

**Execution Copy**

**ALLIANCE AGREEMENT**

between

Merck Serono International, S.A, 9 Chemin des Mines, 1211 Geneva 20  
Switzerland  
(hereafter "**MERCK SERONO**")

and

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

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

**Preamble**

Whereas EPFL is a world-class academic institution with a strong commitment in life sciences and related technologies;

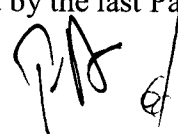
Whereas MERCK SERONO is a world leader in the pharmaceutical industry;

EPFL and MERCK SERONO have decided to collaborate and bring their resources together toward promoting research on in neuroscience, oncology and drug delivery fields

IT IS HEREBY AGREED as follows:

**ARTICLE 1      Definitions**

- 1.1 "Agreement" means this agreement, any signed amendment to it, as well as any attached exhibit, annex, appendix, schedule, protocol or other equivalent addendum.
- 1.2 "Chair" means the MERCK SERONO-endowed chair(s) to be created at EPFL pursuant to this Agreement, respectively dedicated to (i) research on neuroscience, (ii) research on oncology and (iii) research on drug delivery. Two of the Chairs shall be headed by a full-time full professor and one of the Chairs shall be headed by a full time tenure track assistant professor to be recruited by EPFL and approved by MERCK SERONO, and shall additionally comprise a Chair Team for each Chair and laboratory equipment defined according to the rules usually applicable at EPFL for new Chairs.
- 1.3 "Chair Team" means, for each Chair, a group of researchers, as defined in the Chair Team Agreement working at EPFL under the direction of the professor heading the Chair.
- 1.4 "Chair Team Agreement" shall have the meaning set forth in Article 4.1.
- 1.5 "Effective Date" means the date of signature of this Agreement by the last Party to sign.

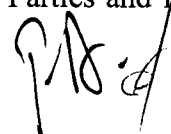


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- 1.6 "Research Project" means any research project conducted at EPFL pertaining to at least one of the areas of research detailed in Article 2.1, and called for by the Parties pursuant to Article 5.1.
- 1.7 "Scientific Services" means any scientific services such as routine analysis, expertise, use of specific equipments, specific simulations, etc pertaining to the fields of Neuroscience, Oncology, Drug Delivery, Imaging and Bioinformatics and requested by MERCK SERONO pursuant to Article 6.1.
- 1.8 "Scientific Committee" means a group of four scientists of MERCK SERONO designated by MERCK SERONO and four scientists of EPFL designated by EPFL, as indicated in Appendix IV, whose functions are (1) to call for Research Projects, (2) to review and select the Research Projects and the Scientific Services, (3) to review the progress made in the Research Projects and Scientific Services, and (4) to resolve amicably any dispute that may arise between the Parties in connection with a Research Project agreement or a Scientific Services agreement. MERCK SERONO and EPFL shall have one vote in the Scientific Committee, in which all decisions shall require unanimity. Any changes by a Party of its representatives in the Scientific Committee shall be communicated in writing to the other Party.
- 1.9 "Steering Committee" means a group of three management representatives of MERCK SERONO designated by MERCK SERONO and three management representatives of EPFL designated by EPFL, as indicated in Appendix V, whose functions are (1) to decide matters brought up to it by the Scientific Committee and (2) to resolve amicably any dispute that may arise between the Parties in connection with this Agreement. MERCK SERONO and EPFL shall have one vote in the Steering Committee, in which all decisions shall require unanimity. Any changes by a Party of its representatives in the Steering Committee shall be communicated in writing to the other Party.

## ARTICLE 2 Scope of the Agreement

- 2.1 EPFL and MERCK SERONO shall collaborate in the following areas of research:
1. Neuroscience;
  2. Oncology; and
  3. Drug Delivery.
- 2.2 The collaboration of the Parties shall occur according to the following modalities:
1. Creation of three (3) MERCK SERONO-endowed Chairs at EPFL who shall conduct research in the areas of Neuroscience, Oncology and Drug Delivery respectively.
  2. Creation of a Chair Team within each Chair.
  3. Research Projects decided on a case-by-case basis by the Parties and financed by MERCK SERONO.
  4. Scientific Services decided on a case-by-case basis by the Parties and financed by MERCK SERONO.



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5. Exchange of researchers and master students.

### ARTICLE 3 MERCK SERONO-endowed Chairs

- 3.1 Upon execution of this Agreement, EPFL shall create three (3) MERCK SERONO-endowed Chairs at EPFL, two (2) headed by a full-time full professor and one (1) headed by a full-time tenure track assistant professor, in each case to be recruited by EPFL. The Parties understand and agree that said professors shall be hired according to the procedures applicable at EPFL, with the participation of MERCK SERONO in the Nomination Committees for each Chair. Any nomination must be approved in writing by MERCK SERONO. The selected candidates shall have the same status that other full and assistant professors have at EPFL.
- 3.2 The Chairs shall be integrated in the school of life sciences of EPFL, and shall respectively be dedicated to research on Neuroscience, Oncology and Drug Delivery.
- 3.3 The Chairs shall respectively be denominated as follows:
  - (a) The MERCK SERONO Chair on Neuroscience;
  - (b) The MERCK SERONO Chair on Oncology; and
  - (c) The MERCK SERONO Chair on Drug Delivery.

The denomination of the Chairs shall remain unchanged at EPFL. Any modification of the denomination shall require the mutual agreement of the Parties.

- 3.4 MERCK SERONO undertakes to co-finance with EPFL the Chairs as follows:

MERCK SERONO shall, subject to the payment schedule below, make a donation of CHF 12.5 million, payable by MERCK SERONO to the foundation "EPFL+" by the end of calendar year 2007, in the following installments :

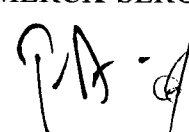
- (a) CHF 2.5 million within thirty (30) days of the Effective Date; and
- (b) CHF 10 million by December 31, 2007

The above amount shall be placed by the foundation "EPFL+" in the EPFL Endowment Funds. Such Funds and related revenues will be used to support EPFL missions and activities, including the Chairs. The above amount shall be allocated as follows:

- (a) CHF 5 million for each of the two (2) full-time full professor Chairs; and
- (b) CHF 2.5 million for the full-time tenure track assistant professor Chair.

EPFL undertakes to finance the Chairs with appropriate funding according to EPFL standards.

In case none of the candidates for the three (3) Chairs has accepted the professor position by December 31, 2008 and provided MERCK SERONO has considered with due care and diligence EPFL proposals for appointments, the aforementioned payments under this Article 3.4 shall be paid back to MERCK SERONO by no later than January 31, 2009, and this Agreement shall be terminated unless the Parties mutually agree to continue the search for candidates. Should there be any Chair still vacant by December 31, 2009, any payment corresponding to the vacant Chair made by Merck Serono under this Article 3.4 shall be paid back to MERCK SERONO, by no later than January 31, 2010.

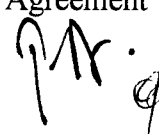


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- 3.5 Each professor heading a Chair shall give to MERCK SERONO's researchers four presentations per year, two (2) of them being held at MERCK SERONO and two at EPFL.
- 3.6 MERCK SERONO acknowledges that tenure track assistant professors at EPFL are appointed in view of their possible promotion as associate or full professors if they achieve certain objectives. After a period of four (4) years, their performances are reviewed and, after a period of eight (8) years from their appointment at the latest, a decision is taken as to their promotion or termination of their appointment. MERCK SERONO will be involved in the process of reviewing the performance of the tenure track assistant professor heading one of the Chairs. If the said professor is promoted as associate or full professor at EPFL, then MERCK SERONO shall be entitled to continue to support such Chair provided it makes an additional single donation in the amount of CHF 2.5 Mio, payable within ninety (90) days from the date EPFL confirmed in writing to MERCK SERONO the promotion of the said professor (unless the promotion occurs prior to five (5) years from the date of appointment of such professor to the Chair Team, in which case, the payment shall be due on the fifth (5<sup>th</sup>) anniversary of such appointment); the said amount shall be placed by EPFL in its Endowment Funds.
- 3.7 If a Chair headed by a tenure track assistant professor becomes vacant for any reason, the terms of Section 3.6 shall apply anew.
- 3.8 Should the President of EPFL determine that the purposes and objectives for which MERCK SERONO made the donation for the creation of the Chairs at EPFL are no longer capable of being obtained (including, without limitation, in the event that a professor heading a Chair leaves EPFL and a suitable replacement cannot be found), then the President of EPFL may propose to MERCK SERONO an alternate application of the donation within the school of life sciences of EPFL in furtherance of a purpose which the President determines to be (a) consistent with the general intent of MERCK SERONO and (b) scientifically relevant within EPFL research and teaching activities. Upon receipt of such a proposal, MERCK SERONO shall diligently examine it and respond within a reasonable period of time. If MERCK SERONO disagrees to this proposal, the Parties shall enter into good faith negotiations in order to seek a mutual acceptable solution.
- 3.9 All endowment payments shall be made to the bank or post account which shall be designated in writing by EPFL.
- 3.10 The amount specified in Article 3.4 and 3.6 includes VAT and any other tax, in the event that any such tax is applicable.

