

AGREEMENT

Chemical contract research organisation
(Chemical CRO)

of

between

Noctiluca Spółka Akcyjna
as the Service Provider

and

.....

as the Customer

This Chemical CRO Agreement ("Agreement") is made and entered into on in Toruń by and between:

....., hereinafter referred to as the "Customer"

and

Noctiluca Spółka Akcyjna with its registered office in Toruń, ul. Jurija Gagarina 7 suite 41B, 87-100 Toruń, entered in the Register of Companies kept by the District Court in Toruń, 7th Commercial Division of the National Court Register, under the number: 0000769219 (NIP (VAT No.) 8792709668; REGON (statistical ID) 382430546), share capital: PLN 233,625.00, fully paid up, hereinafter referred to as "Noctiluca".

Noctiluca and the Customer are hereinafter referred to collectively as the "Parties" and separately as the "Party".

1. DEFINITIONS

1.1. Terms written with capital letters shall have the meaning defined in this Agreement.

2. CHEMICAL CRO AGREEMENT

2.1. The purpose of this agreement concerning the organisation of the Parties' cooperation in conducting chemical tests ("Agreement") is to provide for terms and conditions based on which Noctiluca commits itself, on an exclusivity basis, to provide the services specified in Section 3 below ("Services") to the Customer.

3. SERVICES

3.1. The Services shall be provided to the extent set out in Appendix A.

3.2. Subject to Section 3.4, Noctiluca agrees that, at the Customer's request, which is subject to a separate agreement and the arrangement of separate pricing terms and conditions by the Parties, it may equip its laboratory with additional equipment requested by the Customer to provide the Services (i.e. equipment that is not owned by the laboratory and specified in Appendix A).

3.3. Subject to Section 3.4 below, the Parties mutually agree that the provision of additional equipment in Noctiluca's laboratory, as referred to in Section 3.2 above, may influence the Prices of the Services this Agreement applies to and that in such a case the Parties shall take actions to agree on new Prices of the Services and a corresponding amendment to this Agreement. The previous sentence shall apply accordingly if, notwithstanding the Customer's request, Noctiluca is interested in modifying or supplementing its laboratory equipment.

3.4. The Parties mutually agree that:

- (a) subject to the growth of Prices by no more than 30% in relation to relevant Prices stemming from Section 4.1 below (which, in the case of the extension of the Package referred to in Item (b) below, applies to the prices of the Package that is in force between the Parties), at the Customer's request, Noctiluca's laboratory may be supplemented with additional equipment referred to in Sections 3.2-3.3 above and additional consumables may be bought or additional laboratory tests necessary to provide the Services may be ordered;
- (b) or notwithstanding Item (a) above, if the Package selected in accordance with Appendix B is to be extended into a higher one of the Packages specified in Appendix B, which will also entail a relevant increase in Prices, into Prices stemming from the changed Package, as specified in Appendix B;

in the case of the change of Noctiluca's laboratory equipment specified in Appendix A by the Parties and the related change of the Price specified in Appendix B, as well as the extension of the Package into a higher Package specified in Appendix B, subject to a relevant growth of Prices, the Parties do not need to obey the form stipulated in Section 14.2 below, but have the right to agree on such changes by e-mail through persons appointed in accordance with, and by use of e-mail addresses specified in, Sections 13.2-13.3 below.

- 3.5. The Parties mutually agree that in the case of the changes referred to in Section 3.4 above, the persons appointed in accordance with Sections 13.2-13.3 below will have the right to represent the Party for which they have been appointed (authorisation) on their own.

4. PRICES AND PAYMENTS

- 4.1. Prices that the Customer is to pay to Noctiluca ("Prices") are specified in Appendix B.
- 4.2. The Parties agree that the Prices specified in Appendix B form the basis for invoices to be issued to the Customer once a month with a 30-day payment period.
- 4.3. All Prices are given without VAT or other applicable charges, including in particular costs/fees or levies referred to in Section 5 hereof. Noctiluca (if applicable) shall increase the Prices by an amount equal to VAT and other charges, including in particular costs/fees or levies referred to in Section 5 hereof, as then applicable to the Services or deliveries provided to the Customer, and the Customer shall pay

such an amount. Noctiluca shall issue a relevant invoice for such a payment to the Customer.

