

Date

[Tag/Monat in Worten/Jahr]

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**3a-Diagnostics GmbH**

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72636 Frickenhausen

**BUNKER Biopharma GmbH**

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**DEVELOPMENT, TECHNOLOGY PURCHASE AND LICENSE AGREEMENT  
(DEVELOPMENT, TECHNOLOGY PURCHASING AND LICENSE AGREEMENT)**

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## Preamble

- (A) 3a- Diagnostics GmbH ("**3a**") is a research-based biotechnology company specializing in the development, production and marketing of medical devices and point-of-care diagnostics.
- (B) XPhyto Therapeutics Corp. ("**XPhyto**") is a Canadian-based, publicly listed, science-based company that specializes in the development of growth markets, including the pharmaceutical sector, in collaboration with experienced partners and research institutions. XPhyto and its partners have particular expertise in the establishment, structuring and financing of start-up companies in growth markets.
- (C) BUNKER Biopharma GmbH ("**BUNKER**") is a subsidiary of BUNKER Pflanzenextrakte GmbH. BUNKER Pflanzenextrakte GmbH is in turn a subsidiary of XPhyto. In the coming days, XPhyto and BUNKER Pflanzenextrakte GmbH will transfer and assign the shares of BUNKER in full to XPhyto, so that in future BUNKER will be a direct subsidiary of XPhyto.
- (D) Vektor Pharma TF GmbH ("**VEKTOR**") was founded in 2009. VEKTOR is a subsidiary of SCUR-Alpha 1108 GmbH. SCUR-Alpha 1108 GmbH is in turn a subsidiary of XPhyto. From the beginning, VEKTOR's objective was to modernize existing technologies and to implement new ideas in the production and development of transdermal systems. Using intelligent formulation technologies, VEKTOR has investigated generic and new active ingredients and developed them into efficient transdermal systems. VEKTOR is supplier of the 3a for thin films and transdermal films.
- (E) The parties intend to cooperate in the development and marketing of peptide-based assays. In this context, it is intended that BUNKER will finance further phases of the development of certain solutions in the pipeline up to the possibility of commercialisation or up to market maturity and in this respect obtain exclusive distribution rights (subject to licence fees). Furthermore, BUNKER will finance the development of a platform for the evidence-based detection of epidemics/infectious diseases by 3a within an agreed budget and the development of concrete product implementations; the achievement of defined milestones is additionally supported by the transfer of shares in XPhyto. BUNKER is to receive the (royalty-bearing) exclusive distribution rights for all products developed on the basis of this new platform. Finally, it will be examined whether a COVID-19 sensor can be developed for BUNKER on the basis of the existing technology.

(F) Furthermore, it is intended that an option agreement (call) on the transfer and assignment of all shares in 3a shall be concluded between BUNKER or an affiliated company of BUNKER within the meaning of Section 15 of the German Stock Corporation Act on the one hand and all shareholders of 3a on the other hand [REDACTED]

[Redacted - timeline for option agreement]

(G) In the weeks prior to the conclusion of this agreement, the parties discussed different approaches to cooperation and also concluded a letter of intent on 16 March 2020. Both parties agree that no conclusions for an interpretation of this agreement can be drawn from these preceding documents.

Having said this, the parties agree on what follows:

## **1. Subject matter of the contract / contract content / plant structure**

### **1.1 Subject of the contract**

The subject of this contract is the cooperation of the parties with regard to the following essential service areas:

- (a) Development of the existing product pipeline on the existing development platform to market readiness and distribution of as many of the products as possible by BUNKER within the following 24 months
- (b) Development project for the generation of a new development platform to identify a peptide sequence directly from the saliva of diseased persons which can be used for sensor design.
- (c) Examination of the possibility of developing a COVID-19 sensor for BUNKER by 3a based on the existing development platform.

Within the framework of the execution of this contract, 3a is free in its choice of development and production methods as well as in the choice of the contractual partners. Insofar as there are references to "Cost+" in the context of this contract, all costs must therefore be included without restriction, unless 3a makes improper use of these rights.