## ARTICLE 4 Chair Teams

- 4.1 Each Chair Team shall be composed of no less than three (3) employees of EPFL (PhD students, post-docs and/or technicians) the exact composition of which shall be defined in a specific agreement ("the Chair Team Agreement"). The Parties shall use the template Chair Team Agreement attached to this Agreement as Appendix I, and shall negotiate only the terms which are specific to each Chair, such as the exact number of EPFL employees composing the Chair Team. No other terms of said template Chair Team Agreement shall be changed without the agreement of both Parties. The Parties understand and agree that according to template Chair Team Agreement attached in



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Appendix I, MERCK SERONO shall have a time limited exclusive option to become the sole owner of intellectual property rights (as defined in the Chair Team Agreement) generated by the Chair Team, subject to the license rights granted to EPFL and the other provisions set forth in the said Chair Team Agreement. The Parties further understand and agree that MERCK SERONO shall pay additional funding for the three Chair Teams in the amount of CHF 330,000 (inclusive of VAT) per Chair Team per year for five (5) years subject to the provisions of the Chair Team Agreements.

- 4.2 The Chair Team Agreements shall have a normal duration of five (5) years subject to the earlier termination clause as provided in such Chair Team Agreements.

## ARTICLE 5 Research Projects

- 5.1 In order to promote research on Neuroscience, Oncology and Drug Delivery, the Scientific Committee shall call for research proposals within EPFL and within MERCK SERONO on topics pertaining to at least one of the areas of research referred to in Article 2.1. The Scientific Committee shall determine which research proposals to accept. MERCK SERONO and EPFL shall then enter into a separate research agreement according to the procedure described in this Article 5.
- 5.2 The Scientific Committee shall have the responsibility for reviewing and selecting the Research Projects, and for negotiating the financing, timeline, principal investigators and detailed scientific content of each Research Project. MERCK SERONO and EPFL shall have one vote in the Scientific Committee, and any decision to perform a specific Research Project requires unanimity of these votes. In case of disagreement regarding a specific Research Project, each Party shall have the right (but not the obligation) to bring up the matter to the Steering Committee for final decision. The Steering Committee shall then decide unanimously, according the same modalities as the Scientific Committee. Should the Steering Committee not reach a unanimous decision, the Research Project shall not be performed.
- 5.3 The Parties shall use the template Research Project agreement attached to this Agreement as Appendix II, and shall negotiate only the terms which are specific to the Research Project, such as the cost, timeline, principal investigator and detailed scientific content. No other terms of said template Research Project Agreement shall be changed without the agreement of both Parties. The Parties understand and agree that according to the template Research Project agreement attached in Appendix II, MERCK SERONO shall have a time limited exclusive option to become the sole owner of intellectual property rights (as defined in the Research Project agreement) generated during the Research Projects, subject to the license rights granted to EPFL and the other provisions set forth in the said template Research Project agreement.
- 5.4 The Parties understand and agree that MERCK SERONO shall have no obligation to finance any Research Project unless a separate Research Project agreement is executed by the Parties. EPFL represents that the cost to MERCK SERONO of the Research Projects shall be calculated as to include the direct costs and expenses of EPFL, plus VAT where applicable, and no overhead shall be charged.
- 5.5 The total budget of MERCK SERONO for approved Research Projects shall be up to CHF 2,010,000 per year (inclusive of VAT) for five (5) years starting calendar year 2008.



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Funding shall be required only for Research Projects that have been approved as provided in this Article 5.

## **ARTICLE 6 Scientific Services**

- 6.1 MERCK SERONO shall have the right to request from EPFL, on a case-by-case basis, the provision of scientific services related to Neuroscience, Oncology, Drug Delivery, Imaging and Bioinformatics.
- 6.2 The Scientific Committee shall decide whether a specific Scientific Service shall be performed by EPFL, by using the same procedure as indicated in Article 5.2 above.
- 6.3 The Parties shall use the template Scientific Service agreement attached to this Agreement as Appendix III, and shall negotiate only the terms which are specific to the Scientific Services, such as the cost, timeline, principal investigator and detailed scientific content. No other terms of said template Scientific Service Agreement shall be changed without the agreement of both Parties. The Parties understand and agree that according to the template Scientific Services agreement attached in Appendix III and subject to its terms, MERCK SERONO shall be the owner of the results of any Scientific Services and that EPFL shall be the owner of its methods and tools used or developed to perform such services.
- 6.4 The Parties understand and agree that MERCK SERONO shall have no obligation to finance nor request any Scientific Services unless a separate Scientific Service agreement is executed by the Parties. EPFL represents that the cost to MERCK SERONO of the Scientific Services shall be calculated as to include the direct costs and expenses of EPFL and a sixty percent (60 %) overhead. VAT shall be added where applicable.

## **ARTICLE 7 Visiting Researchers and Master Students**

- 7.1 Both Parties hereby agrees to host researchers (including Master Students) from the other Party, members of Chair Teams and/or participants in Research Projects. The hosting time shall be agreed upon on a case-by-case basis.
- 7.2 The rights to the results obtained by said visiting researchers of both Parties shall be governed by the Chair Team Agreement or Research Project Agreement, as the case may be if such Agreements are applicable. In any other case the rights to the results shall remain with the hosting party, unless the Parties agree otherwise. The Parties agree that any visiting researchers shall enter into an agreement consistent with the terms of the Chair Team Agreement or Research Project Agreement and in particular with their confidentiality provisions and intellectual property provisions..

## **ARTICLE 8 Communication to the public**

The Parties undertake to communicate to the public about this Alliance Agreement in a concerted manner. To this effect, the Parties shall agree to a common communication policy and shall cause its representatives of the Steering and Scientific Committee to comply with the confidentiality undertakings specified in the Research Project and Service Agreements entered

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into within the framework of this Agreement. All press releases regarding this Alliance Agreement shall require the prior written approval of the other Party.

## **ARTICLE 9 Independent Contractors**

The EPFL shall at all times be an independent contractor, and not an agent, partner, joint venturer or employee of MERCK SERONO, 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 MERCK SERONO to its employees. Neither Party or its employees will have the authority to bind or commit another Party to any obligation or agreement, or speak for, represent or obligate another Party in any way.

## **ARTICLE 10 Collaboration with Third Parties**

The Chairs may collaborate with other industrial or academic partners of their choice, subject to the following restriction: for a period of five (5) years from the date of appointment of each Chair professor, the each professor shall not enter into any other collaboration with commercial partners in the following fields: infertility, pediatric growth, multiple sclerosis and targeted therapies for oncology, without the prior written consent by MERCK SERONO.

