

ACADEMIC NON-BIOLOGICAL MATERIAL TRANSFER AGREEMENT

PARTIES: University name ('Provider')
University address

Company / organization name ('Recipient')
Company / organization address

DATE: Date ('Effective Date')

In consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties), the Parties agree as follows:

1. DEFINITIONS

Provider Scientist: [insert name, contact details]

Recipient Scientist: [insert name, contact details]

Recipient's Research Project: [insert title/description of research project]

Material: [insert description/amount of material]

Modifications: Anything created by Recipient which contains or incorporates the Material or is made by making changes to Material.

Commercial Purposes: the sale, lease, license, or other transfer of the Material and/or Modifications to a for-profit organization and includes any use of the Material and/or Modifications by any organization, including Recipient, to perform contract research, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the Material and/or Modifications to a for-profit organization or any activity otherwise for the purposes of commercial exploitation. However, industrially sponsored academic research will not be considered a use of the Material and/or Modifications for Commercial Purposes per se, unless any of the above conditions of this definition are met.

2. PERMITTED USES & USERS OF MATERIAL

Recipient and Recipient Scientist:

- a. May only use the Material for academic research purposes as part of the Recipient's Research Project;
- b. May use the Material only at Recipient's organization and only in Recipient Scientist's laboratory under the direction of Recipient Scientist or others working under his/her direct supervision and control;

- c. Must not use the Material in human subjects without the prior written consent of Provider and confirmation of all regulatory and ethics approvals;
- d. May use the Material for analysis purposes only and must not undertake, directly or indirectly, any efforts to duplicate or reverse engineer the Material; and
- e. Must not transfer the Material to anyone else within Recipient's organization not under Recipient Scientist's supervision or control or to any third party without the prior written consent of Provider.

3. COMMERCIAL USE

If Recipient wishes to use or license the Material or Modifications for Commercial Purposes, Recipient must obtain a commercial licence from Provider. Recipient acknowledges that Provider has no obligation to grant such license to Recipient and Provider is free to grant exclusive or non-exclusive licences to others or assign all or part of the rights in the Material to any third party(ies), subject to any pre-existing rights held by others and any obligations to government agencies.

4. THIRD PARTY REQUESTS FOR MATERIAL

Recipient must refer to Provider any request for the Material from anyone other than those working under Recipient Scientist's direct supervision and control.

5. COST & DELIVERY OF MATERIAL

The Material is provided at no cost, but Recipient must pre-pay for all delivery charges by providing its billing account information for shipping purposes to Provider. Provider will send the Material to Recipient upon receipt of a signed copy of this Agreement from Recipient and billing account information for shipping purposes.

6. OWNERSHIP

Provider owns, or has the right to transfer to Recipient, all Material, including any Material contained within or incorporated into any Modifications.

Recipient owns:

- a. Any Modifications (but specifically excluding any Material contained within or incorporated into the Modifications, which Material remains solely owned by Provider); and
- b. Any other substances, materials or inventions created by Recipient through its use of the Material which do not contain or incorporate the Material;

except where the new material, substance or invention referred to in (a) or (b) results from the collaborative efforts of Provider and Recipient, in which case such elements will be jointly owned and both parties will negotiate in good faith to enter into ownership and benefit sharing arrangements.

7. NO LICENCE TO PROPRIETARY RIGHTS

Recipient acknowledges that the Material is or may be the subject of a patent application or other forms of proprietary rights. Except as provided in this Agreement, no express or implied licenses or other rights are provided to Recipient in respect of such rights, including any altered forms of the Material made by Provider.

8. NEW INTELLECTUAL PROPERTY

If Recipient Scientist's use of the Material results in an invention or substance that may be commercially useful which he/she discloses to Recipient for commercialization purposes ('**New Intellectual Property**'), Recipient will also promptly disclose the invention or substance to Provider at [insert institutional contact] and notify Provider of the role of the Material, Provider Scientist and any other person affiliated with Provider in the creation of the New Intellectual Property. Provider will keep confidential any information provided by Recipient relating to the New Intellectual Property. If Recipient wishes to commercialize New Intellectual Property, Recipient must negotiate with Provider in good faith an agreement based on the respective parties' contributions in creating the invention or substance. Where Recipient has created Modifications, Recipient grants Provider a non-exclusive, non-transferable, perpetual, royalty-free license to use the Modifications for teaching and academic research purposes.

9. PUBLICATION

This Agreement does not prevent or delay publication of research findings resulting from use of the Material provided that Recipient does not include in any oral presentation or written publication any information identified as confidential by Provider without the prior written consent of Provider. Recipient must provide appropriate acknowledgement of Provider and Provider Scientist in any publication and must forward a pre-print copy of the publication to Provider's Scientist.