1.2 Content of contract

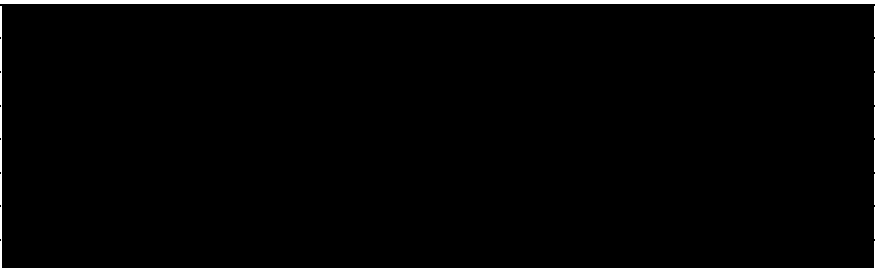
This Development, Technology Acquisition and License Agreement ("**Agreement**") consists of this Agreement and the attachments listed in Section 1.3 below.

This contract replaces all previous agreements relating to the subject matter of the contract.

General terms and conditions of the parties do not become part of this contract. This also applies if reference is made to them in previous correspondence between the parties or in orders placed by the Licensee.

1.3 Plant structure

In the event of contradictions between the text of the contract and the annexes, the text of the contract takes precedence, unless otherwise agreed. In all other respects, the Annexes shall apply in the following order of precedence:

Annex 2.1(a)	
Annex 2.1(b)	
Annex 2.2 (a)	
Annex 2.2 (b)	
Annex 2.3	
Annex 4.1	
Annex 6.1 (b)	
Annex 7.2	

[Redacted - descriptions of the Annexes]

**2. Scope of services**

3a provides the following services in relation to the subject of the contract:

2.1 Existing product pipeline:

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- [Redacted]
- [Redacted]  
[Redacted - details of existing development platform]
- 3a BUNKER grants BUNKER the non-exclusive distribution rights pursuant to section 4.3 to the products from the product pipeline developed to market maturity and the product and development statuses achieved in the context of development financing for the products in the product pipeline.

## 2.2 New development platform

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted - details of new development platform plan]

- BUNKER will receive the exclusive distribution rights to product developments as well as other further developments and any IP based on the new development platform as well as further rights for commercial use according to section 4.4.

### 2.3 COVID-19 Evaluation

- [Redacted]

[Redacted - timeline for evaluation]

- Insofar as the results of the examination show that the development of a sensor on the basis of the existing development platform is possible, the parties will agree on whether further development activities should be undertaken in this respect. Further development activities and the granting of corresponding exclusive distribution rights to BUNKER will be agreed in an annex to this contract, if necessary.

2.4 The Parties aim to further extend cooperation in the above areas. Extensions of the cooperation will be agreed in Annexes to this Agreement.

### 3. Dates, roadmaps and milestones

The dates, roadmaps and milestones for the development of the 3a, as set out in this agreement, serve to structure the research and development activities to be carried out under this agreement. Both parties are aware that this is a research and development project in which neither the timely implementation nor the general feasibility of the individual dates and milestones can be predicted with sufficient certainty.

For each development step, 3a shall provide BUNKER with a written report on the status of the development work. The Parties shall jointly determine the type, scope and frequency of the reports.

In this respect, 3a alone guarantees that 3a will orient all internal and external research and development activities towards the achievement of these milestones, whereby any limited availability of external laboratories and clinical analysis will not be at the expense of 3a. However, this does not constitute a further-reaching commitment of 3a to the agreed milestone deadlines.

#### 4. IP rights

##### 4.1 Background rights

3a already has a comprehensive portfolio of intellectual property rights and licenses when the contract is concluded. This includes the patent families and patents from the patent portfolio overview attached as **Annex 4.1**

Unless rights are expressly transferred to BUNKER under this contract, these rights shall remain with 3a. This applies in particular (but not conclusively) to all rights to the existing development platform.

##### 4.2 Application for joint rights

Insofar as rights arise within the scope of the development activities financed by BUNKER under this Agreement which are accessible for registration, in particular as patents and utility models, and which are not related to already existing property rights of one of the Parties, the Parties shall agree on the extent to which a joint registration of the rights is to take place.

[Redacted]

[Redacted]

[Redacted - details for handling joint registration of IP rights]

##### 4.3 Rights to products from the existing product pipeline

- All rights to current and future developments of the existing development platform are exclusively entitled to 3a in the relationship between 3a and BUNKER.