## **ARTICLE 11 Communication between the Parties**

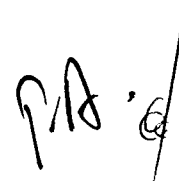
Any notice or communication to be given within the framework of this Agreement between the Parties shall be forwarded to the following contact persons:

For MERCK SERONO:

Merck Serono International, S.A.  
c/o Merck KGaA  
Frankfurter Strasse 250  
D 64293 Darmstadt  
Germany  
Attention : Senior Executive Vice President, Research

With a copy to:

Merck Serono International, S.A.  
9 Chemin des Mines  
1211 Geneve 20  
Attention : General Counsel  
and Senior Executive Vice President, Licensing and Intellectual Property



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For the EPFL:


Ecole Polytechnique Fédérale de Lausanne  
Industrial Relations Office  
CM - Station 10  
CH - 1015 Lausanne, Switzerland  
Attention : Head of Industrial Relations Office

With a copy to:

Ecole Polytechnique Fédérale de Lausanne  
SG - Station 15  
CH- 1015 Lausanne  
Attention : Dean of Life Science School

## ARTICLE 12 Termination

- 12.1 All the rights and obligations of the Parties related to the two (2) Chairs headed by full professors shall automatically expire fifteen (15) years from the Effective Date.
- 12.2 All the rights and obligations of the Parties related to the Chair headed by a tenure track assistant professor shall automatically expire upon the earlier of (a) eight (8) years from the date of appointment of such professor to the Chair Team or (b) the date of promotion of the said professor as full professor or associated professor at EPFL, except in the case where such professor is promoted earlier than five (5) years from such appointment date, in which case the expiration date shall be (5) years from the date of such appointment. However, in the event that MERCK SERONO makes an additional donation to the said Chair in the amount of CHF 2.5 million pursuant to Article 3.6, all the rights and obligations of the Parties related to the said Chair shall be extended and shall automatically expire fifteen (15) years from the Effective Date.
- 12.3 For the avoidance of doubt, the specific expiration provisions of Articles 4.2 and 10 shall prevail over Articles 12.1 and 12.2.
- 12.4 The Research Projects agreements and the Scientific Services agreements shall have their own term, regardless of any expiration of this Alliance Agreement.
- 12.5 In the case a professor of a MERCK SERONO endowed Chair leaves EPFL prior to the expiration of said Chair according to this Article, EPFL shall search for another candidate and the period of validity of the Chair shall be extended by adding the period of vacancy.
- 12.6 Any material failure by a Party (the "Breaching Party") to comply with any of its material obligations provided for in this Agreement will entitle the other Party (the "Non-Breaching Party") to give to the Breaching Party written notice specifying the nature of the material breach, requiring the Breaching Party to make good or otherwise cure such material breach. If such breach is not cured within thirty (30) days after the receipt of such notice, the Non-Breaching Party will have the right, on written notice to the Breaching Party, to terminate this Agreement without prejudice to any of the other rights and remedies conferred on it by this Agreement or by applicable law.

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**ARTICLE 13 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 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 14 Applicable law, Jurisdiction, and Dispute Resolution**

- 14.1 This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland.
- 14.2 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.
- 14.3 Prior to initiating litigation, the Parties shall make a good faith attempt to resolve the dispute amicably. The Steering Committee shall first attempt to resolve the matter by negotiation, and shall attend to at least one meeting to this effect. If the dispute is not resolved within sixty (60) days thereafter, either Party shall be free to initiate court proceedings.

**ARTICLE 15 Delegation/Assignment**

MERCK SERONO shall have the right to delegate and/or assign its rights and obligations to any Affiliate designated by MERCK SERONO. For the purposes of this Agreement, the term "Affiliate" shall mean any legal entity which is controlled by, has control over or is under common control with MERCK SERONO whereby "control" shall mean the holding of more than fifty percent (50%) of the capital stock or participating shares entitled to vote for the election of directors.

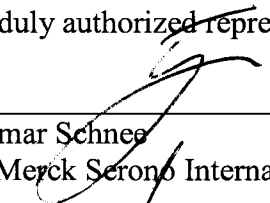
IN WITNESS WHEREOF, the Parties have signed this Agreement.

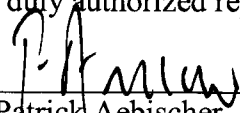
Merck Serono International S.A.


Ecole Polytechnique Fédérale de Lausanne – EPFL

By its duly authorized representative(s):

By its duly authorized representative(s):

  
\_\_\_\_\_  
Mr. Elmar Schnee  
CEO, Merck Serono International S.A.

  
\_\_\_\_\_  
Prof. Patrick Aebischer  
President, EPFL

  
\_\_\_\_\_  
Name: OLAF KLINGER  
Title: CFO, MERCK SERONO INTERNATIONAL S.A.

Place and date: Geneve 25.10.2007

Place and date: Lausanne 27/10/2007

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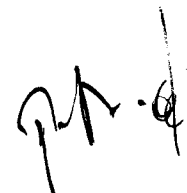
APPENDIX I: template Chair Team Agreement

APPENDIX II: template Research Project agreement

APPENDIX III: template Scientific Services agreement

APPENDIX IV: membership of the Scientific Committee (to be finalized by December 31<sup>st</sup>, 2007)

APPENDIX V: membership of the Steering Committee (to be finalized by December 31<sup>st</sup>, 2007)

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**APPENDIX I**

**TEMPLATE CHAIR TEAM AGREEMENT**

between

Merck Serono International, S.A, 9 Chemin des Mines, 1211 Geneva 20, Switzerland  
(hereafter "**MERCK SERONO**")

and

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

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

*Note: all highlighted terms need to be inserted prior to execution of the Chair Team Agreement*

**Preamble**

EPFL and MERCK SERONO have entered into an alliance agreement on October 25<sup>th</sup> 2007 establishing a strategic scientific cooperation in the field of life sciences, in particular in neurosciences, oncology and drug delivery (hereafter "the Alliance Agreement").

In the framework of the Alliance Agreement, EPFL and MERCK SERONO are willing to

- i. establish teams of researchers in the MERCK SERONO endowed Chairs; and
- ii. carry out specific research projects in collaboration; and
- iii. allow MERCK SERONO to commission EPFL for certain scientific services.

In the present case, the Parties have decided to create a Chair Team (as defined in the Alliance Agreement) in one of the MERCK SERONO endowed Chairs at EPFL.

IT IS HEREBY AGREED as follows :

**ARTICLE 1 Statement of Work**

**1.1** EPFL hereby undertakes to hire a team of no less than three (3) EPFL employees (who shall be researchers of post-doctoral level, PhD students and/or technicians).

This team of researchers shall be fully integrated in the MERCK SERONO Chair on ..... and shall be under the direction of professor ..... , head of such MERCK SERONO Chair (hereafter "the Professor").



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The Chair Team shall focus its research activities in the following specific field(s) :

.....

Such expected research activities are presented in more details in Enclosure 1 which shall be an integral part of this Agreement. The Enclosure 1 shall also present a yearly budget for the Chair Team.

- 1.2 MERCK SERONO will be consulted by the Professor prior to the hiring of each Chair Team member and MERCK SERONO has the right to veto a proposal based on its reasonable judgment. MERCK SERONO designates Mr/Ms ..... as its contact person (and such designation may be changed by MERCK SERONO upon notice to EPFL) for the purpose of building the Chair Team in cooperation with the Professor. MERCK SERONO and EPFL shall respect the confidentiality of any personal information exchanged during this procedure.
- 1.3 MERCK SERONO hereby undertakes to make its best efforts to collaborate with the Chair Team and to bring its competencies for the benefit of the research activities of the Chair Team, and the Chair Team hereby undertakes to make its best efforts to collaborate with MERCK SERONO and to bring its competencies for the benefit of the research activities of the Chair Team. To the extent that proprietary documentation, information and data from MERCK SERONO are transferred to the Chair Team and the Professor, all such elements shall be subject to the confidentiality provisions of Art.5 . The Parties shall mutually agree upon regular meetings to be held at the place of business of one of the Parties hereto in order to monitor the progresses of the research activities of the Chair Team. Regular reporting on research activities and results of the Chair Team to MERCK SERONO shall be according to the Enclosure 1.
- 1.4 Any modifications to the scope and priorities of the research activities and to the budget shall be subject to prior mutual written agreement.
- 1.5 The Professor heading the Chair Team will devote sufficient efforts and time commitment to ensure that the Chair Team adequately performs the Chair Team activities under this Agreement. If MERCK SERONO believes, in its reasonable judgment, that said Professor is not adequately heading the Chair Team, it may request EPFL to take any necessary corrective action. EPFL agrees to duly consider MERCK SERONO's request.

**ARTICLE 2 Term of Agreement and Termination**

- 2.1 This Agreement shall become effective on ..... and remain effective until .....
- 2.2 In the case, but not earlier than two (2) years from the effective date of this Agreement, MERCK SERONO considers that the research activities of the Chair Team is no longer relevant for MERCK SERONO, MERCK SERONO shall have the right to terminate this Agreement with a six (6) months' prior written notice. In the case a PhD work started within the scope of this Agreement with the consent of MERCK SERONO and MERCK

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SERONO intends to terminate this Agreement, the Parties shall diligently and in good faith search for solutions to allow such PhD work to be completed.

