

**NON-EXCLUSIVE LICENSE FOR COMMERCIAL ENTITIES**

This license agreement ("Agreement") has been entered into on [date to be inserted] by and between Amaxa AG, a corporation duly organized and existing under the laws of the Federal Republic of Germany with executive offices at Nattermannallee 1, 50829 Cologne, Germany ("Amaxa") and the purchaser of the Nucleofector® Device with the serial number [name of purchaser to be inserted], [country/U.S. state to be inserted] with executive offices at [address to be inserted] ("Licensee"; Amaxa and Licensee hereinafter collectively referred to as "Parties" and individually as a "Party").

**1. Grant of license; Scope**

- (1) Amaxa has developed proprietary processes, devices, programs, protocols, solutions, consumables and kits for the transfer of biologically active molecules (e.g. DNA, RNA, proteins of varying size) into the cytoplasm and into the nucleus of primary cells and cell lines ("Nucleofector® Technology") and is the holder of national and/or international patents/patent applications as specified in **Appendix A** ("Patents") and technical and economic experience and know-how with respect to these Nucleofector® Technology.
- (2) Amaxa hereby grants to Licensee and Licensee accepts a non-transferable, non-exclusive license without the right to grant sublicenses for a limited use of Amaxa's proprietary Nucleofector® process and method as described in the patents/patent applications exclusively listed in **Appendix B** ("Licensed Process"), and related information and knowledge, Amaxa's software, individual Nucleofector® programs and related update(s), only in combination with the Nucleofector® Device with the serial number \_\_\_\_\_ ("Purchased Device").
- (3) The license includes the right to use the Licensed Process in combination with the Purchased Device for commercial or non-commercial purposes. The license does not, however, grant Licensee the right to perform services using the Licensed Process and/or the Purchased Device for third parties. Notwithstanding the foregoing, Licensee shall be allowed to use the Licensed Process in combination with the Purchased Device to perform services internally for affiliates, subsidiaries, sections or departments of Licensee.
- (4) The license is limited to the use of the Licensed Process in combination with the Purchased Device for the transfer of nucleic acid only.
- (5) **Under no circumstances** shall the Licensed Process and/or the Purchased Device be used for the testing or the treatment in humans. Licensee acknowledges that the Licensed Process and/or the Purchased Device are no diagnostic or therapeutic tools and that they shall not be used as accessory or complement to such tools.
- (6) Licensee shall not manufacture, copy, reproduce, transmit, distribute, sell, lease, transfer or sublicense the Licensed Process and/or the Purchased Device.

**2. Confidentiality**

- (1) Licensee shall maintain in confidence and not disclose, divulge or otherwise communicate to others any information obtained from Amaxa or on behalf of

Amaxa relating to the Licensed Process and/or the Purchased Device ("Confidential Information") or use it for any purpose, except as permitted or contemplated by this Agreement or pursuant to, and in order to carry out, the terms and objectives of this Agreement, and hereby agrees to exercise every reasonable precaution to prevent the unauthorized disclosure of such Confidential Information by any of its directors, officers, employees or other authorized third parties.

- (2) Confidential Information shall not include information disclosed by or on behalf of Amaxa which: (i) either before or after the date of the disclosure to the Licensee is lawfully disclosed without restriction on disclosure to Licensee by an independent, unaffiliated third party rightfully in possession of the Confidential Information; or (ii) either before or after the date of the disclosure to Licensee becomes published or generally known to the public through no fault or omission on the part of Licensee; or (iii) is required to be disclosed by Licensee to comply with applicable laws, to defend or prosecute litigation or to comply with governmental regulations, provided that Licensee provides prior written notice of such disclosure to Amaxa and takes reasonable and lawful actions to avoid or minimize the degree of such disclosure.

**3. Representations and Warranties by Amaxa**

- (1) Amaxa represents and warrants that, on the Effective Date as defined in Section 6 hereunder, it is not aware of any legal deficiencies of the Patents and that to its knowledge on the Effective Date it has the right to dispose of the Patents. Amaxa further represents and warrants that it has no knowledge of any rights of third parties which have priority over the Patents and that the inventors of the invention falling under the Patents have transferred all rights and entitlements to Amaxa and that accordingly Amaxa has full power and authority to grant the license provided hereunder.
- (2) Amaxa does not warrant that the information and data pertaining to the Licensed Process and/or the Purchased Device is correct and without defects, that the use of such information or data is adequate for the use of the Licensed Process and/or the Purchased Device or that the technical information or data for the Licensed Process and/or the Purchased Device is complete.
- (3) Amaxa does not warrant either that the use of the license does not infringe third parties' rights or does not cause damages to third parties. Any liability for later invalidation or lapse of the Patents is excluded.
- (4) Subject to the warranty granted for the Purchased Device, all warranty claims are excluded as far as they are based on the Licensed Process or the Purchased Device. No warranty is made for the reliability, the quality, the economic utilization, efficiency, merchantability and the usefulness of the Licensed Process, the Purchased Device, or products resulting from the use of the Licensed Process or the Purchased Device, for the intended purpose or for any other purpose. The exclusion of warranty claims does not apply in case of gross negligence or intentional misconduct of Amaxa or bodily injury.
- (5) Amaxa does not assume any liability that the Licensed

Process, the Purchased Device or any product resulting from the use of the Licensed Product shall be approved by governmental authorities or any other institution or supervisory board or similar agencies.