- All rights to current and future developments of the product pipeline are - subject to the provision in 4.3 above - in the relationship between 3a and BUNKER exclusively entitled to 3a, unless they have been licensed to BUNKER in accordance with the following bullet point In particular, the rights for further development and production shall remain exclusively with 3a. However, contracts with the following contractual content require the written consent of BUNKER:

■ [Redacted]

■ [Redacted]  
[Redacted]

■ [Redacted]

■ [Redacted]  
[Redacted]

■ [Redacted]

[Redacted - details of the type of arrangements which require written consent from Bunker]

- 3a BUNKER grants, subject to the development fee pursuant to Section 6.1, the payment of the license fee pursuant to Section 6.1 and the transfer of the shares pursuant to Section 7, the worldwide, non-exclusive, sublicensable, perpetual license to distribute or have distributed by third parties, including the right to grant sublicenses, the products from the product pipeline from the time the products reach market maturity and the product and development statuses achieved in the context of the development financing for the products of the product pipeline itself or by third parties.

#### 4.4 Rights to the new development platform and to products based on the new development platform

- All rights to develop products based on the new development platform are the exclusive property of 3a. BUNKER is not entitled to allow third parties to develop products on the basis of the new development platform or to carry out the development itself, unless 3a does not accept an offer made by BUNKER within 24 months of the conclusion of the contract to conclude a development contract for the development of a product in accordance with the terms of this contract [Redacted].

[Redacted - compensation detail]



In this case, BUNKER may carry out the development of the specific project on the new development platform itself or have it carried out.

- The distribution rights for products developed on the basis of the new development platform shall exclusively belong to BUNKER, unless BUNKER expressly waives corresponding rights. 3a In this respect, subject to the development fee pursuant to Section 6.1, payment of the license fee pursuant to Section 6.1 and transfer of shares pursuant to Section 7, BUNKER grants a worldwide, exclusive, sublicensable, perpetual license to distribute or have distributed by third parties, itself or through third parties, all products developed on the basis of the new development platform, including the right to grant sublicenses.

#### 4.5 Rights to the results of the Covid 19 evaluation

- All rights to the results of the examination of the Covid 19 evaluation belong exclusively to 3a. BUNKER is not entitled to allow third parties to further develop on the basis of these results or to carry out the development itself, unless 3a does not accept an offer made by BUNKER within 24 months of the conclusion of the contract to conclude a supplement to this development contract to develop a product in accordance with the terms of this contract ( ). In this case, BUNKER may carry out the development of the specific product itself or have it carried out on the basis of the results of the Covid 19 evaluation. An automatic licensing of intellectual property rights, which may be necessary for the implementation of the Covid 19 Evaluation, will not be granted.

[Redacted - compensation detail]

#### 4.6 Exercise obligation

BUNKER undertakes to conscientiously exercise the rights granted under this Agreement and to make the best possible efforts to distribute and license the subject matter of this Agreement.

If sublicensing is carried out by BUNKER, it must be ensured that it is not carried out below market prices. Contracts with licensees of BUNKER must include appropriate price adjustment clauses.

## 5. Production

### 5.1 Production right / production contract

All products to be distributed by BUNKER under this contract are to be produced by 3a, which retains the exclusive production rights. [Redacted]

[Redacted]

[Redacted - details of a separate production contract between the two parties]

## 5.2 Compensation

[Redacted]

[Redacted - compensation under the production agreement]

## 5.3 Waiver of the right to produce

The obligation to conclude a production contract for a product shall not apply if

3a expressly waives the right of production;

In this case, BUNKER shall be entitled to carry out the production of this product itself or have it carried out. 3a In this respect, subject to the development fee pursuant to Section 6.16.1, payment of the license fee pursuant to Section 6.1 and transfer of shares pursuant to Section 7, BUNKER grants a non-exclusive, sublicensable, perpetual license to produce the Product itself or have it produced by a third party under this Production Agreement, subject to the condition that the license fee [Redacted]

[Redacted - specific compensation from the license fee]

## 5.4 Securing production

[Redacted]



invoice, if and to the extent that such taxes are not taxes determined by, or imposed on, the income or profits of the selling party)

(d) bonuses or rebates granted to health care organisations or governmental or public organisations and their competent bodies and to purchasers or resellers or distributors, including, but not limited to, discounts to wholesalers and purchasing associations; and

(e) discounts (or equivalent reductions) granted or claimed by public authorities.