- 2.3 Any material failure by a Party (the "Breaching Party") to comply with any of its material obligations provided for in this Agreement will entitle the other Party (the "Non-Breaching Party") to give to the Breaching Party written notice specifying the nature of the material breach, requiring the Breaching Party to make good or otherwise cure such material breach. If such breach is not cured within thirty (30) days after the receipt of such notice, the Non-Breaching Party will have the right, on written notice to the Breaching Party, to terminate this Agreement without prejudice to any of the other rights and remedies conferred on it by this Agreement or by applicable law.

## ARTICLE 3 Payments

- 3.1 The financial contribution of MERCK SERONO to the Chair team is agreed to be : CHF 330,000 (including VAT) per year which amount may be increased or decreased after no less than two years by the Parties taking into account the performance of the Chair Team. This amount is free of any EPFL overhead. The yearly budget of the Chair Team is given in Enclosure 1.

- 3.2 The payment schedule shall be the following :

(a) For the first year of this Agreement, a payment of CHF 165,000 shall be due and payable within thirty (30) days of MERCK SERONO's receipt of an invoice from EPFL for such amount following the hiring of the first Chair Team member; and a second payment of CHF 165,000 within six (6) months of the aforementioned due date.

(b) Following the first year of this Agreement, a payment of CHF 165,000 shall be due every six (6) months following the preceding payment due date.

EPFL shall send invoices to MERCK SERONO according to this schedule and the payments shall be done by MERCK SERONO to EPFL within 30 days of receipt of the invoices.

All invoices shall be sent to :

MERCK SERONO INTERNATIONAL S.A.  
9 Chemin des Mines  
1202 Geneva  
Switzerland

.....

## ARTICLE 4 Results, Intellectual Property and Reporting

- 4.1 All results, patentable or not, copyrightable or not, obtained by the Chair Team and/or the Professor in the execution of the research activities according to Enclosure 1

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(hereinafter referred to as "EPFL Results") shall be communicated to MERCK SERONO in form of common meetings, reports or publication drafts. Subject to the provisions of Articles 4.2 to 4.10 of this Agreement, EPFL and MERCK SERONO shall be free to use such results. For clarification, the Professor will, subject to Article 5 of this Agreement and Article 10 of the Alliance Agreement also participate in other research activities and projects and the results generated by such professor within these other activities and projects shall not be within the definition of EPFL Results applicable to the Agreement. Further, any result of Chair Team members which are made incidentally to the benefit of other projects or research activities of EPFL and out of the scope of the Agreement shall belong to EPFL and if an other EPFL employee incidentally contributes to a result of the Chair Team, such result shall be considered as EPFL Results under the Agreement.

- 4.2** MERCK SERONO shall notify EPFL in writing of its interest for legal protection of EPFL Results, in which case MERCK SERONO shall have the right to file a patent application in its own name and at its own expenses. This notification shall reach EPFL within three (3) months from the date the concerned results were first disclosed to MERCK SERONO, subject to the one month period set forth in Article 6.2 in case that EPFL submit a draft of scientific publication.
- 4.3** Title to the EPFL Results, including any invention and any associated new biological materials conceived or first reduced to practice by EPFL in the performance of the research activities of the Chair Team and/or the Professor shall be transferred from EPFL to MERCK SERONO (or by the Chair Team member directly to MERCK SERONO if MERCK SERONO requests EPFL) upon MERCK SERONO or one of its Affiliates filing a patent application, in its own name, on such EPFL Results, provided that such filing occurs within three (3) months from the date MERCK SERONO notified EPFL of its interest according to Article 4.2. MERCK SERONO shall bear all costs related to the patent prosecution and shall inform EPFL of all major steps in such prosecution and of any decision to abandon the patent; MERCK SERONO shall provide EPFL with a copy of any patent application(s) and of any issued patent(s). For the purposes of this Agreement, the term "Affiliate" shall mean any legal entity which is controlled by, has control over or is under common control with MERCK SERONO whereby "control" shall mean the holding of more than fifty percent (50%) of the capital stock or participating shares entitled to vote for the election of directors

During the deadlines pursuant to Articles 4.2 and 4.3, each Party agrees to treat the EPFL Results concerned as confidential.

MERCK SERONO hereby grants to EPFL a perpetual, non-transferable, non-assignable royalty-free right to use said EPFL Results and the associated biological materials in further academic education and research activities internally and with other academic or non-profit institutions, but in all cases solely for non-commercial research and education purposes.

- 4.4** In the event that MERCK SERONO or one of its Affiliates files a patent application pursuant to Article 4.3, MERCK SERONO shall have under any such patent application and patent issued thereon (hereinafter referred to as "a Patent") any and all rights related to such Patent, including the exclusive and royalty-free exploitation rights and the right to enforce such Patent.

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- 4.5** In the event that MERCK SERONO fails to file a Patent according to Article 4.3, title to the EPFL Results concerned shall remain with EPFL and EPFL shall be free to patent or not such EPFL Results.

If MERCK SERONO files a Patent, but renounces to seek protection in the following countries/region : USA, Japan, China and Europe, then MERCK SERONO shall timely inform EPFL and give the latter the opportunity to file in its own name and at its own costs a patent application in the abovementioned countries/region that are not covered by MERCK SERONO Patent.

Should MERCK SERONO decide to abandon a Patent in any countries, MERCK SERONO shall offer to EPFL the assignment of such Patent free of charge. MERCK SERONO shall inform EPFL of such decision at least four (4) months before the deadline for the performance of the formalities necessary for the maintain of the Patent.

- 4.6** In the event that EPFL is the owner of the EPFL Results according to Article 4.5, EPFL hereby grants MERCK SERONO a royalty-free, non-exclusive and irrevocable license for the use of such EPFL Results in the field of pharmaceutical products and services with the right to grant sub-licenses to Affiliates of MERCK SERONO. MERCK SERONO shall additionally have the right to grant sublicenses in the field of pharmaceutical products and services to third parties which are not Affiliates provided that if MERCK SERONO grants such a sublicense of the aforementioned license, then MERCK SERONO shall pay to EPFL twenty percent (20%) of the net payments at arms length conditions received by MERCK SERONO from such third party on account of such sublicense. For the purposes of this Agreement, the term "Affiliate" shall mean any legal entity which is controlled by, has control over or is under common control with MERCK SERONO whereby "control" shall mean the holding of more than fifty percent (50%) of the capital stock or participating shares entitled to vote for the election of directors.
- 4.7** For computer software developed in the research activities by the Chair Team, EPFL hereby grants MERCK SERONO a royalty-free non-exclusive license to copy, modify, adapt, translate, distribute, sale, display and run such computer software, provided that MERCK SERONO shall not pass the source code of such software outside of MERCK SERONO and Affiliates without EPFL's prior written approval.
- 4.8** Any intellectual property solely developed by MERCK SERONO during the course of cooperation shall be MERCK SERONO's property and no right of use nor license of any kind is hereunder granted to EPFL.
- 4.9** Subject to any other cooperation agreement signed between the Parties, it is hereby agreed that neither right of use nor license of any kind is hereunder granted to MERCK SERONO on EPFL's intellectual property and to EPFL on MERCK SERONO's intellectual property obtained by each Party before, after and/or outside of the scope of this Agreement.
- 4.10** Should at any point in time within the life of a Patent, (a) a product covered by such patent(s), successfully complete a pivotal Phase II clinical trial or (b) any technology covered by such Patent be used by MERCK SERONO with any MERCK SERONO product(s), or be licensed or sold to a Third Party, MERCK SERONO will recognize to

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the EPFL inventor(s) of the Patent, through a single lump sum payment to all of the EPFL inventors together, which at MERCK SERONO's sole discretion and in its good faith judgment, will be comprised between 100,000 and 1,000,000 Swiss Francs. A single payment shall be payable in the aforementioned cases, regardless of the number of Patents covering the technology or product.

