

**Material Transfer Agreement (MTA) - standard version from 2021-08-19**

between

Providing Party, Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter \_\_\_\_\_)

and

Receiving Party, Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter \_\_\_\_\_)

In the following, \_\_\_\_\_ and \_\_\_\_\_ shall be referred to individually as *Party* or together as *Parties*. Both *Parties* can act as *Recipient* or *Provider of Confidential Information*.

**I. Preamble**

1. The intention of the *Parties* who sign this *MTA* is to exchange *Materials* for the purpose of energy storage research & development. This *MTA* shall govern the *Parties'* use of the transferred *Materials*.
2. Further specifics of a *Collaboration* between the *Parties* may be established by means of a separate contract.
3. Each *Party* confirms that it has made no modifications to this *MTA* in sections I to VIII or *Annex 2*, compared to the standard version of this document from 2021-08-19, as published on *b-science.net*.

**II. Definitions**

1. *Thematic Area* refers to the subject regarding which the *Parties* exchange *Materials* within the framework of this *MTA*. The *Thematic Area* shall be: energy storage, including

corresponding precursor materials and applications. The *Thematic Area* may be defined more specifically in *Annex 1*, which is an integral part of this *MTA*.

2. *Material* refers to a material or device as received by the *Receiving Party* in its original form from the *Providing Party*. The *Material* shall not include modifications, other substances or devices created by the *Receiving Party* based on the *Material*.

3. *Modification* refers to a substance or device created by the *Receiving Party* that incorporates a *Material* from the *Providing Party*.

4. *Staff* are all those persons who are either formally employed by, or who work for one of the *Parties* in another capacity (e.g. students, doctoral candidates, guest scientists, interns, consultants, etc.).

5. The term *Invention* comprehensively refers to an invention, a discovery, a new observation, use, or a product based on, containing, or relating to a *Material* or *Modification*.

6. *Discussions* designates all contacts between the *Parties* within the framework of this *MTA*, such as conversations, e-mail exchanges, meetings in person or other data exchanges.

7. *Collaboration* refers to projects, mandates, contracts or other forms of *Collaboration* resulting from *Discussions*.

8. *Confidential Information* designates all information, know-how, including technical, business and operational secrets, which are disclosed to the receiving *Party* by the disclosing *Party* orally or in writing. Written *Confidential Information* shall be marked 'confidential'. Orally disclosed *Confidential Information* has to be confirmed in writing as being confidential within ten (10) days after disclosure.

### **III. Terms and Conditions of the *MTA***

1. This *MTA* applies to all *Materials* transferred within the scope of the *Thematic Area*.

2. The *Providing Party* retains all legal title and all rights for all *Materials*, including any *Material* incorporated or contained in *Modifications*.

3. *Materials* are to be used only at the *Receiving Party's* institutional facilities by *Staff* under the supervision of a representative that signed this *MTA*, within the scope of the *Thematic Area*.

4. Except as expressly provided in this *MTA*, no rights are granted to the *Receiving Party* under any patent applications, trade secrets or other proprietary rights of the *Providing Party*.
5. *Materials* are provided for research & development purposes only. The *Receiving Party* agrees that for any envisioned sale of a *Material*, *Modification* or related commercial services, the *Receiving Party* shall in advance negotiate in good faith with the *Providing Party* the terms of a commercial license. It is understood by the *Receiving Party* that the *Providing Party* shall have no obligation to grant such a license.
6. The *Receiving Party* shall not transfer any *Material* or any *Modification* to third parties without the prior written approval of the *Providing Party*.
7. If, in the performance of activities related to this *MTA*, a *Party* is given access to information that the *Provider* considers confidential, the rights and obligations of the *Parties* with respect to such *Confidential Information* shall be governed by the terms and conditions set forth in *Annex 2*, which is an integral part of this *MTA*.
8. The *Receiving Party* may not engage in reverse-engineering, disassembly or decompilation efforts of *Materials* obtained through this *MTA*.
9. The *Receiving Party* may not analyze *Materials* obtained through this *MTA* except to the extent defined in the *Thematic Area*.
10. Upon request, the *Receiving Party* will send the *Providing Party* a confidential summary of results obtained with *Materials* and *Modifications*.
11. If the *Receiving Party's* work with a *Material* or *Modification* results in an *Invention* for which it intends to file a patent or other intellectual property right, it may do so only after disclosing the *Invention* to the *Providing Party*. Both *Parties* have to agree before an intellectual property right can be filed. The determination of patent ownership shall be based on inventorship.
12. If the *Receiving Party* wishes to publicly disseminate results obtained based on a *Modification* in the scientific/technical literature or in a presentation at a scientific/technical conference, the *Providing Party* is allowed to review any manuscript or presentation before public dissemination for thirty (30) days and may block publication of its own proprietary or *Confidential Information* related to a *Material*. The *Providing Party* shall be acknowledged in the manuscript or publication unless it prefers otherwise. At a minimum, the *Receiving Party* is allowed to publicly disseminate:

