**Mikrobiologický ústav AV ČR, v. v. i.,**

**Centrum ALGATECH**

Registration number: 61388971,

Tax registration number: CZ61388971,

Registered seat: Vídeňská 1083, 142 20 Praha 4 – Krč, the Czech Republic,

Represented by its director Ing. Jiří Hašek, CSc.,

(hereinafter ***the IMCAS***)

And

**Phycom B.V.,**

Business registration number (KVK): 09193250,

Tax registration number: NL820436999B01,

Registered in the Netherlands,

Registered seat: Koningsschot 11, 3905 PP Veenendaal, Netherlands,

Represented by its executive manager (CEO) Erwin Houtzager,

(hereinafter ***Phycom***)

Each hereinafter referred to as ***a Party*** and jointly as ***the Parties***

Have entered today into this

**Material Transfer Agreement**

1. **Subject Matter and Aim of the Agreement**
	1. The IMCAS is a Czech publicly funded institution engaged in research and development in areas of physiology, biochemistry, molecular biology, and genetics of microalgae, algae and other microorganisms, biocatalysis and microbial or algae biotechnology.
	2. Phycom is a company focused on producing microalgae as food for humans and animals.
	3. The IMCAS is a holder of the Czech patent titled *Parachlorella kessleri HY1 microalgae strain for lutein production and use of this strain for industrial lutein production*, patent application no. 2019-776 (hereinafter ***the Patent*** and ***the Material***). The IMCAS declares that it has independently developed the Material.
	4. The IMCAS and Phycom are participants in an H2020 funded project MULTI-STR3AM,[[1]](#footnote-1) in which Phycom has tested the Material.
	5. Phycom
		1. desires to pursue commercial application of the Material in the fields of food and feed industries,
		2. wishes to be the exclusive commercial user of the Material with an effect like the acquisition of a property right, while respecting the IMCAS's existing rights in the Material, and
		3. acknowledges that the Patent maintenance fees are paid by the IMCAS for the period until 16th December 2023, and that the IMCAS will not prolong the Patent without Phycom’s written request.
	6. This Agreement sets out the rights and obligations of the Parties in relation to the Material and its use.
2. **The Material**
	1. The IMCAS has provided Phycom with the Material, i.e. *Parachlorella kessleri* – HY1 (yellow strain producing lutein) as a basic culture in tube on agar media.
	2. The IMCAS grants to Phycom an exclusive right to make, use, offer to sell and/or sell products covered by the Patent, i.e. the Material, its progeny, unmodified derivatives and modifications.
	3. The IMCAS shall not provide the Material to any third party for commercial purposes without the prior written consent of Phycom.
	4. The IMCAS may use the Material for non-commercial and/or research purposes. Only after written prior consent of Phycom, the IMCAS may provide the Material for such purposes to third parties.
	5. Phycom’s exclusive rights to the Material shall cease if Phycom has not used the Material commercially, nor has it shown reasonable efforts in this respect, for a period of 48 months; Phycom shall provide the IMCAS with information and evidence demonstrating its commercialisation efforts in due time. In such cases, the exclusive rights shall cease upon the IMCAS’s written notice is served on Phycom. The termination of exclusive rights has no effect on the right of Phycom to continue to use the Material on a non-exclusive basis.
	6. Given the experimental nature of the Material, The IMCAS makes no representation and gives no warranty or undertaking, in relation to the Material. As examples, but without limiting the foregoing, the IMCAS gives no warranty that:
		1. it owns all necessary property and other rights in the Material and that its use will not infringe any patent, copyright, trademark or other right owned by any third party, or
		2. the Material is of merchantable or satisfactory quality or fit for any particular purpose, has been developed with reasonable care and skill or tested, for the presence of pathogens or otherwise, or is viable, safe, or non-toxic.
	7. Phycom
		1. warrants that the Material will be used in compliance with all applicable laws, regulations and guidelines in force from time to time (including, when applicable, Good Laboratory Practice),
		2. assures that within its laboratory access to the Material will be restricted to personnel capable and qualified to safely handle said Material and shall exercise the necessary care (considering the specific characteristics of the Material) to maintain and use it with appropriate precautions to minimise any risk of harm to persons, property, and the environment, and to safeguard it from theft or misuse.
	8. Phycom agrees to acknowledge the IMCAS as the source of the Material in any and all relevant publications that reference the Material.
3. **Costs and Fees**