- 4.11** EPFL will, and will use its best efforts to cause, each member of the Chair Team (for so long as such members are employees of EPFL) and the Professor to, cooperate with MERCK SERONO as reasonably requested by MERCK SERONO in connection with the filing, prosecution, maintenance, enforcement and defense of any Patents, and will execute all documents deemed necessary by MERCK SERONO for such purposes, and will cause each member of the Chair Team and the Professor, for so long as such members are employees of EPFL, to execute such documents assigning rights to the Patents as may be requested by MERCK SERONO. MERCK SERONO will reimburse EPFL for all out of pocket expenses incurred in such efforts.
- 4.12** Within thirty (30) days of each calendar quarter, EPFL will submit a written report to MERCK SERONO summarizing its work and any EPFL Results obtained during such calendar quarter. Upon termination or expiration of this Agreement, EPFL shall provide MERCK SERONO with a detailed written report of its activities under this Agreement.

## ARTICLE 5 Confidentiality

- 5.1** Each Party (Recipient) agree to keep confidential and not to use for another purpose than the performance of this Agreement all information belonging to the other Party (the Disclosing Party) with which it may come in contact during the cooperation, provided that such information have been clearly labeled as confidential by the Disclosing Party or, if disclosed orally, have been confirmed in writing as being confidential within ten (10) days rom their disclosure. Each Party shall be responsible for the compliance by its personnel with these confidentiality obligations.
- 5.2** The obligations under Article 5.1 shall not apply to any information that:
- (a) were in the public domain or open to the public at the time they were transmitted to Recipient, or
  - (b) became public or open to the public for reasons other than an action or omission attributable to Recipient, or
  - (c) were in Recipient's possession, without any limitation regarding their disclosure at the time they were transmitted to Recipient, provided that such prior possession is supported by a written evidence, or
  - (d) were obtained in good faith by Recipient and without any commitment relating to confidentiality from a third party entitled to disclose them, or
  - (e) is used to support a regulatory submission or filing.
- 5.3** If the Recipient becomes legally required to disclose any such information, the Recipient will give the Disclosing Party prompt notice of such fact, so the Disclosing Party may seek a protective order or other appropriate remedy concerning any such disclosure and/or waive compliance with the non-disclosure provisions of this Agreement. The Recipient will cooperate fully with the Disclosing Party in connection with the Disclosing Party's efforts to obtain any such order or other remedy. If any such order or

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other remedy does not fully preclude disclosure, or the Disclosing Party waives such compliance, the Recipient will make such disclosure, only to the extent such disclosure is legally required, and will use its commercially reasonable efforts to have confidential treatment accorded to the disclosed information.

- 5.4 The obligations under this Article 5 shall remain effective for five (5) years after termination of this Agreement or for a period defined by the Disclosing Party at the time of communication of such confidential information to Recipient.

## ARTICLE 6 Scientific publications

6.1 MERCK SERONO recognizes that EPFL is entitled to publish its scientific results obtained in the performance of the research activities of the Chair Team.

6.2 Prior to the publication of such results, EPFL shall submit a draft of the information to be disseminated to MERCK SERONO for review. MERCK SERONO shall then have one (1) month to :

- (a) notify EPFL of any objection. If an objection is raised, discussion shall be held without delay to determine acceptable modifications to resolve the issue and allow dissemination within three (3) months; and/or
- (b) request the postponement, for no more than three (3) months, of the publication of EPFL Results for which MERCK SERONO wishes to file a patent application according to Article 4.3; and/or
- (c) request the postponement of the publication for more than 3 months subject to the prior written agreement of EPFL in the case the Parties consider and agree that additional scientific work is necessary prior to the filing of a patent application in order to obtain potentially a better patent protection. Such extended postponement shall be exceptional and agreed in writing on a case-by-case basis and shall not be such to delay the public defense and publication of a PhD thesis and shall not be more than nine (9) months.

Failure to respond within the abovementioned one month period is considered as approval of the publication by MERCK SERONO.

6.3 In case of public presentations in particular at scientific conferences, EPFL shall submit to MERCK SERONO a written summary of the intended presentation and the provisions of Article 6.2 shall apply, whereby the time indicated under (a) shall be reduced to one (1) month.

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**ARTICLE 7 No Warranties**

- 7.1 EPFL shall perform the research activities by applying its best scientific knowledge and best efforts.
- 7.2 EPFL makes no warranties, either express or implied, including but not limited to warranties of originality, accuracy, property, merchantability, fitness for a particular purpose of EPFL Results.

**ARTICLE 8 Liability**

- 8.1 In the event that MERCK SERONO decides to commercialize products and/or services based on EPFL Results, MERCK SERONO shall bear the sole responsibility for the conception of such products or services and shall be liable towards third parties in connection with this commercialization. MERCK SERONO agrees to indemnify and defend EPFL against any such claim from third parties brought against EPFL, except to the extent that such claim arises out of EPFL's gross negligence or willful misconduct; to this end, MERCK SERONO agrees to maintain an insurance in such amounts as it shall reasonably determine.
- 8.2 Neither Party shall be entitled to commit the other Party to any obligation in connection with this Agreement, without the prior written consent of the other Party.

**ARTICLE 9 Communication**

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

**For MERCK SERONO:**

Communications pursuant to Article 4 (Results and Intellectual Property) shall also be sent to :

- .....

**For the EPFL:**

- .....

Communications pursuant to Article 4 (Results, Intellectual Property and Reporting) shall also be sent to :

## **Execution Copy**

Ecole Polytechnique Fédérale de Lausanne (EPFL)  
Service des relations industrielles (SRI)  
Station 10  
CH-1015 Lausanne, Switzerland

### **ARTICLE 10 Assignment**

Should MERCK SERONO assign its rights to EPFL Results and/or to a Patent, then MERCK SERONO shall impose all the obligations deriving from this Agreement on the assignee.

### **ARTICLE 11 Survival**

The provisions of Articles 4, 7, 8, 10 and 12 shall survive any expiration or termination of this Agreement.

### **ARTICLE 12. Applicable law, Jurisdiction and Dispute Resolution**

- 12.1** This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland.
- 12.2** 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.
- 12.3** Prior to initiating litigation, the Parties shall make a good faith attempt to resolve the dispute amicably. The Steering Committee, set up by the Alliance Agreement, shall first attempt to resolve the matter by negotiation, and shall attend to at least one meeting to this effect. If the dispute is not resolved within sixty (60) days thereafter, either Party shall be free to initiate court proceedings.

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This Agreement is executed in two (2) originals and duly signed by the authorized representatives of the Parties hereto, as printed below :

Ecole Polytechnique Fédérale de Lausanne, EPFL		Merck Serono International S.A.
Place :		Place :
Date :		Date :
Signature :		Signature :
Name and title :		Name and title :
		Signature :
		Name and title :

Enclosure 1 : Description of the research activities of the Chair Team with annual budget

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**APPENDIX II**

**Article I.      TEMPLATE                      RESEARCH PROJECT AGREEMENT**

between

Merck Serono International, S.A, 9 Chemin des Mines, 1211 Geneva 20, Switzerland  
(hereafter "**MERCK SERONO**")

and

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

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

**PREAMBLE**

EPFL and MERCK SERONO have entered into an alliance agreement on October 25<sup>th</sup> 2007 establishing a strategic scientific cooperation in the field of life sciences, in particular in neurosciences, oncology and drug delivery (hereafter "the Alliance Agreement").

In the framework of the Alliance Agreement, EPFL and MERCK SERONO are willing to

- i. establish teams of researchers in the MERCK SERONO endowed Chairs; and
- ii. carry out specific research projects in collaboration; and
- iii. allow MERCK SERONO to commission EPFL for certain scientific services.

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

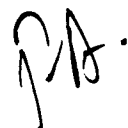
IT IS HEREBY AGREED as follows :

**ARTICLE 1                      Statement of Work**

1.1      EPFL hereby undertakes to make its best efforts to accomplish, in collaboration with MERCK SERONO, the research project entitled :

.....  
hereafter "Project"

The goals, research plan and timeline of the Project are detailed in Enclosure 1 which shall be an integral part of this Agreement. The Project shall be carried out by the Laboratory ..... of EPFL, under the supervision of Professor .....



1.2 MERCK SERONO hereby undertakes to make its best efforts to collaborate with EPFL during the Project and to bring its competencies for the benefit of the Project and to furnish EPFL with documentation, information and data necessary to accomplish the Project according to Enclosure 1. To the extent that such documentation, information and data from MERCK SERONO are proprietary, all such elements shall be subject to the confidentiality provisions of Art. 5. Whenever it is deemed necessary during the Project, the Parties may mutually agree upon regular or separate meetings to be held at the place of business of one of the Parties hereto.

