Marie Skłodowska-Curie Visitor Agreement

THIS AGREEMENT dated _____ 2020 is made:

BETWEEN:

(1) ______________________________________________ of ______________________ (the “University”); and

(2) Massachusetts Institute of Technology of 77 Massachusetts Avenue,
    Cambridge, MA 02139 United States (“MIT”)

(hereinafter, each of University and MIT individually, a “Party” and collectively, “the Parties”)

RECITALS

(A) The University has been awarded funding for a “Marie Skłodowska-Curie Actions Individual Fellowship – Global Fellowship” for Dr __________________ (“the Fellow”) under a grant agreement #____________ dated _______________ 2020 (the “Prime Contract”) with the Research Executive Agency (“REA”) under the power delegated by the European Commission to undertake a research project (the “Project”) entitled “____________________.”

(B) The University wishes to carry out the Project in the University’s Department of ____________________.

(C) The University wishes to enter into agreement with MIT for the secondment of the Fellow to MIT for the outgoing phase of the Project (the “Research”) in accordance with the provisions of this Agreement.

IT IS NOW AGREED as follows:

1 Definitions

In this Agreement, the following words shall have the following meanings:

“Account Number” shall mean ____________________.

“Fellow” shall mean Dr ____________________.

“MIT Principal Investigator” shall mean MIT Professor ____________________.

“MIT Supervisor” shall mean MIT Professor ____________________.

“Prime Contract” shall have the meaning given in Recital A above.

“REA” shall have the meaning given in Recital A above.
“Institutional Unit Payments” shall mean the sums to be paid by the University to MIT, comprising the Research, Training and Networking Payment and the Management and Overheads Payment as specified in Section 13 and Schedule 1.

“Research” shall have the meaning given in Recital C above and in Schedule 2.

“Research Period” shall mean the period of secondment running from __ _____________ 2020 through __ _____________ 2022.

The “MIT Lab” shall mean the __________________ Laboratory at MIT.

“University Principal Investigator” shall mean University Professor __________________.

“University Supervisor” shall mean University Professor __________________.

2 MIT shall not be bound by the terms of the Prime Contract. In the event of any conflict arising between the terms of this Agreement and those of the Prime Contract, the terms of this Agreement shall prevail. MIT agrees to make reasonable efforts to collaborate with the University in order for the University to meet the University’s obligations under the Prime Contract.

3 MIT shall allow the Fellow to attend its research establishments during the Research Period for the purpose of the Project. The Fellow will remain an employee of the University, and the University shall be solely responsible for the Fellow’s salary, benefits, worker's compensation, and taxes and for any other employer obligations. For the avoidance of doubt, the term “benefits” in the foregoing sentence includes appropriate medical insurance for the Fellow that at minimum meets the criteria of MIT, the Commonwealth of Massachusetts, and the United States; provided, however, that based upon University’s advice to MIT that the following represents an appropriate use of funds under the Prime Contract and to the extent that such use does not impair financing of the Research, MIT will permit the Fellow to use a portion of the Research, Training and Networking Payment (as set forth in Schedule 1 hereto), to purchase such medical insurance for the Fellow and, as applicable, the Fellow’s family. For guidance with regard to medical insurance requirements, please see:

1. http://web.mit.edu/iso/students/insurance.shtml;
3. https://medical.mit.edu/my-mit/affiliates/do-i-need-health-care; and

University shall cause the Fellow to comply with all applicable and reasonable rules and safety and other regulations communicated to him by MIT and which MIT may reasonably prescribe during the Research Period. For the avoidance of doubt, the Fellow shall not be an employee of MIT and the Fellow shall neither
be required to sign any contract of employment nor, subject to the following sentence, other legally binding agreements. However, as provided in Section 16 below, MIT will require the Fellow and the University to sign an Inventions and Proprietary Information Agreement, attached hereto as Schedule 3, which shall not conflict with the terms of this Agreement.

4 The Research shall comprise the activities specified in Schedule 2, and labelled “Research.”

5 MIT shall have, throughout the Research Period, the means, including infrastructure, equipment and products for implementing the Project and shall make these available to the Fellow as necessary.

6 The days per week (excluding Saturday and Sunday and statutory bank holidays) and the Fellow’s hours of work and holiday requests, if any, will be agreed and recorded by the Fellow and the applicable Supervisor.

7 MIT shall provide reasonable assistance to the Fellow for all administrative procedures required including, but not limited to visa and work permissions leading up to and during the Research Period.