	1. Phycom shall pay the IMCAS the fee of 15.000, - EUR by 30th November 2023 (hereinafter ***the Fees***).
	2. Should Phycom request the Patent’s prolongation, Phycom shall reimburse the Patent maintenance fees paid by the IMCAS starting from 16th December 2023, within 30 days following Phycom’s receipt of the IMCAS’s invoice.
	3. Phycom shall pay the Fees and the invoices to the IMCAS’s bank account: IBAN: CZ76 0100 0000 0022 4666 0227.
	4. The Fees are stipulated without VAT and will be invoiced in the reverse charge regime.
4. **Confidentiality**
	1. Either Party (hereinafter ***the Discloser***) may in the course of mutual collaboration disclose to the other Party (hereinafter ***the Recipient***) information that the Discloser considers to be confidential (hereinafter ***the Confidential Information***).
	2. The Parties shall treat as the Confidential Information any and all information disclosed by the Discloser in course of the Parties’ negotiations and collaboration as long as the information
		1. is classified (identified) by the Discloser as confidential or
		2. is considered a trade secret.
	3. The Recipient agrees to keep the Confidential Information in confidence, in particular not to reveal, disclose or make accessible the Confidential Information to any other party without the prior approval of the Discloser.
	4. The Recipient agrees to use the Confidential Information only for the agreed purpose and handle it with the professional standard of care.
	5. The duty of confidentiality does not apply to any information that:
		1. is publicly available at time of its disclosure to the Recipient;
		2. is published or made publicly available after having been disclosed to the Recipient, and not by any breach of contract by the Recipient;
		3. the Discloser approved for publication by the Recipient;
		4. was already known to the Recipient before its disclosure by the Discloser, provided that the Recipient was not at that time bound by a duty of confidentiality;
		5. is requested by a court or by an authority responsible for criminal proceedings or other public authority in accordance with the law, provided that the Confidential Information is disclosed only to the extent necessary to comply with the law.
	6. The Recipient may disclose the Confidential Information to its employees, contractors or agents that have a need to know in order to fulfil the aim of this Agreement or protect a legitimate interest of the Recipient. The Recipient shall ensure that each such person is informed of the Confidential Information’s confidential nature and is required to abide by a duty of confidentiality to the extent required by this Agreement.
	7. In the event of a breach of confidentiality, the Recipient shall without undue delay notify the Discloser of the circumstances of the breach and the Confidential Information concerned and shall take all necessary steps to minimise the negative consequences of the breach.
	8. Immediately upon the termination or expiration of this Agreement, or upon written request of the Discloser, the Recipient must immediately upon being so requested in writing by the Discloser, deliver to the Discloser the Confidential Information in its possession and all tangible items containing the Confidential Information or summaries thereof. Any part of the Confidential Information which cannot conveniently be returned to the Discloser by the Recipient must be destroyed in the manner that the Discloser directs.
	9. The IMCAS may publish the information about the Parties’ cooperation, characteristics and use of the Material, history of its development etc. The IMCAS will provide the Phycom with the text intended for publication at least thirty (30) days prior to its publication for the purpose of enabling Phycom to review and provide comments. Phycom shall have the right to remove from the proposed text any information that is considered confidential and/or proprietary. If Phycom does not provide any comments or objections in time, the IMCAS is free to publish the text.
5. **Duration and Termination of the Agreement**
	1. The Agreement will take effect upon signature of both Parties and shall remain in effect for an indefinite period.
	2. Either Party may terminate this Agreement upon a material breach of the Agreement by the other Party, provided that the terminating Party has previously informed the Party in breach of the breach in writing and has allowed the Party in breach reasonable time to rectify the breach. The notice period in such a case shall be 2 months and shall commence on the day the notice is delivered to the Party in breach.
6. **Liabilities**
	1. Notwithstanding anything to the contrary in this Agreement, a Party’s entire liability under this Agreement, regardless of the basis on which the other Party is entitled to claim damages (including material breach, negligence, misrepresentation or other contract or tort claim), will be limited in the aggregate for all claims and causes of action to actual direct damages, but in no event more than the amount of the Fees already paid under this Agreement.