1.3 Any modifications to the scope of the Project, to the budget, any priorities and scientific options to be decided in the course of the Project shall be subject to prior mutual written agreement.

## **ARTICLE 2 Term of Agreement and Termination**

2.1 This Agreement shall become effective on ..... and remain effective for the duration of the Project, unless terminated earlier as provided in Article 2.2 or 2.3.

2.2 In the case the duration of the Project is more than twelve (12) months, MERCK SERONO shall have the right to terminate this Agreement with written notice, if MERCK SERONO considers that the aim of the Project will most probably not be reached or that the agreed research work is no longer relevant for MERCK SERONO, and in such case, this Agreement shall terminate (a) six (6) months after such notice, if notice is given after twelve (12) months from the date of this Agreement, and (b) eighteen (18) months from the date of this Agreement, if notice is given prior to twelve (12) months from the date of this Agreement. In the case a PhD work started within the scope of this Agreement with the consent of MERCK SERONO and MERCK SERONO intends to terminate this Agreement, the Parties shall diligently and in good faith search for solutions to allow such PhD work to be completed.

2.3 Any material failure by a Party (the "Breaching Party") to comply with any of its material obligations provided for in this Agreement will entitle the other Party (the "Non-Breaching Party") to give to the Breaching Party written notice specifying the nature of the material breach, requiring the Breaching Party to make good or otherwise cure such material breach. If such breach is not cured within thirty (30) days after the receipt of such notice, the Non-Breaching Party will have the right, on written notice to the Breaching Party, to terminate this Agreement without prejudice to any of the other rights and remedies conferred on it by this Agreement or by applicable law.

## **ARTICLE 3 Payments**

3.1 The total financial contribution of MERCK SERONO to EPFL for the Project is agreed to be : CHF ..... +VAT. No overhead will be charged by EPFL for these sponsored research projects.

3.2 The payment schedule shall be the following:

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- \_\_\_% upon signing of this Agreement
- \_\_\_% upon MERCK SERONO receiving the 1st interim report due on .....
- \_\_\_% upon MERCK SERONO receiving the 2nd interim report due on .....
- \_\_\_% upon MERCK SERONO receiving the final report due on .....

EPFL shall send invoices to MERCK SERONO according to this schedule and the payments shall be done by MERCK SERONO to EPFL within thirty (30) days of receipt of the invoices.

All invoices shall be sent to :

Merck Serono International S.A.  
9 Chemin des Mines  
1202 Geneva, Switzerland  
Attention: \_\_\_\_\_

**ARTICLE 4 Results and Intellectual Property**

- 4.1 All results, patentable or not, copyrightable or not, obtained in the execution of the Project by EPFL (hereinafter referred to as "EPFL Results") shall be communicated to MERCK SERONO in form of common meetings, reports or publication drafts. Subject to the provisions of Articles 4.2 to 4.10 of this Agreement, EPFL and MERCK SERONO shall be free to use such results.
- 4.2 MERCK SERONO shall notify EPFL in writing of its interest for legal protection of EPFL Results, in which case MERCK SERONO shall have the right to file a patent application in its own name and at its own expenses. This notification shall reach EPFL within three (3) months from the date the concerned results were first disclosed to MERCK SERONO, subject to the one (1) month period set forth in Article 6.2 in case that EPFL submit a draft of scientific publication.
- 4.3 Title to any EPFL Results, including any invention and to any associated new biological materials conceived or first reduced to practice by EPFL in the performance of the Project shall be transferred from EPFL to MERCK SERONO upon MERCK SERONO filing a patent application on such EPFL Results, provided that such filing occurs within three (3) months from the date MERCK SERONO notified EPFL of its interest according to Article 4.2. MERCK SERONO shall bear all costs related to the patent prosecution and shall inform EPFL of all major steps in such prosecution and of any decision to abandon the patent; MERCK SERONO shall provide EPFL with a copy of any patent application(s) and of any issued patent(s). During the deadlines pursuant to Articles 4.2 and 4.3, each Party agrees to treat the EPFL Results concerned as confidential.
- 4.3.1 MERCK SERONO hereby grants to EPFL a perpetual, non-transferable, non-assignable royalty-free right to use any Patent and the associated biological materials in further academic education and research activities internally and with other academic or non-profit institutions, but in all cases solely for non-commercial research and education purposes.

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4.4 In the event that MERCK SERONO files a patent application pursuant to Article 4.3, MERCK SERONO shall have under any such patent application and patent issued thereon (hereinafter referred to as "a Patent") exclusive and royalty-free exploitation rights for all applications.

4.5 In the event that MERCK SERONO fails to file a Patent according to Article 4.3, title to the EPFL Results concerned shall remain with EPFL and EPFL shall be free to patent or not such EPFL Results.

If MERCK SERONO files a Patent, but renounces to seek protection in the following countries/region: USA, Japan, China and Europe, then MERCK SERONO shall timely inform EPFL and give the latter the opportunity to file in its own name and at its own costs a patent application in the abovementioned countries/region that are not covered by MERCK SERONO Patent.

Should MERCK SERONO decide to abandon a Patent in any countries, MERCK SERONO shall offer to EPFL the assignment of such Patent free of charge. MERCK SERONO shall inform EPFL of such decision at least four (4) months before the deadline for the performance of the formalities necessary for the maintain of the Patent.

4.6 In the event that EPFL is the owner of the EPFL Results according to Article 4.5, EPFL hereby grants MERCK SERONO a royalty-free, non-exclusive and irrevocable license for the use of any such EPFL Results in the field of pharmaceutical products and services with the right to grant sub-licenses to Affiliates of MERCK SERONO. MERCK SERONO shall additionally have the right to grant sublicenses in the field of pharmaceutical products and services to third parties which are not Affiliates provided that if MERCK SERONO grants such a sublicense of the aforementioned license, then MERCK SERONO shall pay to EPFL twenty percent (20%) of the net payments at arms length conditions received by MERCK SERONO from such third party on account of such sublicense. For the purposes of this Agreement, the term "Affiliate" shall mean any legal entity which is controlled by, has control over or is under common control with MERCK SERONO whereby "control" shall mean the holding of more than fifty percent (50%) of the capital stock or participating shares entitled to vote for the election of directors.

4.7 For computer software developed in the Project by EPFL, EPFL hereby grants MERCK SERONO a royalty-free non-exclusive license to copy, modify, adapt, translate, distribute, sale, display and run such computer software, provided that MERCK SERONO shall not pass the source code of such software outside of MERCK SERONO and Affiliates without EPFL's prior written approval.

4.8 Any intellectual property solely developed by MERCK SERONO during the course of the Project shall be MERCK SERONO's property and no right of use nor license of any kind is hereunder granted to EPFL.

4.9 It is hereby agreed that neither right of use nor license of any kind is hereunder granted to MERCK SERONO on EPFL's intellectual property and to EPFL on MERCK SERONO's intellectual property obtained by each Party before, after and/or outside of the Project.

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- 4.10 Should at any point in time within the life of a Patent, (a) a product covered by such patent(s), successfully complete a pivotal Phase II clinical trial or (b) any technology covered by such Patent be used by MERCK SERONO with any MERCK SERONO product(s), or be licensed or sold to a Third Party, the COMPANY will recognize to the EPFL inventor(s) of the Patent, through a single lump sum payment to all of the EPFL inventors together, which at MERCK SERONO's sole discretion and in its good faith judgement, will be comprised between 100,000 and 1,000,000 Swiss Francs. A single payment shall be payable in the aforementioned cases, regardless of the number of patents covering the technology or product.
- 4.11 EPFL will, and will cause each employee of EPFL working on the Project (for so long as such members are employees of EPFL) to cooperate with MERCK SERONO as reasonably requested by MERCK SERONO in connection with the filing, prosecution, maintenance, enforcement and defense of any Patents, and will execute all documents deemed necessary by MERCK SERONO for such purposes, and will cause each employee of EPFL working on the Project (for so long as such members are employees of EPFL), to, if requested by MERCK SERONO, to execute such documents assigning rights to the Patents to MERCK SERONO. MERCK SERONO will reimburse EPFL for all out of pocket expenses incurred in such efforts.
- 4.12 Within thirty (30) days of each calendar quarter, EPFL will submit a written report to MERCK SERONO summarizing its work and any EPFL Results obtained during such calendar quarter. Upon termination or expiration of this Agreement, EPFL shall provide MERCK SERONO with a detailed written report of its activities under this Agreement.