8 MIT shall ensure a scientist is designated as MIT Supervisor to the Fellow for the Research Period.

9 The MIT Supervisor will supervise and ensure support is available to the Fellow to pursue the Fellow’s personal development plan comprising “Research Training Activities” as set forth and so labelled in Schedule 2 hereto, during the Research Period.

10 The Fellow’s responsibility in reporting to the REA on behalf of the University is recognised by MIT.

11 The effective period of this Agreement shall initially be for the Research Period. Any variation of these dates shall require the prior written consent of MIT and the University, and shall form the basis of a formal amendment to this Agreement.

12 Notwithstanding Section 11 MIT understands and agrees that the Fellow is obligated and committed to return to the University after the Research Period to complete the Fellow’s commitment to REA.

13 The University shall pay to MIT in US Dollars the Institutional Unit Payments in accordance with the wire transfer instructions set forth in Schedule 1 hereto, subject to MIT performing its obligations under this Agreement satisfactorily.
The Institutional Unit Payments comprise the total sum due to MIT under this Agreement and shall be payable to MIT in advance within a period ending on the later to occur of (i) 30 days after signature of this Agreement and (ii) 45 days after the receipt of funds from the European Commission. MIT will provide University with financial reports justifying the nature of the expenditure, its amount and the actually realized expenses within 90 days of the end of the reporting period corresponding to the Research Period. Financial reports shall be sent to the University for the attention of ______________ and shall bear the University’s Account Number. Further, within 90 days of the conclusion of the Research Period, MIT shall submit to the University, if the University so requests, a final statement of the expenditures which it has claimed under this Agreement. MIT undertakes to maintain good and accurate records of all expenditures claimed under this Agreement for inspection by the University’s authorised representatives. For the avoidance of doubt, any funds paid to MIT by the University that at the end of the Research Period remain unspent and uncommitted to purposes necessitated by the Research or this Agreement shall be repayable to the University.

14 In the event of either Party (the “Disclosing Party”) making available to the other (the “Receiving Party”) confidential information (“Confidential Information”) relating to its business, scientific or other activities in the course of the Project, such Confidential Information being marked as confidential and any verbal disclosure of Confidential Information being identified as confidential and reduced to writing and delivered in such form to the Receiving Party within 30 days, the Receiving Party shall maintain the confidentiality of such information, and shall use reasonable efforts not to disclose it to third parties, members of its staff, or students outside the research team working on the Project without the prior written permission of the Disclosing Party for a period of three years from the date of disclosure. If either Party uses the services of sub-contractors, consultants, agents or students to undertake part of the Project, advise on the Project or manage the Project, that Party shall promptly and diligently ensure that such sub-contractors, consultants, agents or students are informed of and agree to abide by the same conditions of confidentiality as are set out herein.

15 The obligations in Section 14 above shall not apply to data or information which the Receiving Party can clearly demonstrate:

(a) was known to the Receiving Party prior to disclosure; or
(b) was in or enters the public domain through no fault of the Receiving Party; or
(c) has become available to the Receiving Party through an unconnected third party with the lawful right to make such a disclosure; or
(d) has been independently developed or conceived by it; or
(e) it is required to disclose by law.
The Parties acknowledge that in hosting the Fellow and making available to the Fellow significant MIT facilities and resources, which may include Research guidance, supervision, participation and support by MIT faculty and personnel, MIT will make substantial contributions to the Research activity of the Fellow (the “MIT Contributions”). In consideration for the MIT Contributions, and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the results of the Research, and any intellectual property created, generated or developed by the Fellow during the Research Period (the “Foreground IP”) shall be owned as follows:

(a) Foreground IP invented, created or developed in the performance of the Research together with MIT faculty or other personnel shall be jointly owned by the University and MIT in equal undivided shares;

(b) Foreground IP invented, created or developed in the performance of the Research solely by the Fellow shall also be jointly owned by the University and MIT in equal undivided shares (such Foreground IP, together with the Foreground IP described in Clause 16(a) above, is referred to herein as “Joint IP”); and

(c) Foreground IP invented, created or developed other than in performance of the Research, and with significant use of MIT-administered funds or facilities, shall be solely owned by MIT (“MIT Foreground IP”).

In furtherance of the ownership contemplated by clauses (a), (b) and (c) above, the Fellow and the University shall execute and deliver to MIT an Inventions and Proprietary Information Agreement in the form attached as Schedule 3 hereto.

