shall bear the burden of proof if it invokes one of these exceptions.

- 5.4 The Receiving Party may communicate the Confidential Information only to those of its employees and students who are directly and necessarily involved in the performance of the Project, and who are bound to the Receiving Party by obligations similar to those of this Article 5. The Receiving Party shall be responsible for any breach of this Agreement by its employees or students.

- 5.5 The Parties shall not advertise, publish or in any way publicly indicate the fact that they are collaborating on the Research Project with the other Party, unless they have received prior written authorization from that Party.
- 5.6 Subject to Article 6 below, the EPFL undertakes to keep confidential and not to disclose (or otherwise publish) the Results to any third party, unless it has obtained the prior written consent of Nestec.

Article 6 : Publication

- 6.1 Nestec acknowledges that the EPFL has an interest to publish the EPFL Results. Subject to Article 6.2 and 6.3 below, the EPFL shall be permitted to present or publish the EPFL Results at scientific conferences and/or in scientific journals, theses or dissertations, provided always that Nestec shall have been furnished a copy of any proposed presentation or publication in advance of said presentation or publication.
- 6.2 Nestec shall then have thirty (30) days, from reception of the copy, to object because the proposed presentation or publication (i) contains EPFL Results which are patentable or otherwise require protection (plant certificates or trademarks) and/or (ii) contains Confidential Information of Nestec.
- 6.3 In the event that Nestec makes such an objection,
- (i) and if Nestec wishes to file a patent application or otherwise protect the EPFL Results, the EPFL shall refrain from making such presentation or publication until Nestec has filed patent application(s) directed to the patentable EPFL Results (or filed plant certificates or trademarks, as the case may be). Nestec shall use its best efforts to file said patent application(s) or seek such protection within a period of ninety (90) days from the date of Nestec's objection, except that in no case shall this postponement exceed one hundred twenty (120) days from the date of the objection; and
 - (ii) and if Nestec has identified Confidential Information of Nestec in the proposed presentation or publication, the EPFL shall remove such Confidential Information from the presentation or publication. EPFL undertakes to obtain written consent from Nestec for the amended text before any publication whereby Nestec shall respond within thirty (30) days from the submission of such amended version.

In case of public presentations such as at scientific conferences, the periods of time indicated under (i) above shall be reduced to thirty (30) days, respectively to ninety (90) days.

The EPFL shall also consider any request by Nestec to keep specific and well identified EPFL Results confidential, and not to publish them either by way of publication or patenting. Such request by Nestec shall however remain exceptional, and only in objectively motivated cases. EPFL shall consider such request in good faith and on a case-by-case basis, taking its public interest missions into account, and shall be free to accept or refuse such request. In the event that EPFL accepts such a

request, the Parties shall establish a separate agreement (i) describing in details the EPFL Results in question and (ii) defining the duration of the confidentiality and any other conditions pertaining thereto.

- 6.4 The provisions of Articles 6.1 to 6.3 shall apply for the duration of this Agreement and for five (5) years thereafter.
- 6.5 Subject to Articles 6.1 to 6.3 above, any publication in which authors from both Parties have contributed scientifically shall be a joint publication. The citation order and respective functions of the authors from Nestec and from the EPFL (e.g. first author, last author, corresponding author) shall be determined in good faith by the Parties, in accordance with the rules applicable in the scientific community.