- 4.4. Except for payments that have been invoiced and then successfully questioned by the Customer, the Customer shall pay maximum default interest, within the meaning of Art. 481 §2¹ of the Civil Code, on all late payments. The interest shall be charged for each day of delay until the actual payment date. Apart from any other measures available to Noctiluca, Noctiluca may suspend the Services or deliveries referred to in Section 5 hereof if the Customer fails to pay full amounts due to Noctiluca hereunder.

5. PLACE OF PERFORMANCE AND DELIVERY

- 5.1. Unless this Agreement provides otherwise, the Services shall be provided to the Customer in Noctiluca's offices at ul. Gagarina 7/41B, 87-100 Toruń, Poland.
- 5.2. If, as part of the Services, Noctiluca has to send its deliverables or other materials to the Customer, they shall be sent at the Customer's risk. At the Customer's request, shipment shall be provided with relevant transport insurance and all costs of such shipment and insurance shall be payable by the Customer.
- 5.3. Noctiluca shall not liable for any additional costs related to the shipment of the deliverables of its Services or other materials to the Customer, including insurance, customs duties, other customs fees, taxes or other similar charges, which will be fully payable by the Customer.
- 5.4. In the event the Customer fails to collect the deliverables or other materials shipped by Noctiluca, all amounts related to the return of such shipment, warehousing or other related fees shall be payable by the Customer.

6. INTELLECTUAL PROPERTY

- 6.1. The Customer acknowledges and agrees that by ordering the Services to Noctiluca, the Customer does not acquire any intellectual property rights which are owned and developed by Noctiluca.
- 6.2. The Customer shall neither acquire any rights to nor distribute, use or otherwise deliver Noctiluca's intellectual property without Noctiluca's prior written consent.
- 6.3. The Customer also acknowledges and agrees that all patents, trademarks, copyrights, design rights, know-how and any other intellectual or industrial property rights with regard to any and all modifications or improvements in Noctiluca's intellectual property will be only attributable to Noctiluca.

6.3.1. The Customer shall fully cooperate with Noctiluca in terms of Noctiluca's efforts taken to maintain, extend and enforce Noctiluca's intellectual property rights. The Customer shall immediately notify Noctiluca of any potential breach, theft, appropriation or unauthorised use of Noctiluca's intellectual property that the Customer becomes aware of. The Customer shall provide, subject to the reimbursement of costs, any aid requested by Noctiluca in a reasonable way in connection with actions taken by Noctiluca with regard to such breach, theft, appropriation or unauthorised use.

6.3.2. The provisions of this Section shall apply accordingly to the protection of the Customer's intellectual rights.

7. GUARANTEE

Acting on the basis of Art. 558 of the Civil Code, the parties hereby exclude Noctiluca's liability for defect warranty, provided that the exclusion of liability is ineffective if Noctiluca deceitfully hides any defects in the goods.

8. LIABILITY

8.1. Noctiluca's liability for damages shall be in each case limited solely to the actual loss suffered by the Customer.

8.2. Noctiluca shall not be liable for the suitability of tests made hereunder by Noctiluca to the Customer's intended purposes. Noctiluca shall not be liable for any specific properties or the suitability of deliverables or other materials to the Customer's intended purposes, unless in it explicitly warrants to the Customer in writing that the deliverables or other materials have specific properties or are suitable to the Customer's intended purposes.

9. TERM AND TERMINATION

9.1. This Agreement shall become effective between the Parties as of [.] and be in force for 12 (twelve) months ("Term"). Either Party shall have the right to terminate this Agreement with a two-month notice to be made in writing and in such a case the Agreement shall be terminated as of the end of the calendar month falling 2 (two) months after the termination date.

9.2. Either Party shall have the right to terminate this Agreement with a thirty-day notice to be made in writing if the other Party fails to meet any of its material obligations hereunder. In such a case the Agreement shall be terminated as of the end of the last day of the notice period.

