# Confidential Information Disclosure and Material Transfer Agreement

between

Bayer Aktiengesellschaft

Kaiser-Wilhelm-Allee 1

51373 Leverkusen

Germany

and

[Please provide name and address of your institution]

The Parties agree as follows:

# Definitions

Annex D contains a list of defined terms, which, when used in this Agreement shall have the respective meaning set forth in Annex D.

# The Parties’ Primary Obligations

* 1. Disclosure and use of Confidential Information
     1. Provider [Please define in Annex D] shall disclose Confidential Information to Bayer during the term and under the terms of this Agreement.
     2. Within Bayer only Bayer Gatekeeper Team shall have access to Chemical Structures.
     3. Bayer Gatekeeper Team shall verify, if the Chemical Structures fall within certain chemical classes, in which Bayer does not want to co-operate with Provider If this should be the case, Bayer shall inform Provider accordingly in writing.
     4. If Bayer is interested in receiving and testing Material, Bayer shall inform Provider accordingly in writing. With such written information optional provision 2.2 of this Agreement shall become effective.
     5. For the term of this Agreement and for a period of 10 years thereafter, Bayer shall keep strictly confidential and agrees not to disclose to any Third Party or use for any purpose other than the Purpose of this Agreement, any Confidential Information without the prior written approval of Provider.
     6. Bayer does not acquire any right to Confidential Information disclosed pursuant to this Agreement, except for the limited right to use Confidential Information for the Purpose.
     7. The confidentiality obligations shall not apply to the extent that Bayer or its employees are required to disclose Confidential Information under Applicable Laws; provided that Bayer shall give written notice thereof to Provider and sufficient opportunity and collaboration to prevent or limit any such disclosure or to request confidential treatment thereof.
     8. Upon request by Provider, Bayer shall delete or destroy Confidential Information. However, this obligation shall not apply to one copy of Confidential Information stored in a secure place for the sole purpose of evidence as well as copies of Confidential Information, which are required to be retained under Applicable Laws or copies which have been created by automatic backup systems, provided that the confidentiality obligations herein shall continue to apply.
  2. Transfer and testing of Material
     1. This provision 2.2 shall become effective only if Bayer informs Provider in writing about its interest to receive Material according to provision 2.1 c) of this Agreement.
     2. Provider shall provide a minimum amount of 5 mg of Material to Bayer. Provider retains all rights in and to Material.
     3. Bayer Gatekeeper Team shall organize the shipment of Material from Provider to Bayer.
     4. After receipt of Material Bayer shall test Material in Bayer’s screening assays according to its own discretion. Bayer may use its Affiliates to do the screening, provided that (i) said Bayer Affiliate is bound to comparable contractual obligations as Bayer is under this Agreement, and (ii) Bayer shall be liable for any breach of confidentiality by said Affiliate.
     5. After finalization of the screening Bayer shall provide an aggregated summary of the screening results obtained with Material to Provider.
     6. Bayer shall (i) handle Material with all due care, (ii) not reverse engineer, analyze or otherwise attempt to determine the identity, structure or composition of Material, (iii) use Material only for the Purpose, (iv) limit access to Material to those of its employees and Affiliates to whom this is needed to fulfil the Purpose, (v) not to transfer the Material to any third party, (vi) not administer Material to humans or mammals in any manner or form and not use it in any form that would cause environmental damages and (vii) destroy any remaining part of Material which is not used in the screening.
     7. Bayer agrees that Provider shall not be liable for any use of Material by Bayer or Bayer’s Affiliate and that Bayer will defend, indemnify and hold harmless Provider from any loss, claim, damage or liability of any kind which may arise from or be connected with any use, handling or storage of the Material by Bayer or Bayer Affiliate, except to the extent that such loss, claim, damage or liability is caused by Provider´s gross negligence or willful misconduct.

# Covenants

* 1. Compliance with Applicable Laws

In connection with the implementation of this Agreement, the Parties shall comply with all Applicable Laws.

# Term

* 1. Term

This Agreement shall become effective on the day the last Party has signed this Agreement and shall expire one year thereafter.

* 1. Effect of Expiration

After the term, the obligations under this Agreement shall survive for a period of 10 years.