The protection and exploitation of MIT Foreground IP shall be MIT’s responsibility and MIT shall bear all expenses incurred in obtaining and maintaining any patent on MIT Foreground IP. The protection and exploitation of Joint IP shall be subject to discussion and agreement between the Parties in good faith. Notwithstanding the foregoing statement, the Parties hereby agree that each Party shall be entitled to use or transfer its interest in Joint IP as it sees fit and to grant licenses to third parties, without the consent of and without accounting to the other Party, provided, however, that unless otherwise mutually agreed in writing, the University shall take the lead in filing and licensing for all Joint IP of which the Fellow is the sole inventor, and MIT shall take such lead on all Joint IP with respect to which MIT personnel have made an inventive contribution. The Party taking such lead shall have the first right to file a patent application on Joint IP in the names of both Parties. Each Party shall notify the other of any Joint IP promptly after an invention disclosure is received by MIT’s Technology Licensing Office or by University, as applicable. MIT TLO will make a good faith effort to accommodate reasonable requests received in writing from University, with respect to inclusion in a specific Joint IP patent filing or
other Joint IP protective filing, of a legend or other brief language acknowledging funding for the Project from the European Union’s Horizon 2020 research and innovation program under a Marie Skłodowska-Curie grant agreement. All expenses incurred in obtaining and maintaining any patent on such Joint IP shall be equally shared except that, if one Party declines to share in such expenses, the other Party may take over the prosecution and maintenance thereof, at its own expense, provided that title to the patent remains in the names of both Parties.

17 The Parties will be free to publish the results of the Research in accordance with normal academic practice, but subject to the following procedure: (i) All publications arising from the Project which one Party intends to publish will be submitted to the other Party at least thirty (30) calendar days prior to publication to permit the other Party to review the publication to identify patentable subject matter and to identify any disclosure of Confidential Information; (ii) The non-publishing Party is entitled to request that its Confidential Information or such Party’s solely owned Foreground IP be deleted from any such publication or communication; (iii) The Party wishing to make the publication may also agree to an additional delay of up to sixty (60) additional calendar days to allow for the filing of a patent application; and (iv) Any publication made by either Party will acknowledge the support from the REA and that the Research was conducted in collaboration with the non-publishing Party, unless requested to the contrary by the non-publishing Party.

18 Nothing in this Agreement shall affect the ownership of intellectual property rights existing prior to this Agreement or generated outside the Project (“Background IP”).

19 This Agreement may be terminated by one Party giving a minimum of one month’s written notice to the other, receipt of which must be acknowledged in writing. Further, this Agreement shall be terminated forthwith should the University notify MIT that its support under the Prime Contract has been terminated for any reason. In the event of termination, MIT shall repay to the University any unexpended balance from the sums paid to it under Section 13 above after it has deducted all costs outstanding and unavoidable commitments which it has incurred in undertaking the Research up to the date of such termination, and the University shall pay to MIT a sum to cover any expenditures incurred and unavoidable commitments entered into in undertaking the Research up to the date of such termination, which have not been covered by prior payments by the University; provided, however, that in no event shall such sum payable to MIT cause University’s total payments to MIT to exceed the amount of the Institutional Unit Payments as set forth in Schedule 1.
20 MIT undertakes to maintain at its own cost, during the term of this Agreement, general liability insurance with combined limits of not less than $1,000,000 per occurrence and $2,000,000 per accident for bodily injury, including death, and property damage, or to maintain the functional equivalent of such insurance.

21 Neither Party shall assign, delegate, sub-contract, charge, mortgage or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld.

22 If any part or any provision of this Agreement shall to any extent prove invalid or unenforceable in law, the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable to the fullest extent permissible by law, and such provision shall be deemed to be omitted from this Agreement to the extent of such invalidity or unenforceability. The remainder of this Agreement shall continue in full force and effect and the Parties shall negotiate in good faith to replace the invalid or unenforceable provision with a valid, legal and enforceable provision which has an effect as close as possible to the provision or terms being replaced.

23 No failure to exercise or delay in the exercise of any right or remedy which any Party may have under this Agreement or in connection with this Agreement shall operate as a waiver thereof, and nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or of any other such right or remedy.

24 This Agreement is not intended to establish, and shall not be construed by any party in the future as having established, any form of business partnership between the Parties.

25 This Agreement (including its Schedules 1, 2 and 3) supersedes all other agreements and understandings, whether written or oral, between the Parties about the Research and constitutes the entire agreement between the Parties concerning the Research.