**4. Representations and Warranties by Licensee**

- (1) Licensee represents and warrants that it will use the Licensed Process and/or the Purchased Device with the appropriate care and in strict accordance with the applicable laws and regulations.
- (2) Licensee further represents and warrants that it will not manufacture copy, reproduce, transmit, distribute, sell, lease, transfer or sublicense the Licensed Process or the Purchased Device.
- (3) Licensee warrants that upon the Effective Date as defined in Section 6 hereunder it has not filed and has no present plans to file a patent application and that it does not independently possess an invention on which it could file a patent application, any of which patent applications do or may claim the same invention(s) claimed under the Patents or that otherwise may be a basis for the declaration of an interference in the United States Patent and Trademark Office between any such patent application and any Patent or a comparable action in the European Patent Office or any other equivalent competent national authority.

**5. Indemnification**

Licensee agrees to indemnify, defend and hold harmless Amaxa, the inventors and all officers, directors, employees and agents of Amaxa (collectively hereinafter referred to as "the Indemnities") from and against any and all claims, damages and liabilities, including legal cost and fees asserted by Licensee, its Affiliates, any special parties, and/or any third parties (whether governmental or private) in connection with or arising out of the use by or on behalf of Licensee, its authorized sub-licensees, employees, agents or third parties of any Patents, the Licensed Process or the Purchased Device or any other products, processes or services performed or developed in connection with or arising out of the Patents, the Licensed Process or the Purchased Device. Licensee hereby waives any rights of subrogation it may have against the Indemnities on account of any claim, damage or liability arising from activities under or in connection with this Agreement. In no event shall Amaxa be liable under this Agreement for any direct, indirect, special, incidental or consequential damages including but not limited to lost revenue, lost profits or lost savings, even if Amaxa has notice of the possibility of such damages. The aforesaid shall not apply in case of gross negligence or intentional misconduct of Amaxa or bodily injury.

**6. Term and termination**

- (1) The term of this Agreement shall commence upon delivery of the Purchased Device to Licensee ("Effective Date") and shall continue for as long as the Licensed Process are used by Licensee in combination with the Purchased Device.
- (2) Amaxa shall have the right to terminate this Agreement with immediate effect in the event that Licensee challenges the Patents or supports third parties challenging the validity of the Patents during the term of the Agreement.

- (3) Both Parties shall have the right to terminate the Agreement for good cause with immediate effect if the other Party commits a material breach of contract and does not cure such breach susceptible of being cured within a period of 30 (thirty) days after receipt of a written notice by the non-breaching party requesting to do so. A reason entitling to the right to terminate for a material breach of contract under this Paragraph 6 (3) shall include but not be limited to the violation of the Licensee's obligation not to offer services to third parties using the Licensed Process and/or the Purchased Device.

- (4) Sections 2 and 5 shall survive the expiration or termination of this Agreement.

**7. Miscellaneous**

- (1) This Agreement shall be governed and construed in accordance with the laws of Germany without regard to its conflicts of laws provisions. Exclusive venue for all actions related to this Agreement shall be Cologne, Germany.
- (2) The failure or delay of any Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right by the Party, excuse a similar subsequent failure to perform any such term or condition or preclude the exercise of any other right under the Agreement.
- (3) Should any provision of this Agreement be or become invalid or unenforceable, then the validity and enforceability of the remaining provisions shall thereby not be affected. The parties of this Agreement are under the obligation to substitute any invalid or unenforceable provision by a legally effective provision which comes as close as possible to the economic purpose of the invalid or unenforceable provision. The same applies to any lacunae of this Agreement ("Vertragslücke").

**Appendix A:** Patents and/or patent applications relating to amaxa's Nucleofactor® Technology

Short title	Application no.
Nucleofactor® Process	PCT/EP01/07348
Nucleofactor® Device	PCT/DE02/01489
Nucleofactor® Process II	EP 04024956.7
Nucleofactor® Device II	EP 04013843.0
Nucleofactor® Solutions	PCT/DE02/01483
Nucleocuvette™	PCT/DE03/00536
Nucleocuvette™ Contacting	PCT/IB04/003485
Nucleocuvette™ Modules	PCT/IB05/000663
96-well Shuttle®	PCT/IB05/000663
Small volume Nucleofection®	EP 05014758.6

**Appendix B:** Patents and/or patent applications relating to the Licensed Process

Short title	Application no.
Nucleofactor® Process	PCT/EP01/07348
Nucleofactor® Process II	EP 04024956.7
Nucleofactor® Solutions	PCT/DE02/01483