

## Terms and Conditions

Lonza Cologne GmbH ("LONZA") reserves the right to modify this promotional offer at any time without notice.

### 1. Scope and Purpose of CytoSMART™ Lab Test Use

- 1.1 Applicants for the CytoSMART™ Lab will receive a confirmation email about the receipt of the application within seven (7) days.
- 1.2 All CytoSMART™ Lab test users, hereinafter referred to as "TEST USER", will be chosen from the entries received by Lonza Cologne GmbH by December 31, 2016. LONZA will use commercially reasonable efforts to notify all applicants for the CytoSMART™ Lab of LONZA's determination by email within one month after the application is submitted, but in any event, no later than February 28, 2017.
- 1.3 LONZA will loan the TEST USER a CytoSMART™ System (hereinafter referred to as "Device") to allow TEST USER to use the Device for a specified research project
- 1.4 TEST USER will provide LONZA with information on the TEST USER'S research interest, experiments performed with the CytoSMART™ System and a conclusion. Furthermore an image and video of the cell culture project taken with the CytoSMART™ System, a CytoSMART™ Project Link and image of researcher shall be provided by the TEST USER.
- 1.5 LONZA may upload, in its sole discretion, TEST USER's lab, research project and CytoSMART™ Project to LONZA's website.

### 2. Test Period

- 2.1 TEST USER can test the CytoSMART™ Live Cell Monitoring System for free for a four (4) weeks testing period.
- 2.2 An overrun of the loan-period for up to five (5) additional days will be allowed at LONZA's sole discretion.
- 2.3 Any breach of these Terms by TEST USER shall entitle LONZA to terminate the testing period without notice.

### 3. Conditions of Use

- 3.1 TEST USER will conduct the Test Use at its own expenses and facilities and will observe all legal requirements and regulations applicable. TEST USER shall not use the CytoSMART™ System for any use or purpose other than defined in these Terms.
- 3.2 Under no circumstances shall the CytoSMART™ System be used for the testing or the treatment in humans. TEST USER acknowledges that the Device is no diagnostic or therapeutic tool and that the Device shall not be used as accessory or complement to such tools.
- 3.3 Upon termination of the Test Period TEST USER will return the Device received for the Test Use free of any contamination that may have occurred at TEST USER's facilities (i.e. chemical or biological). Further TEST USER will return the filled out LONZA Device Decontamination Verification Form that was provided to Test User prior to Test Start. Return shipping of the Device, including insurance, will be at TEST USER's expense.

### 4. Limited Liability

LONZA shall be liable for damage caused by an intentional misconduct or by gross negligence on the part of LONZA, its legal representatives or its vicarious agents pursuant to the governing law. Subject to gross negligence and intentional misconduct, LONZA's liability shall be limited to reasonably foreseeable and typically occurring damage. Liability for damage arising out of any injury of life, body or health of a person, provided that such damage was caused through the fault of LONZA, its legal representatives or its vicarious agents as well as the German Product Liability Act is not affected by this Section.

## 5. Indemnity

TEST USER shall defend, indemnify and hold LONZA, its employees and agents harmless from and against any and all claims or demands of third parties, including statutory, otherwise attorneys' fees, arising out of TEST USER's use of the CytoSMART™ System not expressly permitted under these Terms. The same shall apply if TEST USER's specific use of the results collected during the Test Use infringes or violates any patent, copyright, trademark or other property rights of a third party.

## 6. Intellectual Property Rights

- 6.1 TEST USER acknowledges and agrees that the CytoSMART™ System and all rights connected thereto are and shall remain the sole and exclusive property of the Intellectual Property owner.
- 6.2 TEST USER acknowledges and agrees that LONZA exclusively owns the right to commercially exploit the CytoSMART™ System and that LONZA shall be the exclusive owner of any right(s) to apply for intellectual property protection stemming from any creation, modification, invention or improvement to the Device.
- 6.3 LONZA acknowledges and agrees that, subject to Subsections 6.1 and 6.2 above, all rights to results rightfully collected during the Test Use shall vest in TEST USER, and that such results shall always be and remain the sole and exclusive property of TEST USER.

## 7. Miscellaneous

- 7.1 Nothing herein will be deemed to create a joint venture, partnership, franchise or any other type of business association between the Parties.
- 7.2 No waiver, amendment or modification of these Terms shall be valid until agreed on by both Parties in writing. Waiver of this form requirement must be in writing.
- 7.3 Failure of either Party to insist upon or enforce strict performance of any provision of this Agreement will not be construed as a waiver of that provision or any other provision nor future rights or provisions. Nor shall the course of conduct between the Parties or trade practice(s) act to modify any provision of this Agreement.
- 7.4 Should a single provision of these Terms be or become invalid, this shall not affect the validity of the remaining provisions. The Parties agree to replace such invalid provision by a valid provision which comes as close as possible to the economic intention the Parties had in mind when drafting the invalid provision. The same shall apply in case of gaps in these Terms.
- 7.5 No failure or omission in the performance of any of the obligations under this Agreement shall be deemed a breach of this Agreement or create liability, if such failure or omission is the result of acts of God, war, riot, accidents, compliance with any action or restriction of any government or agency thereof, strikes or labour disputes, inability of transportation, or any other factor or circumstance beyond the control of the Party hereto. Any suspension of performance by reason of this Subsection shall be limited to the period during which such cause of failure exists.
- 7.6 Any notice to LONZA required hereunder shall be directed to: Legal Department, Lonza Cologne AG, Nattermannallee 1, 50829 Cologne, Germany. All notices to TEST USER shall be directed to the address set forth herein.
- 7.7 These Terms shall be governed by the laws of the Federal State of Germany. Exclusive venue for all actions arising out of or related to these Terms shall be Cologne, Germany.