Article 7: Results and Intellectual Property

A/ Ownership of Results

- 7.1 All EPFL Results shall be promptly communicated to Nestec in writing as soon as they are obtained. Tangible EPFL Results such as biological materials shall also be promptly transferred to Nestec, subject, regarding biological materials, to any prior commitment of EPFL to third parties.
- 7.2 The EPFL agrees that all EPFL Results and all Intellectual Property pertaining to the EPFL Results shall be the sole and exclusive property of Nestec. To the extent that such Intellectual Property does not vest automatically in Nestec, the EPFL hereby irrevocably assigns to Nestec all right, title and interest in and to all such Intellectual Property, and will execute – and will cause its employees and students to execute - all documents which may be necessary to give effect to the provisions of this Article 7.2. Nestec shall bear all costs related to the protection of Intellectual Property pertaining to EPFL Results, such as patent drafting, filing and prosecution, and shall provide EPFL with a copy of any patent application(s) claiming EPFL Results. To the extent that EPFL Results include tangible materials such as biological materials, Nestec shall also be the exclusive owner of all tangible property rights and Intellectual Property on such tangible materials, subject, regarding biological materials, to any prior commitment of EPFL to third parties.
- 7.3 Within six months from the delivery of the final written report pursuant to Article 3.2 or from the date Nestec informs EPFL of the filing of a patent application according to Article 7.2, EPFL may notify Nestec in writing of its interest to file, in any given country/countries, one or more patents claiming any EPFL Results which (i) have not been already published pursuant to Article 6 (subject to the US one year "grace" period), and/or (ii) have not been already claimed in one or more patents filed by Nestec in the same country/countries pursuant to Article 7.2. Nestec shall then notify EPFL in writing, within ninety (90) days from said written notice of interest by EPFL, of its decision:
- i. to file one or more patents claiming said EPFL Results in said country/countries, or
 - ii. not to file a patent claiming said EPFL Results in said country/countries and, as the case may be,

- iii. to request from EPFL that specific and well identified EPFL Results be kept confidential and not published, either by way of publication or patenting. Such request by Nestec shall however remain exceptional, and only in objectively motivated cases. EPFL shall consider such request in good faith and on a case-by-case basis, taking its public interest missions into account, and shall be free to accept or refuse such request. In the event that EPFL accepts such a request, the Parties shall establish a separate agreement (i) describing in details the EPFL Results in question and (ii) defining the duration of the confidentiality and any other conditions pertaining thereto.

In the event that Nestec decides not to file a patent application in one or several of the countries mentioned in the abovementioned notification by EPFL, then EPFL shall be entitled to file a patent application in its own name and at its own cost in such country/countries, and EPFL shall be the owner of such patent applications and patents issued thereon.

- 7.4 Notwithstanding Articles 7.1 to 7.3 above, any EPFL Results pertaining to methodologies or research tools used by EPFL in the performance of the Research Project, including improvements to such methodologies or research tools, shall be the sole and exclusive property of the EPFL. For the avoidance of doubt, this provision shall not apply in cases where said methodologies or research tools constitute Background Intellectual Property of Nestec. EPFL hereby grants Nestec a non-exclusive, royalty-free, non-transferable and irrevocable license to use such methodologies or research tools for R&D purposes only and to the extent necessary for Nestec to use any Results.
- 7.5 Before abandoning any patent application/patent(s) claiming EPFL Results in any country/countries, Nestec and EPFL shall make their best efforts to inform the other Party at least ninety (90) days in advance, so as to assign said patent application/patent(s) claiming EPFL Results to said other Party, and to allow it to maintain said patent application/patent(s) in its name and at its cost.
- 7.6 The Nestec Results shall always be and remain the sole and exclusive property of Nestec. For clarity, this Agreement does not confer to EPFL any assignment, license or other right to use any Nestec Results.

B/ Use and exploitation of the EPFL Results

- 7.7 Nestec hereby grants to the EPFL a royalty-free, non-exclusive and irrevocable worldwide license with sublicensing rights in the EPFL Field of Use under any patent application/patent(s) claiming EPFL Results and owned by Nestec according to Article 7.2 or 7.3 (i), or assigned to Nestec according to Article 7.5. In addition, the EPFL shall have the right to use any such patent application/patent(s) for education and non-commercial research purposes, including outside the EPFL Field of Use.
- 7.8 EPFL hereby grants to Nestec a royalty-free, non-exclusive and irrevocable worldwide license with sublicensing rights in the Nestec Field of Use under any patent application/patent(s) claiming EPFL Results and owned by EPFL according to Article 7.3 or assigned to EPFL according to Article 7.5.