10. WARRANTIES

Provider makes no representation or warranty of any kind, expressed or implied, with respect to the Material, including but not limited to any representation or warranty with respect to the utility, efficacy, non-toxicity, safety, merchantability, title, or fitness for a particular purpose, or that the use of the Material will not infringe any patent, copyright or other intellectual property rights of a third party.

11. ASSUMPTION OF RISK

Recipient acknowledges that the Material is experimental in nature, that all of its characteristics, as well as hazards associated with its use, may not be known. Recipient assumes all risk and responsibility for the use, storage or disposal of the Material as well as the risks of transport, loss or damage to or by the Material upon the Material leaving the custody and premises of Provider.

12. LIMITATION OF LIABILITY & INDEMNITY

Recipient assumes all liability for loss or damages arising from the use, storage or disposal of the Material and further agrees to indemnify, defend and hold harmless Provider and its officers, directors and employees from all claims, actions and damages whatsoever, including legal fees, resulting from or in connection with the use, storage or disposal of the Material, except insofar as such claims result directly from the gross negligence or wilful misconduct of the Provider. In no circumstances will Provider be liable for any special, direct, consequential, incidental or any other damages suffered by Recipient or any others resulting from the use, storage or disposal of the Material, and Modification or any product derived from use of the Material or any modification.

13. TERM & TERMINATION

This Agreement will terminate on the earliest of the following dates:

- a. when the Material becomes generally and unconditionally available from third parties, for example, through reagent catalogues or public depositories;
- b. on completion of Recipient's Research Project;
- c. on thirty (30) days written notice by either party to the other;
- d. if Recipient materially breaches the Agreement, immediately upon written notice from Provider to Recipient of Recipient's breach of this Agreement; or
- e. on [insert date].

Upon termination under 13a or 13c, Recipient will be bound to Provider by those terms of this Agreement applicable under Survival and shall return all Materials as delivered from Provider, provided that if Provider terminates this Agreement under 13c, other than for cause such as an imminent health risk or for alleged patent infringement, upon request from Recipient, Provider may defer the effective date of termination for a period of up to one year, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, Recipient will discontinue its use of the Material and will, upon direction of Provider, return or destroy any remaining Material.

Upon termination under 13b or 13e, Recipient must discontinue its use of the Material and will, upon direction of Provider, return or destroy any remaining Material and confirm in writing the destruction of the Material to Provider.

Upon termination under 13d, Recipient must immediately discontinue its use of the Material and any Modifications, destroy all Material and Modifications and confirm in writing the destruction of the Material and Modifications to Provider within 30 days' following receiving notice of the breach.

14. GENERAL PROVISIONS

14.1 **Notices** - All notices given under this Agreement must be in writing and delivered by courier or registered mail, return receipt requested, or facsimile, to the address of the party set out on page one of this Agreement. All notices to the Provider must be addressed to **title / contact name for position** and all notices to the Recipient must be addressed to **title/contact name for position**. Notices will be deemed to have been received on the date of delivery, if delivered by courier, on the fifth business day following receipt, if delivered by registered mail or on the first business day following the electronic confirmation of the successful transmission of the facsimile, if sent by facsimile.

14.2 **Remedies/No Waiver** - Provider will be entitled to seek a temporary or permanent injunction or any other form of equitable relief to enforce the obligations contained in this Agreement. Failure of a party to enforce its rights on one occasion will not result in a waiver of those rights on any other occasion.

- 14.3 **Assignment** - Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.
- 14.4 **Regulatory compliance** – Each party must comply with all applicable laws, regulations and rules in its jurisdiction.
- 14.5 **Entire Agreement/Severability** - This Agreement represents the entire agreement between the parties with regard to the Material and supersedes any previous understandings, commitments or agreements, whether written or oral. If any provision of this Agreement is wholly or partially unenforceable for any reason, all other provisions will continue in full force and effect.
- 14.6 **Survival** - The obligations contained in clauses 6, 7, 10, 11 and 12 will survive termination of this agreement.
- 14.7 **Authority to Bind/Execution** – Each Party represents that it is permitted to enter into this Agreement, to consent to its conditions and that each has authority to sign this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. If delivered by facsimile, the party must also send promptly and without delay an executed original by courier to the other party. This Agreement may also be created as an electronic document and executed by electronic signature.
- 14.8 **Governing Law** - This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada and the parties submit to the exclusive jurisdiction of the courts of the Province of Ontario.

The Parties have duly executed this Agreement by their duly authorized representatives as of the Effective Date.

PROVIDER

RECIPIENT

Name of signatory
 Title
 Name of Institution

Name of signatory
 Title
 Name of Institution/Entity

Date

Date

ACKNOWLEDGMENT BY PROVIDER SCIENTIST & RECIPIENT SCIENTIST

I have read and understood this Agreement and agree to act in accordance with all the terms and conditions of the Agreement. I further agree to ensure that all participants working under my supervision or otherwise involved in working with the Material are aware of and abide by the terms of this Agreement.

Name of Provider Scientist

Name of Recipient Scientist

Date

Date