- 9.3. The Customer agrees that it does not have the right to claim and irrevocably waives any rights to any statutory or other compensation, refund or reimbursement for alleged or actual losses that are likely to arise, directly or indirectly, from the termination of this Agreement and Noctiluca shall not be liable for those losses.
- 9.4. The termination of this Agreement shall be without prejudice to the Customer's commitment to pay all amounts due to Noctiluca in accordance with the provisions hereof for the term of this Agreement.

10. CONFIDENTIALITY

- 10.1. Based on this Agreement Noctiluca may provide the Customer with Noctiluca's classified and confidential information (hereinafter collectively referred to as "Noctiluca's Confidential Information"), which may include Noctiluca's trade secrets, including, without limitation, materials, production tolerances and processes, information about suppliers, customers, technical data, marketing information, including prior notices of marketing programmes, information about prices and annual sales and revenues. In addition, the terms and conditions of this Agreement shall be considered as Noctiluca's Confidential Information by the Parties. The Customer shall not disclose Noctiluca's Confidential Information both during and upon the term of this Agreement to any third party (except third parties taking part in the performance or enforcement of this Agreement, provided that the Customer is liable for such third parties' operations like for its own actions or such third parties are bound by important professional secrecy) without Noctiluca's prior written consent. Such a confidentiality obligation shall be in force until the information is published by Noctiluca (separately for each information being Noctiluca's Confidential Information). The Customer's confidentiality obligation shall apply in particular to acquiring, using and disclosing Noctiluca's Confidential Information and the Customer shall not use such information in its own business activity which does not come within the provision of services hereunder.
- 10.2. Based on this Agreement, the Customer may provide its classified and confidential information to Noctiluca (hereinafter collectively referred to as the "Customer's Confidential Information"), which may include the Customer's trade secrets, as well as the Customer's financial information, including sales and quantities of inventories, as well as specially designed non-standard materials. The Customer agrees, however, that Noctiluca will use the information to provide its Services and enforce the Customer's compliance with the terms and conditions hereof or to prepare Noctiluca's internal plans. Noctiluca shall not disclose the Customer's Confidential Information both during and upon the term of this Agreement to any third party

(except third parties taking part in the performance or enforcement of this Agreement, provided that Noctiluca is liable for such third parties' operations like for its own actions or such third parties are bound by important professional secrecy) without the Customer's prior written consent. Such a confidentiality obligation shall be in force until the information is published by the Customer (separately for each information being the Customer's Confidential Information). Noctiluca's confidentiality obligation shall apply in particular to acquiring, using and disclosing the Customer's Confidential Information and Noctiluca shall not use such information in its own business activity which does not come within the provision of services hereunder or to the extent exceeding the provisions of this Section.

- 10.3. The Party receiving confidential information shall pay the disclosing Party a contractual penalty of EUR 50,000 (fifty thousand euro) for the violation of the confidentiality obligation set out in Sections 10.1 and 10.2 above.
- 10.4. The Party shall return any and all confidential information within the meaning of this Section 10 to the other Party on demand and upon the termination of this Agreement.
- 10.5. If any part of this Section 10 is found unenforceable, it shall be amended to be less restrictive, but enforceable to the extent as close as possible to the original provisions hereof.
- 10.6. Customer acknowledges that Noctiluca is an entity listed on the Polish stock exchange market and is therefore subject to regulations related to the publication of Confidential Information, i.e. the MAR Regulation. Any publications regarding the Parties' cooperation may be published only after verification by Noctiluca and with its written consent.

11. FORCE MAJEURE

- 11.1. The Parties shall be exempted from liability for delay, late performance or non-performance of this Agreement if such a delay or non-performance is caused by events over which the Party has not had sufficient control, including, without limitation: market conditions, the shortage of materials, war, acts of terrorism, riots and social unrest, dispossession or forfeiture of facilities, or the implementation of any order or request of a government authority, strikes and hindrances in the performance of work, both direct and indirect ("Force Majeure"). The Party claiming Force Majeure shall notify the other Party of the occurrence and expected duration thereof.