	2. Each Party shall indemnify, defend and hold harmless the other Party, its officers, employees, subcontractors and agents, from and against any and all costs, expenses, liabilities, damages, losses and harm (including reasonable legal expenses and attorneys’ fees) arising out of or resulting from any third party suits, claims, actions, or demands to the extent resulting from or caused by: (a) the Party’s performance under this Agreement; (b) the negligence, recklessness or wilful misconduct of the Party or its officers, directors, employees, subcontractors or agents; or (c) the Party’s breach of its obligations, warranties, or representations under this Agreement, except in each case to the extent that the claim arises out of or results from the negligence, recklessness misconduct of the other Party or the other Party’s breach of its obligations, warranties, or representations under this Agreement.
	3. Each Party’s agreement to indemnify, defend and hold harmless the other Party is conditioned on the indemnified Party: (a) providing written notice to the indemnifying Party of any claim or demand for which it is seeking indemnification hereunder promptly after the indemnified Party has knowledge of such claim; (b) permitting the indemnifying Party to assume full responsibility to investigate, prepare for and defend against any such claim or demand, except that the indemnified Party may cooperate in the defence at its expense using its own counsel; (c) assisting the indemnifying Party, at the indemnifying Party’s reasonable expense, in the investigation of, preparing for and defence of any such claim or demand; and (d) not compromising or settling such claim or demand without the indemnifying Party’s written consent.
7. **Governing Law and Dispute Resolution**
	1. This Agreement shall be governed by the law of the Czech Republic, regardless of its conflict of law principles.
	2. Any dispute arising under this Agreement will be resolved as follows. First, within ten (10) days after either Party identifies the existence of a dispute, each Party will appoint a representative with authority to resolve the identified dispute and such representatives, within 20 days after their appointment, will meet or organise a video call to resolve such dispute. If the representatives cannot resolve the dispute, either Party may make a written demand for formal dispute resolution.
	3. Within ten (10) days after such written demand, the Parties shall meet or organise a video call with an impartial mediator solely to consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within ten (10) days after the mediation, either Party may begin litigation proceedings. The parties acknowledge that their preferred method of alternative dispute resolution shall be mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.
	4. If the dispute is not settled by mediation within 90 days of the commencement of the mediation, or such further period as the Parties shall agree in writing, the dispute shall be referred to and finally resolved by a competent court of the Czech Republic.
8. **Final Provisions**
	1. The Parties declare that they have the power and authority to enter into this Agreement, and that they have solicited all required approvals.
	2. The Parties acknowledge that this Agreement is subject to obligatory publication under the Czech Act No. 340/2015 Coll., on Special Conditions of Effect of certain Contracts, Publication of these Contracts and on the Register of Contracts (Act on the Register of Contracts) and shall become legally binding upon the IMCAS only upon such publication in the Register of Contracts. The Parties have agreed that prior to publication of this Agreement, the IMCAS will remove (black out) any and all provisions of this Agreement designated by the Parties as trade secrets and provide the redacted Agreement to Phycom for approval.
	3. Any changes to this Agreement may only be made in writing in the form of numbered amendments to this Agreement, upon the previous agreement of both Parties.
	4. In the event that any of the terms and provisions of this Agreement are held to be invalid or unenforceable by any competent court, such determination shall not affect the operation of the remaining provisions of this Agreement, which shall remain in full force and effect.
	5. The Agreement is executed in (2) two counterparts. Each party shall receive one.
	6. The Parties declare that they have read the Agreement, understand its content, agree with it in full and desire to be bound by it.

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| **Mikrobiologický ústav AV ČR, v. v. i.** | **Phycom B.V.** |

1. ) Grant agreement ID: 887227, URL https://cordis.europa.eu/project/id/887227 [↑](#footnote-ref-1)