- 7.9 Both Parties shall be free to use any unpatented EPFL Results, subject to any separate agreement regarding EPFL Results that EPFL exceptionally accepted to keep confidential according to Article 6.3 or 7.3.

C/ Background Intellectual Property

- 7.10 Each Party is and shall remain the exclusive owner of its respective Background Intellectual Property. For clarity, this Agreement does not confer any assignment, license or other right to use any Background Intellectual Property of any Party to the other Party. Notwithstanding, the EPFL represents either that (i) to the best of its knowledge, no Background Intellectual Property of EPFL is required for Nestec to use the EPFL Results in good faith, or that (ii) to the best of its knowledge, any Background Intellectual Property of EPFL which may be required for Nestec to use the EPFL Results in good faith is listed in Exhibit B.
- 7.11 Pursuant to this Agreement, either Party may receive from the other Party certain tangible materials (hereafter "Materials") which are not Results. In such case, the Materials as well as the name of the Party providing said Materials shall be detailed in Exhibit C. The Materials and, in case of biological materials, their components, supernatant, progeny and unmodified derivatives constitute Background Intellectual Property of the Party providing the Materials, and may be patented. Title to the Materials and any pertaining Intellectual Property is and shall always remain with the providing Party, and the Party receiving the Materials shall not, for any purpose, transfer or otherwise disclose any of said Materials to any third party without the prior written consent of the providing Party. The receiving Party hereby undertakes to use the Materials only for the purpose of this Agreement, and more specifically not to produce nor attempt to produce any modified derivatives of the Materials. Upon termination or expiration of this Agreement, the receiving Party shall immediately cease use and destroy any remaining Materials, unless instructed otherwise in writing by the providing Party.

Article 8 : Independent Contractors

The EPFL shall at all times be an independent contractor, and not an agent, partner, joint venturer or employee of Nestec, and nothing contained herein shall be deemed to create any employment, partnership or joint venture relationship between the Parties. The EPFL shall not be eligible to participate in any benefits extended by Nestec to its employees. Neither Party or its employees will have the authority to bind or commit the other Party to any obligation or agreement, or speak for, represent or obligate the other Party in any way.

Article 9 : Quality of Performance

- 9.1 The EPFL shall perform the Research Project with care, skill and diligence, in accordance with the highest applicable academic standards. The EPFL shall comply with all applicable laws in performing the Research Project.
- 9.2 EPFL makes no warranties, express or implied, regarding the originality, the merchantability or fitness for a particular purpose of the EPFL Results.

- 9.3 In the performance of the Research Project, the EPFL shall not disclose to Nestec nor use any information that the EPFL knows is the confidential information of any third party, unless it has received the prior written consent of such third party. Moreover, in the performance of the Research Project, EPFL shall make reasonable efforts to avoid that the use of the EPFL Results will be dependent of third parties' Intellectual Property known by the EPFL researchers involved in the Research Project, unless Nestec agrees to such orientation of the Research Project. Nestec hereby acknowledges that EPFL shall not perform patent or other Intellectual Property searches in view of the Research Project.

Article 10 : Liability

- 10.1 Before the use or the commercialization of any product and/or service based on the Results, it is the responsibility of Nestec to undertake such investigations and tests as are necessary to the development of such product and/or service. In the event that Nestec decides to use or commercialize such products and/or services, Nestec shall be liable towards third parties in connection with this use or commercialization. Subject to Article 10.2 below, Nestec agrees to indemnify and defend EPFL against any such claim from third parties brought against EPFL.
- 10.2 EPFL shall be liable to Nestec only in the event of fraud or gross negligence of EPFL for any damages suffered in connection with this Agreement. In addition, indemnification of EPFL by Nestec pursuant to Article 10.1 shall not apply in case of fraud or gross negligence of EPFL.