26 All notices served under this Agreement shall be served by recorded delivery, with a copy sent by electronic or telephonic facsimile. All notices served under this Section will be acknowledged in writing immediately by the Receiving Party.
Any amendments to this Agreement shall be agreed in writing by both Parties.

This Agreement is made and shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts and United States federal law without regard to principles of conflict of laws.

For United Kingdom only: Except as provided, this Agreement does not create any right enforceable by any person who is not a party to it ("Third Party") under the Contracts (Rights of Third Parties) Act 1999, but this Section does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

Neither Party shall be responsible to the other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act. For any remaining contractual liability, a Party’s aggregate liability towards the other Party shall be limited to an amount equal to the Institutional Unit Payments provided such damage was not caused by a wilful act. Neither Party shall be considered to be in breach of this agreement if such breach is caused by “Force Majeure,” meaning conditions beyond its reasonable control, including, without limitation, natural disasters, fire, government restrictions, war, terrorism, civil unrest, or insurrection. Each Party will notify the other Party of any Force Majeure as soon as possible.

Neither Party shall use the other’s name or any variation, adaptation, or abbreviation thereof, or the name of any of the other’s trustees, directors, officers, faculty members, students, employees, or agents, or any trademark owned by the
other, in any promotional material or other public announcement or disclosure without the other’s, or in the case of an individual, the individual’s, prior written consent, which consent may be withheld in such person’s or entity’s sole discretion. In the case of MIT, the consent must come from MIT’s Technology Licensing Office (requests may be sent to tlo-uon@mit.edu), and in the case of the University, the consent must come from the __________________________.

IN WITNESS whereof the Parties have executed this Agreement effective as of the date first above written through their authorised signatories:

For and on behalf of Massachusetts Institute of Technology

Signed

Print name

Title

Date

For and on behalf of __________________________

Signed

Print name

Title

Date
Schedule 1
Institutional Unit Payments

All sums are expressed in Euros

**Period:** ______________ 2020 — ______________ 2022

Research, Training and Networking Payment: € 19,200.00
Management and Overheads Payment: € 15,600.00
**Total** € 34,800.00

**INSTRUCTIONS FOR MAKING WIRE TRANSFERS TO MIT**

| Name of bank to which funds are to be wired: | Bank of America, NA |
| Bank address: | 100 Federal Street Boston, MA 02110 |
| WIRE PAYMENT ABA Routing Number: | 026 009 593 |
| SWIFT CODE: | BOFAUS3N |
| DDA Account Number: | # 004632424694 (MIT Incoming Wire) |
| ACH ABA Routing Number: | 011 000 138 |

University, please provide as much information as possible to identify the objective of the wire transfer, including at minimum that payment is for a Marie Skłodowska-Curie Actions Fellowship, MIT Principal Investigator’s name, MIT Lab, and Project title, to facilitate identification of the incoming wire transfer. If there is limited space, the MIT Principal Investigator and Research title are probably the minimum information needed to identify the objective for the wire transfer.

University, please notify wire-transfers@mit.edu or Patricia Crosby in MIT Accounts Receivable at +1.617.253.2751, pcrosby@mit.edu, that you are making a wire transfer. Provide your company name, the name of the bank or party wiring the money, the amount of the wire, the MIT Principal Investigator, Research title and/or account number to which this money should be transferred, and the date when the wire is expected to be made. Please include a contact at the Principal Investigator’s MIT department in case of questions and the date when the wire is expected to be made.
Schedule 2

The Research

and

The Research Training Activities

{Please insert descriptions of "Research" and "Research Training"
From approved Marie Skłodowska-Curie IOF Part B here.}
Schedule 3
Massachusetts Institute of Technology (“MIT”)
Inventions and Proprietary Information Agreement (“IPIA”) for Visiting Scientist under a Marie Skłodowska-Curie Outgoing International Fellowship

Legal Name of Fellow (please print): FIRST: _____________________ MIDDLE: ___________________ LAST: ___________________ (“Fellow”)

MIT ID No.: ___________________ Birth Month/Day: ___________________ (year of birth not required)

Email address at MIT: ___________________ Department hosting Research: ___________________

MIT Principal Investigator for the Research: ___________________

Employer Name and Address: ____________________________________________ (“Employer”)

Name, Email & Address of Authorized Representative of University: ___________________________________________________________

“This IPIA is entered into by Fellow, University and MIT in regard to a Marie Skłodowska-Curie Action hosted by MIT (the “Fellowship”) for consideration comprising opportunities made or to be made available to Fellow and Fellow to make significant use of one or more of the following: MIT administered funds or MIT administered facilities in the performance of research at MIT and hosting of this Fellowship by MIT, which may include Research guidance, supervision, participation and support by certain MIT faculty and personnel; and consideration may also include opportunities to share in royalties and other inventor/author rights outlined in the “Guide to Ownership, Distribution and Commercial Development of MIT Technology” (the “Technology Policy Guide”) as in effect from time to time.