a) results for *Modifications* within the scope of the *Thematic Area*, but not results related to a *Material* and its characteristics in its unmodified form;

b) the identity of the *Providing Party* and the name of the furnished *Material*, to the extent necessary to permit for a reproducible experimental description according to scientific standards.

13. *Materials* are experimental and will be used by the *Receiving Party* with prudence and appropriate caution, as not all of its characteristics are known. *Materials* will not be used in/for humans or animals.

14. The *Receiving Party* will use *Materials* in compliance with all applicable laws, regulations and guidelines.

15. The *Receiving Party* shall retain the right to refuse *Materials*. The *Receiving Party* shall inform the *Disclosing Party* of such a refusal and shall be obliged to return to the *Disclosing Party* any refused *Materials* that were already received.

16. The contents of this *MTA* are confidential. It may not be forwarded to any third party without the other *Party's* consent.

#### **IV. Warranty and Liability**

1. All *Materials* and *Confidential Information* are provided on an *as is* basis.

2. All warranties, express or implied, pertaining in particular to, but not limited to the use, merchantability, storage or disposal of *Materials*, are hereby disclaimed.

3. Furthermore, all warranties, express or implied, pertaining in particular to, but not limited to the accuracy, non-infringement of any patent or other intellectual property rights, or fitness for a particular purpose of *Materials* or *Confidential Information*, are hereby disclaimed.

4. The *Receiving Party* shall assume all liabilities for any damages arising from the use, storage or disposal of all *Materials* or *Modifications*.

5. The *Providing Party* shall not be liable for any damages suffered by the other *Party*, its *Staff*, or others in relation to the use of *Materials*, *Modifications* or *Confidential Information*.

#### **V. Duration and Termination**

1. This *MTA* enters into force once it is signed by the *Parties* and ends two (2) years after it entered into force, after which *Materials* provided by the *Providing Party* shall not be used any longer. Any extension of this period shall be agreed to in writing.

2. Upon request by the *Providing Party* upon termination of this *MTA*, the *Receiving Party* shall either return or destroy *Materials* or *Modifications* and *Confidential Information*. If mandated by law or by other regulations *Parties* are obliged to follow, *Confidential Information* may be stored by the *Recipient* strictly for documentation purposes within the documentation time frame specified by the relevant mandate.

3. This *MTA* can be terminated prematurely at any time by one of the *Parties*, provided notice is given in writing to the other *Party*, thirty (30) days in advance. In case of a premature termination other than for breach of this *MTA*, the *Receiving Party* may keep and use *Materials*, *Modifications* and *Confidential Information* for one (1) more year to finish any work within the scope of the *Thematic Area*.

4. The terms and conditions of this *MTA* shall remain in effect for as long as they are pertinent to the subject matter.

#### **VI. Amendments / Assignment**

1. Amendments to this *MTA* and legally relevant correspondence shall be in writing.

2. This *MTA* may not be assigned without the written consent of the *Providing Party*.

#### **VII. Severability Clause**

1. Should individual provisions of this *MTA* be invalid, in whole or in part, then the validity of the remaining provisions shall remain unaffected.

2. The *Parties* shall be mutually obliged to replace invalid provisions with legally applicable provisions which conform to the greatest possible extent to the sense and purpose of the present *MTA*.