The respective amounts are taken from the accounts of BUNKER and companies affiliated with BUNKER. These accounts shall be kept in accordance with internationally recognized accounting standards.

(d) New development platform and products developed on it: The parties agree on a remuneration as follows:

(e) Development grant: For the development activities for the development of a new development platform, 3a shall receive a remuneration of up to EUR [REDACTED] along the remuneration milestones agreed in **Annex 6.1 (b)**. The development grant is due for payment within 14 days of signing this agreement and after the respective milestones have been reached and a corresponding invoice has been received.

(f) License fee: For the net revenues generated by the distribution of products based on the new development platform or the sublicensing of distribution rights granted for the distribution of products based on the new development platform, 3a will receive a revenue-based license fee of [REDACTED] of the corresponding net revenues (as defined above).

(g) COVID-19 evaluation:

For the examination of the possibility of the development of a COVID-19 sensor for BUNKER by 3a on the basis of the existing development platform, 3a shall receive a remuneration of EUR [REDACTED] in accordance with the remuneration milestones agreed in **Annex 2.3**. The individual payments according to the remuneration milestones

agreed in Annex 2.3 are due for payment within 14 calendar days upon achievement of the respective milestones and receipt of a corresponding invoice.

[Redacted - compensation plan details]

6.2 Net prices / due date

All fees are to be paid in Euro. Prices quoted do not include the applicable value added tax.

[Redacted]

[Redacted]

[Redacted - due dates for invoices and basis for license fees]

7. Transfer of shares to XPhyto

7.1 BUNKER undertakes, in addition to the payment of the remuneration according to the above clause 6 (and without consideration within a cost + calculation) to transfer shares in XPhyto to 3a in accordance with the following regulations or to ensure a transfer.

7.2 [Redacted]

7.3 [Redacted]

[Redacted - details of share transfer plan]

8. Warranty

8.1 3a Declares that

- (a) 3a is entitled to dispose of the rights granted to BUNKER in this contract;
- (b) 3a no rights of third parties are known which would conflict with the granting of rights under this Agreement; and
- (c) 3a no legal defects in the distribution rights granted are known; and

(d) 3a shall in any case carry out the development work in accordance with the latest published state of the art in science and technology.

8.2 A liability exists only if 3a has positive knowledge of the incorrectness of the circumstances mentioned in clause 8.1 at the time of conclusion of the contract or if the ignorance of the incorrectness of 3a is based on gross negligence.

8.3 3a shall not assume any warranty for defects beyond this. 3a is in particular not liable for the technical usability or commercial exploitability of the subject matter of the contract or for any other freedom from legal or material defects.

## **9. Liability**

During the commercial negotiations, the parties discussed the economic basis for risk sharing and risk hedging and took these into account in the price agreement. Against this background, the parties enter into the following liability agreement:

9.1 The liability of 3a is unlimited in cases of intent, assumption of a guarantee of quality, fraudulent concealment of defects, liability under the Product Liability Act and injury to life and limb.

9.2 Liability for negligence within each contractual year is limited in total to the amount of payments made by BUNKER to 3a in the respective contractual year.

9.3 Insofar as nothing to the contrary results from Section 8.1, 3a shall not be liable, regardless of the legal grounds, for production stoppages, product losses, loss of profit, loss of use, loss of contracts or any other consequential, indirect or indirect damage.

9.4 Any further liability is excluded.

## **10. Accounting / Audit Law**

10.1 BUNKER shall keep separate accounts for the use of the rights acquired under this Agreement and the rights to future developments. The accounts must show the type and scope of the delivered products or licenses granted, the recipients and delivery dates, the time and type of use, the invoice date and invoice number, the pricing and other circumstances essential for the calculation of the license fees.

10.2 The Licensor may once a year check the correctness of the accounts himself or have them checked by a third party who is obliged to maintain secrecy at his own expense. If the audit reveals accounting errors (deviations at the expense of 3a of more than 1%), BUNKER shall bear the costs of the audit.