# Miscellaneous

* 1. Assignability

This Agreement or any rights or obligations under this Agreement may not be assigned in full or in part by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. Each Party may, however, assign this Agreement to any Affiliate of such Party, or to a Third Party in connection with the sale or transfer of all or substantially all of (i) its business, (ii) a given business unit or (iii) a given site, or in connection with a merger or other consolidation of a Party or any of its Affiliates with a Third Party.

* 1. Severability

If a provision of this Agreement is found by any Governmental Authority to be wholly or partly illegal, invalid, void, voidable or unenforceable, it shall, to the extent of such illegality, invalidity, voidness, voidability or unenforceability be deemed severable, and the remaining provisions shall continue in full force and effect.

* 1. Governing Law

This Agreement and all matters relating to this Agreement shall be governed by and construed in accordance with the laws of Germany (without giving effect to the choice of law principles and the United Nations Convention on Contracts for the International Sale of Goods (CISG)).

* 1. Dispute Resolution

The exclusive jurisdiction for any claim or matter, whether of a contractual or a non-contractual nature, arising under or in connection with this Agreement shall be finally settled by the competent courts of Düsseldorf, Germany.

* 1. Entire Agreement, Amendments
     1. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement. Any reference to standard terms and conditions by either of the Parties is considered void.
     2. This Agreement, including this provision, may only be amended either (i) by a written instrument duly executed by the Parties (ii) or in the form pursuant to which this Agreement was signed.

**Annex D**

The following terms shall have the respective meanings set forth below:

**Bayer** shall mean Bayer Aktiengesellschaft, Kaiser-Wilhelm-Allee 1, 51373 Leverkusen, Germany.

**Provider** shall mean [please add name and address of your institution as on first page of the Agreement]

**Affiliate** of a Party shall mean any individual, corporation or other business entity that, either directly or indirectly, controls such Party, is controlled by such Party, or is under common control with such Party. As used herein, “control” means the power to direct the decisions of an entity by possession of more than 50% of the voting rights in an entity, by contract, or otherwise.

**Agreement** shall mean this Agreement including its Annexes.

**Applicable Laws** shall mean all laws (including local labour laws), orders, statutes industry codes, regulations, ordinances, decrees, rules or other requirements with similar effect of any Governmental Authority and applicable to the Parties when implementing this Agreement.

**Bayer Gatekeeper Team** shall mean a predefined group of Bayer employees. The members of Bayer Gatekeeper Team (i) are and will not be involved in any research & development activity of Bayer with regard to small molecules which are potentially active in crop protection, and (ii) will not share the chemical structures with any other person within Bayer. Bayer will cause and compel Bayer Gatekeeper Team to perform such obligation and comply with the terms of this Agreement and any breach of the terms or conditions of this Agreement by Bayer Gatekeeper Team shall be deemed a breach by Bayer of such terms or conditions.

**Chemical Structures** means one or more chemical structures of potentially active crop protection compounds (non-confidential description from proposal questions).

**Confidential Information** shall mean Chemical Structures disclosed by Provider to Bayer during the term of this Agreement.

Any new information or finding based on or resulting from Bayer’s use of Provider’s Confidential Information for the Purpose shall be part of Provider’s Confidential Information. Confidential Information shall not include information that (i) was or becomes generally available to the public other than as a result of an unauthorized disclosure by Bayer or any its Affiliates; or (ii) was or becomes available to Bayer or any of its Affiliates on a non-confidential basis from a source other than Provider; provided that such source was under no duty to maintain confidentiality to Provider; or (iii) was known to Bayer before the date of its disclosure to Bayer by Provider; or (iv) was or is developed independently by Bayer or any of its Affiliates without using Confidential Information.

**Governmental Authority** shall mean any entity or body exercising executive, legislative, judicial, regulatory, administrative or taxing functions of or pertaining to governments (including courts), and any multinational organization or body (including the European Commission).

**Material** shall mean physical samples of Chemical Structures.

**Party** shall mean either Bayer or Provider, and Parties shall mean both of Bayer and Provider.

**Purpose** shall mean (i) a verification by Bayer Gatekeeper Team, if the Chemical Structures fall within certain chemical classes, in which Bayer does not want to co-operate with Provider, and (ii) testing of Material in Bayer’s screening assays.

**Third Party** shall mean any person or legal entity that is neither a Party nor an Affiliate.