## **ARTICLE 5      Confidentiality**

- 5.1 Each Party (Recipient) agree to keep confidential and not to use for another purpose than the performance of this Agreement all information belonging to the other Party (the Disclosing Party) with which it may come in contact during the course of the Project, provided that such information have been clearly labeled as confidential by the Disclosing Party or, if disclosed orally, have been confirmed in writing as being confidential within ten (10) days from their disclosure. Each Party shall be responsible for the compliance by its personnel with these confidentiality obligations.
- 5.2 The obligations under Article 5.1 shall not apply to any information that:
- were in the public domain or open to the public at the time they were transmitted to Recipient, or
  - became public or open to the public for reasons other than an action or omission attributable to Recipient, or
  - were in Recipient's possession, without any limitation regarding their disclosure at the time they were transmitted to Recipient, provided that such prior possession is supported by a written evidence, or
  - were obtained in good faith by Recipient and without any commitment relating to confidentiality from a third party entitled to disclose them, or
  - is used to support a regulatory submission or filing.

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- 5.3 If the Recipient becomes legally required to disclose any such information, the Recipient will give the Disclosing Party prompt notice of such fact, so the Disclosing Party may seek a protective order or other appropriate remedy concerning any such disclosure and/or waive compliance with the non-disclosure provisions of this Agreement. The Recipient will cooperate fully with the Disclosing Party in connection with the Disclosing Party's efforts to obtain any such order or other remedy. If any such order or other remedy does not fully preclude disclosure, or the Disclosing Party waives such compliance, the Recipient will make such disclosure, only to the extent such disclosure is legally required, and will use its commercially reasonable efforts to have confidential treatment accorded to the disclosed information.
- 5.4 The obligations under this Article 5 shall remain effective for five (5) years after termination of this Agreement or for a period defined by the Disclosing Party at the time of communication of such confidential information to Recipient.

## **ARTICLE 6      Scientific publications**

- 6.1 MERCK SERONO recognizes that EPFL is entitled to publish its scientific results obtained in the performance of the Project.
- 6.2 Prior to the publication of such results, EPFL shall submit a draft of the information to be disseminated to MERCK SERONO for review. MERCK SERONO shall then have one (1) month to :
- (a) notify EPFL of any objection. If an objection is raised, discussion shall be held without delay to determine acceptable modifications to resolve the issue and allow dissemination within three (3) months; and/or
  - (b) request the postponement, for no more than three (3) months, of the publication of EPFL Results for which MERCK SERONO wishes to file a patent application according to Article 4.3; and/or
  - (c) request the postponement of the publication for more than three (3) months subject to the prior written agreement of EPFL in the case the Parties consider and agree that additional scientific work is necessary prior to the filing of a patent application in order to obtain potentially a better patent protection. Such extended postponement shall be exceptional and agreed in writing on a case-by-case basis and shall not be such to delay the public defense and publication of a PhD thesis and shall not be more than nine (9) months.

Failure to respond within the abovementioned one month period is considered as approval of the publication by MERCK SERONO.

- 6.3 In case of public presentations in particular at scientific conferences, EPFL shall submit to MERCK SERONO a written summary of the intended presentation and the provisions of Article 6.2 shall apply, whereby the time indicated under (a) shall be reduced to one (1) month.

T.A.

## **ARTICLE 7      No Warranties**

- 7.1 EPFL shall perform said Project by applying its best scientific knowledge and best efforts.
- 7.2 EPFL makes no warranties, either express or implied, including but not limited to warranties of originality, accuracy, property, merchantability, fitness for a particular purpose of EPFL Results.

## **ARTICLE 8      Liability**

- 8.1 In the event that MERCK SERONO decides to commercialize products and/or services based on the results of the Project, MERCK SERONO shall bear the sole responsibility for the conception of such products or services and shall be liable towards third parties in connection with this commercialization. MERCK SERONO agrees to indemnify and defend EPFL against any such claim from third parties brought against EPFL, except to the extent that such claim arises out of EPFL's gross negligence or willful misconduct; to this end, MERCK SERONO agrees to maintain insurance in such amounts as it shall reasonably determine.
- 8.2 Neither Party shall be entitled to commit the other Party to any obligation in connection with this Agreement, without the prior written consent of the other Party.

## **ARTICLE 9      Communication**

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

### **For MERCK SERONO:**

Merck Serono International S.A.  
9 Chemin des Mines  
1204 Geneva, Switzerland  
Attention: General Counsel

Communications pursuant to Article 4 (Results and Intellectual Property) shall also be sent to :

Merck Serono International S.A.  
9 Chemin des Mines  
1204 Geneva, Switzerland  
Attention: Senior Executive Vice President, Licensing and Intellectual Property



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**For the EPFL:**

- .....

Communications pursuant to Article 4 (Results and Intellectual Property) shall also be sent to :

Ecole Polytechnique Fédérale de Lausanne (EPFL)  
Service des relations industrielles (SRI)  
Station 10  
CH-1015 Lausanne, Switzerland

**ARTICLE 10 Assignment**

Should MERCK SERONO assign its rights to EPFL Results and/or to a Patent, then MERCK SERONO shall impose all the obligations deriving from this Agreement on the assignee.

**ARTICLE 11 Survival**

The provisions of Articles 4, 7, 8, 10 and 12 shall survive any expiration or termination of this Agreement.

**ARTICLE 12 Applicable law, Jurisdiction and Dispute Resolution**

- 12.1 This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland.
- 12.2 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.
- 12.3 Prior to initiating litigation, the Parties shall make a good faith attempt to resolve the dispute amicably. The Steering Committee, set up by the Alliance Agreement, shall first attempt to resolve the matter by negotiation, and shall attend to at least one meeting to this effect. If the dispute is not resolved within sixty (60) days thereafter, either Party shall be free to initiate court proceedings.

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This Agreement is executed in two (2) originals and duly signed by the authorized representatives of the Parties hereto, as printed below :

Ecole Polytechnique Fédérale de Lausanne, EPFL		Merck Serono International SA
Place :		Place :
Date :		Date :
Signature :		Signature :
Name and title :		Name and title :
		Signature :
		Name and title :

Enclosure 1 : Description of the Project

**Execution Copy**

**APPENDIX III**

**TEMPLATE            SCIENTIFIC SERVICE AGREEMENT**

between

Merck Serono International, S.A, 9 Chemin des Mines, 1211 Geneva 20, Switzerland  
(hereafter "**MERCK SERONO**")

and

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

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

**Preamble**

EPFL and MERCK SERONO have entered into an alliance agreement on October 25<sup>th</sup> 2007 establishing a strategic scientific cooperation in the field of life sciences, in particular in neurosciences, oncology and drug delivery (hereafter "the Alliance Agreement").

In the framework of the Alliance Agreement, EPFL and MERCK SERONO are willing to

- i. establish teams of researchers in the MERCK SERONO endowed Chairs; and
- ii. carry out specific research projects in collaboration; and
- iii. allow MERCK SERONO to commission EPFL for certain scientific services.

In the present case, the Scientific Committee, set up by the Alliance Agreement, decided that MERCK SERONO shall commission EPFL for specific scientific services.

IT IS HEREBY AGREED as follows :

**ARTICLE 1            Performance of Services**

1.1 EPFL hereby undertakes to make its best efforts to perform the services pursuant to the description contained in Enclosure 1 hereto and shall deliver any reports or other deliverables as described in said Enclosure 1 (hereinafter referred to as "the Services"). Enclosure 1 shall be an integral part of this Agreement.

1.2 The Services shall be performed by the Laboratory ..... of EPFL under the supervision of Professor .....

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- 1.3 Whenever it is deemed necessary during the performance of the Services, the Parties shall mutually agree upon meetings to be held at the place of business of one of the Parties hereto.
- 1.4 MERCK SERONO shall furnish EPFL with the documentation, information or data, if any, necessary to perform the Services. To the extent that such documentation, information and data from MERCK SERONO are proprietary, all such elements shall be subject to the provision of confidentiality of Art.3.
- 1.5 Any modifications to the scope of the Services shall be subject to mutual written agreement.