## **11. Confidentiality**

11.1 The Parties acknowledge that certain information, materials and documents received or obtained by them under this Agreement may be confidential. The Parties shall take all reasonable measures and precautions to protect and maintain the confidentiality of such information, materials and documents and shall ensure that their directors, officers, employees, representatives and agents also take such measures; provided that the foregoing shall not prevent either Party from disclosing or making available on a confidential basis such information, materials and documents to its accountants/auditors and professional advisors for the purposes of performing the Agreement.

11.2 The aforementioned obligation shall not apply (1) to information which is in the public domain, unless this is due to a wilful or negligent act or omission and circumvention of the aforementioned obligations or (2) to the extent that disclosure or provision of such information is required by court order, governmental order, law or applicable regulation, including any regulations of an antitrust authority and a stock exchange on which the shares or stock of one of the parties or of a company affiliated with one of the parties are listed.

## **12. change of control**

12.1 In the event of a change in the control or majority structure of 3a, 3a shall notify BUNKER without delay, unless the planned transaction was already notified to BUNKER by 3a at the time the contract was concluded. A change of control or majority is deemed to occur if one party's shares are transferred to a third party or if there is any other change in the ownership structure and the third party holds more than 25% of the shares after completion of the relevant transaction or transactions.

12.2 BUNKER shall be entitled to terminate the contract without notice due to a change in the control and majority situation, as far as this is reasonable after weighing the interests of the parties.

**13. Contract transfer**

12.1 BUNKER is entitled to transfer the rights and obligations arising from this contract in its entirety to an affiliated company within the meaning of Section 15 of the German Stock Corporation Act. 3a consents to the transfer of the contract.

**14. Term / Termination**

14.1 The contract begins with the signing and is concluded for an indefinite period.

The contract can be terminated at the end of a calendar year, but for the first time at the end of 2022, with a notice period of 12 months.

14.2 Before the end of the term, the contract can only be terminated for good cause. Good cause shall be deemed to exist if there are facts on the basis of which the party giving notice of termination, taking into account all circumstances of the individual case and weighing the interests of both contractual parties, cannot reasonably be expected to continue the contractual relationship until the end of the notice period. This is especially the case,

14.3 if a contracting party culpably fails to fulfil its essential contractual obligations and does not remedy the breach of contract within a reasonable period of time, even after written request;

14.4 the other contracting party or its parent company is exposed to a significant threat to its assets or its assets deteriorate or an application is made against it for the opening of insolvency, composition or composition proceedings.

14.5 3a is furthermore entitled to terminate the exclusivity of the distribution licenses for individual or all products based on the new development platform after threat of termination according to the following statements, if the total license fees to be paid by BUNKER per calendar year for these products remain below the joint expectations of the parties according to the following list The termination shall be threatened by 3a in writing and with a notice period of 1 month ("Monthly Period") to BUNKER. BUNKER shall be entitled to avert the right of termination by paying the difference between the license fees to be remunerated and the expected license fees within the one-month period:

2022	0,00 €
2023	10.000,00 €
2024	10.000,00 €



2025	35.000,00 €
2026	35.000,00 €

## 15. Final provisions

- 15.1 The waiver by one party of a notice of breach of contract or deviations from contractually agreed provisions shall not be deemed to be consent of the other party thereto, even if the other party has tolerated them once or several times.
- 15.2 Should individual provisions of this contract be partially or completely void or invalid for other reasons, the contracting parties hereby undertake to agree on a legally effective replacement clause that comes as close as possible to the economic objectives. The same applies to the closing of a loophole that is contrary to plan.
- 15.3 There are no subsidiary agreements to this contract. All changes and amendments to this contract must be made in writing. This also applies to the amendment of this provision.
- 15.4 The contractual regulation of the contractual partners' performance contents and obligations specified herein shall be governed exclusively by the provisions of this contract and its annexes. General terms and conditions of the contractual partners are expressly not applicable.
- 15.5 German law shall apply to this contract. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) as well as the conflict of laws rules of private international law is excluded.
- 15.6 Place of jurisdiction is Stuttgart.