12. RELATIONS BETWEEN THE PARTIES; INSPECTION

12.1. Nothing in this Agreement shall be interpreted as one Party appointing the other Party as its representative, proxy, member of joint venture, partner or employee for any purpose. Neither Party shall have the right to make any commitments on behalf of the other Party. Neither Party shall have a significant control over the activity of the other Party based on this Agreement.

12.2. The Customer shall have the right to inspect Noctiluca's laboratory, provided that the date of such an inspection, as well as the number of persons and the members of the inspecting team must be prior agreed between the Customer and Noctiluca and that the Customer obeys Noctiluca's laboratory and confidentiality rules and regulations. Members of the inspecting team shall have the right to enter Noctiluca's laboratory provided that they have confirmed in writing that they have familiarised themselves with the rules mentioned above (whose valid versions will be made available to the Customer based on the Customer's request for inspection) and committed themselves in writing to obey confidentiality rules in the form of an NDA clause applicable to people entering Noctiluca's laboratories.

13. NOTICES

13.1. Notices of the Parties required hereunder shall be made in writing and delivered to the following addresses by registered mail or courier:

(a) To Noctiluca:
Gagarina 7/41B, 87-100 Toruń, Poland

(b) To the Customer:
.....

13.2. If the written form is not necessary, the Parties shall contact on an ongoing basis via persons appointed by the Parties by use of the following e-mail addresses, provided that those e-mail addresses may be also used to make written statements, provided that the requirement of an electronic form that is lawfully equivalent (in accordance with the Civil Code) to a written form is met:

(a) To Noctiluca:

(b) To the Customer:
.....

13.3. The change of the addresses shall not constitute an amendment hereto, but to be effective, must be communicated to the other Party in writing.

14. GENERAL REGULATIONS

- 14.1. No failure of the Party to request the other Party to perform any of the provisions hereof shall be considered as the waiver of such a provision or the waiver of rights arising from any other provision of this Agreement.
- 14.2. This Agreement (including attachments hereto) shall constitute an entire understanding between the Parties. Subject to Sections 3.4 - 3.5 above, all amendments to this Agreement shall be made in writing. This Agreement is entered into in favour of and be binding on the Parties hereto and their relevant legal successors or assignees.
- 14.3. In any case this Agreement provides for a written form, the Parties agree that such a form may be replaced with the lawfully equivalent electronic form (in accordance with the Civil Code), provided that for communication purposes the Parties use the e-mail addresses specified in Sections 13.2 - 13.3 above.
- 14.4. The Parties agree that this Agreement is governed by Polish law and all matters not provided herein will be subject to commonly applicable regulations of Polish law. The Parties agree that all disputes arising from or connected with this Agreement will be finally resolved by the Arbitration Court at the Polish Chamber of Commerce in Warsaw in accordance with the rules of that court, as applicable as at the commencement of proceedings by an arbitrator or arbitrators appointed in accordance with those rules.
- 14.5. If any of the provisions hereof is found unenforceable or invalid, this Agreement shall become ineffective solely to the extent of such a provision and such unenforceability or invalidity shall be without prejudice to the remaining provisions.
- 14.6. Neither Party shall be entitled to transfer or assign any rights hereunder without the prior written consent of the other Party.
- 14.7. If the text of this Agreement is provided to the Customer in a language other than Polish, it shall be only used to enable the understanding of the Agreement, provided that the Polish text prevails in every case and is the official text of contractual regulations binding on the Parties.
- 14.8. The following attachments form an integral part of this Agreement:
- Appendix A Scope of Services under the Chemical CRO Agreement
 - Appendix B Prices
- Noctiluca**

Mariusz Bosiak

President of the Board of Directors

Krzysztof Czaplicki

Member of the Board of Directors

Confidential

Appendix A

Scope of Services under the Chemical CRO Agreement

- I. The following scope of Services is in force:

- II. Consumables and minor laboratory equipment defined as:

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Appendix B Prices

Noctiluca shall provide its Services based on 3 different packages of services.

The Parties agree that they will cooperate on the basis of Package 1 starting from the commencement of the term of this Agreement.

Package 1 may be extended to Package 2 or 3 in the way stipulated in Sections 3.4 - 3.5 of the Agreement.

Package 1

Package 2

Package 3

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