In exchange for the consideration listed above, Fellow and University agree to each of the following:

A. Fellow and University will disclose promptly and assign to, and each does hereby assign to, MIT and University jointly and co-equally all rights that each respectively holds, now or in the future, to all inventions, copyrightable materials, computer software, semiconductor mask works, tangible research property, and trademarks (“Intellectual Property”) conceived, invented, authored, or reduced to practice by Fellow, either (i) jointly with employees or students of MIT in the performance of the Research as defined under that certain Marie Skłodowska-Curie Visitor Agreement (the “MCVA”) between University and MIT relating to my Marie Skłodowska-Curie Outgoing International Fellowship or (ii) solely or jointly with others in the performance of the Research as defined under such MCVA with significant use of MIT administered funds or MIT facilities as defined above and in Paragraph 2.1.2. in the Technology Policy Guide;

B. Fellow and University will disclose promptly and assign to, and each does hereby assign to, MIT all rights that each respectively holds, now or in the future, to all intellectual Property conceived, invented, authored, or reduced to practice by the Fellow, either solely or jointly with others, other than in the performance of the Research as defined under the MCVA, which result from the Fellow’s own or the Fellow’s co-inventor’s/ co-author’s significant use of MIT administered funds or MIT facilities as defined above and in Paragraph 2.1.2. in the Technology Policy Guide;

C. Fellow and University will each take all necessary actions and execute all necessary papers, and otherwise provide proper assistance promptly upon MIT’s or University’s request and at MIT’s or University’s expense, during and subsequent to the Fellow’s performance of research at MIT, to enable MIT and/or University to obtain, maintain, or enforce for themselves or their nominees, their respective rights as set forth above and in the MCVA in such intellectual Property and related patents, copyrights and other legal protections of such intellectual Property;

D. Fellow and University will each prepare and maintain for MIT or for MIT and University, as applicable, adequate and current written records of all such intellectual Property;

E. Fellow and University will each deliver promptly to MIT when the Fellow leaves MIT for any reason, and at any other time or times that MIT may request, copies of all written records referred to in Paragraph D. above, as well as all related memoranda, notes, records, schedules, plans or other documents, and tangible research property made by, compiled by, delivered to, or manufactured, used, developed or investigated by MIT, which will at all times be the property of MIT; and

F. Fellow will not disclose to MIT or use in Fellow’s work at MIT (unless otherwise agreed in writing by MIT):

(i) any proprietary information of any of Fellow’s current or prior employers or of any third party, such information to include, without limitation, any trade secrets or confidential information with respect to the business, work or investigations of such current or prior employer (including University) or other third party; or

(ii) any ideas, writings, or Intellectual Property of Fellow’s own which are not included in Paragraphs A. or B. above within the scope of this IPIA (please note that inventions previously conceived, even though a patent application has been filed or a patent issued, are subject to this IPIA if they are actually first reduced to practice under the circumstances included in Paragraphs A. or B. above).

This IPIA replaces all previous agreements relating in whole or in part to the same or similar matters that Fellow or University may have entered into with MIT, excluding the MCVA. This IPIA may not be modified or terminated, in whole or in part, except in writing signed by an authorized representative of each of Fellow, University and MIT. Discharge of the undertakings of each of Fellow and University in this IPIA will be the respective obligation of each and of the respective executors, administrators or other legal representatives, successors, or assignees of each.

Fellow and University each represent that except as identified on pages attached hereto, neither has any agreement with or obligations to others in conflict with the above. This IPIA is made and shall be interpreted under the laws of the Commonwealth of Massachusetts and United States federal law.

Witness Signature
Print name: ___________________________ Date: ___________________________

Your Signature

Execution by Employer: ___________________________

(Authorized Signature)

Institution Name: __________

By: ___________________________

Title: ___________________________

Date: ___________________________

Return to: MIT Technology Licensing Office, Room NE18-501, 255 Main Street, Kendall Square, Cambridge, MA 02142 USA

For further information see: MIT Policies and Procedures or the Guide to the Ownership, Distribution and Commercial Development of MIT Technology, OR contact the TLO at (617) 253-6966

MIT OSATT MCVA TEMPLATE 20200615