**ARTICLE 2 Price and Payment Modalities**

2.1 For the performance of the Services, MERCK SERONO shall pay to EPFL the sum of CHF ..... + VAT. This total amount includes EPFL overhead for services.

2.2 The payment schedule shall be the following :

.....  
.....  
.....

EPFL shall send invoices to MERCK SERONO according to this schedule and the payments shall be done by MERCK SERONO to EPFL within thirty (30) days of receipt of the invoices.

All invoices shall be sent to :

Merck Serono International, S.A.  
9 Chemin des Mines  
1202 Geneva, Switzerland  
Attention: \_\_\_\_\_

**ARTICLE 3 Confidentiality**

3.1 Each Party (Recipient) agree to keep confidential and not to use for another purpose than the performance of this Agreement all information belonging to the other Party (the Disclosing Party) with which they may come in contact during the performance of this Agreement, provided that such information have been clearly labeled as confidential by the Disclosing Party or, if disclosed orally, have been confirmed in writing as being confidential within ten (10) days from their disclosure. Each Party shall be responsible for the compliance by its personnel with these obligations.

3.2 The obligations under Article 3.1 shall not apply to any information that:

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- were in the public domain or open to the public at the time they were transmitted to Recipient, or
- became public or open to the public for reasons other than an action or omission attributable to Recipient, or
- were in Recipient's possession, without any limitation regarding their disclosure at the time they were transmitted to Recipient, provided that such prior possession is supported by a written evidence, or
- were obtained in good faith by Recipient and without any commitment relating to confidentiality from a third party entitled to disclose them.
- is used to support a regulatory submission or filing.

3.3 If the Recipient becomes legally required to disclose any such information, the Recipient will give the Disclosing Party prompt notice of such fact, so the Disclosing Party may seek a protective order or other appropriate remedy concerning any such disclosure and/or waive compliance with the non-disclosure provisions of this Agreement. The Recipient will cooperate fully with the Disclosing Party in connection with the Disclosing Party's efforts to obtain any such order or other remedy. If any such order or other remedy does not fully preclude disclosure, or the Disclosing Party waives such compliance, the Recipient will make such disclosure, only to the extent such disclosure is legally required, and will use its commercially reasonable efforts to have confidential treatment accorded to the disclosed information.

3.4 The obligations under this Article 3 shall remain effective for five (5) years after termination of this Agreement or for a period defined by the Disclosing Party at the time of communication of such confidential information to Recipient.

## ARTICLE 4 Intellectual Property and Reporting

4.1 MERCK SERONO shall be the owner of all results obtained by EPFL in the performance of the Services (including without limitation, data, results of tests, measurements and routine analysis) and of any intellectual property rights pertaining thereto (collectively, the "Results"). EPFL hereby agrees neither to use nor to publish the said data without MERCK SERONO's written approval.

4.2 EPFL shall remain the owner of all its methods and tools used or developed in the performance of the Services as well as of any intellectual property rights pertaining thereto. EPFL hereby grants to MERCK SERONO the non-exclusive right to disclose EPFL's methods and tools when required by law, in regulatory submissions or in publications, subject to prior EPFL approval for the cases of public disclosures.

4.3 It is hereby agreed that neither right of use nor license of any kind is hereunder granted to MERCK SERONO on EPFL's intellectual property obtained before, after and/or outside of this Agreement.

4.4 EPFL will, and will cause each employee of EPFL performing the Services to (for so long as such members are employees of EPFL) cooperate with MERCK SERONO as reasonably requested by MERCK SERONO in connection with the filing, prosecution,

*P.A.*

## **Execution Copy**

maintenance, enforcement and defense of any patents for the Results, and will execute all documents deemed necessary by MERCK SERONO for such purposes, and will cause each employee of EPFL performing the Services to (for so long as such members are employees of EPFL) execute such documents assigning rights to the Patents to MERCK SERONO or one of its Affiliates. MERCK SERONO will reimburse EPFL for all out of pocket expenses incurred in such efforts. For the purposes of this Agreement, the term "Affiliate" shall mean any legal entity which is controlled by, has control over or is under common control with MERCK SERONO whereby "control" shall mean the holding of more than fifty percent (50%) of the capital stock or participating shares entitled to vote for the election of directors

- 4.5 Within thirty (30) days of each calendar quarter during the term of this Agreement, EPFL will submit a written report to MERCK SERONO summarizing its work and any Results obtained during such calendar quarter. Upon termination or expiration of this Agreement, EPFL shall provide MERCK SERONO with a detailed written report of its activities under this Agreement (the "Final Report").

## **ARTICLE 5 No Warranties**

- 5.1 EPFL shall perform the Services by applying its best scientific knowledge and best efforts.
- 5.2 EPFL makes no warranties, either express or implied, including but not limited to warranties of originality, merchantability and fitness for a particular purpose of the Services and of the data resulting from the Services.

## **ARTICLE 6 Liability**

- 6.1 In the event that MERCK SERONO decides to commercialize products and/or services based on the Services, MERCK SERONO shall bear the sole responsibility for the conception of such products or services and shall be liable towards third parties in connection with this commercialization. MERCK SERONO agrees to indemnify and defend EPFL against any such claim from third parties brought against EPFL, except to the extent such claim arises out of EPFL's gross negligence or willful misconduct; to this end, MERCK SERONO agrees to maintain insurance in such amounts as it shall reasonably determine.
- 6.2 Neither Party shall be entitled to commit the other Party to any obligation in connection with this Agreement, without the prior written consent of the other Party.

## **ARTICLE 7 Communication**

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



**Execution Copy**

**For MERCK SERONO :**

Merck Serono International, S.A.  
9 Chemin des Mines  
1202 Geneva, Switzerland  
Attention : \_\_\_\_\_

**For the EPFL :**

Ecole Polytechnique Fédérale de Lausanne  
CH-1015 Lausanne, Switzerland  
Attention: \_\_\_\_\_.

**ARTICLE 8      Term and Termination**

- 8.1 This Agreement shall come into effect on ..... and shall remain in effect until the completion of the Services including delivery to MERCK SERONO of the Final Report, unless earlier terminated..
- 8.2 MERCK SERONO shall have the right to terminate this Agreement for any reason and at any time upon sixty (60) days prior written notice. In the event of such termination, MERCK SERONO shall have no further obligation to EPFL under this Agreement, except for the payment of those accrued costs and expenses due to EPFL for the work performed up to the date of termination as well as any non-cancellable expenses incurred by EPFL prior to the receipt of the termination notice. Upon receipt of a termination notice, EPFL shall discontinue the Services, and shall immediately deliver MERCK SERONO all written reports and other materials already prepared by EPFL in the performance of the Services.
- 8.3 Any material failure by a Party (the "Breaching Party") to comply with any of its material obligations provided for in this Agreement will entitle the other Party (the "Non-Breaching Party") to give to the Breaching Party written notice specifying the nature of the material breach, requiring the Breaching Party to make good or otherwise cure such material breach. If such breach is not cured within thirty (30) days after the receipt of such notice, the Non-Breaching Party will have the right, on written notice to the Breaching Party, to terminate this Agreement without prejudice to any of the other rights and remedies conferred on it by this Agreement or by applicable law.
- 8.4 The provisions of articles 4, 5, 6 and 9 shall survive any expiration or termination of this Agreement.



**Execution Copy**

**ARTICLE 9      Applicable law, Jurisdiction and Dispute Resolution**

- 9.1 This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland.
- 9.2 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.
- 9.3 Prior to initiating litigation, the Parties shall make a good faith attempt to resolve the dispute amicably. The Steering Committee, set up by the Alliance Agreement, shall first attempt to resolve the matter by negotiation, and shall attend to at least one (1) meeting to this effect. If the dispute is not resolved within sixty (60) days thereafter, either Party shall be free to initiate court proceedings.

**ARTICLE 10**

MERCK SERONO shall have the right to delegate and/or assign its rights and obligations to any Affiliate designated by MERCK SERONO.

This Agreement is executed in two (2) originals and duly signed by the authorized representatives of the Parties hereto, as printed below :

Ecole Polytechnique Fédérale de Lausanne, EPFL		Merck Serono International S.A.
Place :		Place :
Date :		Date :
Signature :		Signature :
Name and title :		Name and title:
		Signature :
		Name and title :

Enclosure 1 : Description of the Services