Article 11 : Exclusivity

For the duration of this Agreement, the EPFL shall not enter into any other collaboration with commercial partners in the food industry, if said collaboration (a) is directed to studying the impact of nutrition on cognitive performance as defined in Article 2.1 and (b) implies the participation of any EPFL personnel and/or specific laboratory which are directly involved in the Research Project.

Article 12 : Communication

Any notice or communication to be given within the framework of this Agreement shall be forwarded to the following contact persons:

For Nestec:

- [Name]
Nestlé Research Center
Case Postale 44
CH-1000 Lausanne 26
Switzerland
e-mail:
Telephone:
Fax:

CP

Communications pursuant to Article 7 (Results and Intellectual Property) shall also be sent to:

- [Name, address and full details of patent Dept]
e-mail:
Telephone:
Fax:

For the EPFL:

- [Name, address and full details]
e-mail:
Telephone:
Fax:

Communications pursuant to Article 7 (Results and Intellectual Property) shall also be sent to:

- EPFL
Industrial Relations Office (SRI)
Station 10
CH-1015 Lausanne
Switzerland

Article 13 : Termination

- 13.1 This Agreement shall come into effect on the Effective Date and shall then continue for the duration of the Project, i.e. until <please complete>.
- 13.2 Nestec shall have the right to terminate this Agreement at any time upon sixty (60) days prior written notice. In the event of such termination, Nestec shall have no further obligation to the EPFL under this Agreement, except to pay those accrued fees and expenses due to the EPFL based on work duly performed up to the date of termination, as well as those non-cancellable expenses incurred by EPFL to the extent evidenced by written documents. Upon receipt of such notice of termination, the EPFL shall discontinue the Research Project and shall deliver immediately to Nestec all written reports and other materials or documents, whether completed or in process, developed or prepared by the EPFL in the performance of the Research Project.
- 13.3 The obligations mentioned under Articles 5, 6 and 7 shall survive the expiration or termination of this Agreement, as well as any other obligation which by its nature is intended to survive.

Article 14 : Entire Agreement and Amendments

This Agreement sets forth the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties (whether written or oral) relating thereto, except any prior confidentiality agreement which may have been entered by the Parties, and

CP 

which shall continue to apply. This Agreement may be amended only in writing with the signature of a duly authorized representative of each Party.

Article 15 : Assignment and Subcontracting

The EPFL shall not assign nor subcontract the Research Project in whole or in part without the prior written consent of Nestec. Nestec 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 EPFL.

Article 16 : Applicable law, Jurisdiction, and Dispute Resolution

- 16.1 This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland.
- 16.2 The Parties agree that any dispute which cannot be resolved amicably shall be submitted exclusively to the competent courts of Lausanne, subject to appeal to the Swiss federal Tribunal.
- 16.3 Prior to initiating litigation, the Parties shall make a good faith attempt to resolve the dispute amicably. The Scientific Committee shall first attempt to resolve the matter by negotiation, and shall attend to at least one meeting to this effect. In case this effort is unsuccessful within fifteen (15) days from said meeting, the Parties shall bring the matter up to the Steering Committee. If the dispute is not resolved by the Steering Committee within sixty (60) days thereafter, either Party shall be free to initiate court proceedings.

IN WITNESS WHEREOF, the Parties have signed this Agreement.

Nestec Ltd.
Avenue Nestlé 55
CH-1800 Vevey
Switzerland

Ecole Polytechnique Fédérale de
Lausanne – EPFL
CH-1015 Lausanne
Switzerland

By its duly authorized representative(s):

By its duly authorized representative(s):

Name:
Department Head, <complete>

Name:
Title:

Prof. Dr. Peter Van Bladeren
Director of the Nestlé Research Center

Name:
Title:

Date:

Date:

cc 