#### **VIII. Applicable Law and Court of Jurisdiction**

##### **If *Parties* are based in the same country:**

1. This *NDA* shall be governed by national law in which both *Parties* reside, without regard to principles of conflict of laws therein.

2. *Parties* agree to resolve conflicts between themselves in an amicable manner whenever possible.

3. If both *Parties* agree, one conflict arbitrator approved by both *Parties* will make the final decision regarding resolution of any conflict.

4. Upon request by any *Party* before entering conflict arbitration, the case shall be brought forward to the court of jurisdiction of the capital of their home country. If both *Parties* are based in the same local administrative entity (such as a Canton, State, Prefecture, etc.) and if both *Parties* agree, the court of jurisdiction may be moved to the capital of their administrative entity.

**If *Parties* are based in different countries:**

1. This *MTA* shall be governed by Swiss law, without regard to principles of conflict of laws therein.

2. *Parties* agree to resolve conflicts between themselves in an amicable manner whenever possible.

3. If both *Parties* agree, any conflict shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of arbitration shall be the city of Zurich, Switzerland. The arbitration proceedings shall be conducted in English.

4. Upon request by any *Party* before entering conflict arbitration, the case shall be brought forward to the court of jurisdiction of the city of Zurich, Switzerland, which is the exclusive place of jurisdiction.

This *Material Transfer Agreement (MTA)* is executed in two originals and duly signed by the authorized representatives of the *Parties* hereto:

*Acceptance of the Material Transfer Agreement (MTA) by Providing Party:*

Place/Date:

Signature:

Name:

Function:

Organization:

*Acceptance of the Material Transfer Agreement (MTA) by Receiving Party:*

Place/Date:

Signature:

Name:

Function:

Organization:

**Annex 1: Specific Description of the *Thematic Area***

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**Annex 2: Exchange of *Confidential Information***

**I. Confidentiality Obligation / Use of Confidential Information**

1. The confidentiality obligation means that the *Recipient* shall handle and store with due care *Confidential Information* disclosed by the *Provider* and:

a) may provide it only to those *Staff* who require access to the *Confidential Information* in order to fulfil their duties in connection with the *Discussions* and *Collaboration* and who are obliged to respect confidentiality obligations because of the conditions of their employment;

b) may not distribute it outside the area in which it is subject to their supervision and may neither publish it nor otherwise disclose it to third parties without the written authorization of the *Provider*;

c) shall use it only within the scope of the *Collaboration*, not for other research & development projects or other purposes that do not relate to the *Collaboration*.

2. Neither *Party* is obliged to disclose any information to the other *Party*, or to enter into a further *Collaboration*.

3. The *Confidential Information* shall remain the property of the *Provider*. Nothing in this *MTA* shall be construed as granting to the *Recipient* any license or right of any kind with respect to the *Confidential Information* or any intellectual property of the *Provider*.

4. The confidentiality obligation of the *Recipient* with regard to *Confidential Information* disclosed before termination of this *MTA* shall remain in effect for a further five (5) years after termination of this *MTA*.

## II. Exceptions

1. The obligations imposed on the *Recipient* by this *MTA* shall not apply to any *Confidential Information* or portion thereof disclosed by the *Provider* for which the *Recipient* is able to prove that:

a) it was in the public domain or public knowledge at the time it was transmitted to the *Recipient*;

b) it later fell into the public domain or public knowledge for reasons other than an action or omission attributable to the *Recipient* that is a breach of this *MTA*;

c) it was already in the *Recipient's* possession, without any limitation regarding its disclosure at the time it was transmitted to the *Recipient* by the *Provider*, provided that such prior possession is supported by written evidence;

d) it was obtained in good faith and without any commitment relating to confidentiality from a third party entitled to disclose it;

e) it is or was independently developed by the *Recipient* without use of *Confidential Information* of the *Provider*.

2. Confidentiality obligations shall not apply to any portion of *Confidential Information* required to be disclosed as a result of a court order or pursuant to a government action, provided that the *Recipient* shall inform the *Provider* of any such order or action to give the *Provider* the opportunity to request a protective order.